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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**ADMINISTRATIVE LAW JUDGES'  
CASELOAD PERFORMANCE**

**February 2008 A-07-07-17072**

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**AUDIT REPORT**

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## SOCIAL SECURITY

### **MEMORANDUM**

**Date:** February 6, 2008

**Refer To:**

**To:** The Commissioner

**From:** Inspector General

**Subject:** Administrative Law Judges' Caseload Performance (A-07-07-17072)

### **OBJECTIVE**

The objective of our review was to evaluate the effect of varying levels of administrative law judges' (ALJ) caseload performance on the Office of Disability Adjudication and Review's (ODAR) ability to process projected hearing requests and address the growing backlog of cases.

### **BACKGROUND**

ODAR is responsible for holding hearings and issuing decisions as part of the Social Security Administration's (SSA) process for determining whether or not a person may receive benefits. ODAR directs a nationwide field organization staffed with ALJs who conduct impartial hearings and make decisions on appealed determinations involving retirement, survivors, disability, and supplemental security income. ALJs are supported by hearing office staff who conduct initial case screening and preparation, maintain a control system for all cases in the hearing office, conduct prehearing case analyses, develop additional evidence, schedule hearings, and write, type, and send notices and decisions to claimants.<sup>1</sup>

ALJs are eligible for membership in the Association of ALJs, International Federation of Professional and Technical Engineers (the Union). The purposes of the Union are to preserve, promote, and improve:

- Guarantees and protections provided by the United States Constitution, the Administrative Procedures Act (APA),<sup>2</sup> and all other Federal laws;<sup>3</sup>
- The working conditions of ALJs;<sup>4</sup>

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<sup>1</sup> HALLEX I-2-0-5. See Appendix C for the typical organization of a hearing office.

<sup>2</sup> Administrative Procedures Act, 5 U.S.C. § 554.

<sup>3</sup> Agreement between SSA and the Union, Article 5, Section 2.

<sup>4</sup> Agreement between SSA and the Union, Article 23.

- The professionalism and competence of ALJs by ensuring opportunities for continuing professional education and training;<sup>5</sup> and
- The rights of its members through collective bargaining, political action and all other lawful concerted activities.<sup>6</sup>

On August 31, 2001, SSA entered into an agreement with the Union. The agreement was initially effective for 3 years and automatically renewable for 1 year unless there was a change in a law, rule, or regulation that mandated a change in the agreement. Either SSA or the Union can request the agreement be amended, modified, or terminated. If negotiations are not concluded prior to the expiration date, the agreement will continue until a new agreement becomes effective. In January 2007, SSA and the Union extended the agreement to January 31, 2010.

ODAR issued 558,760 case decisions during Fiscal Year (FY) 2006.<sup>7</sup> These cases were processed<sup>8</sup> by 1,217 ALJs.<sup>9</sup> Of these ALJs, 895 were fully available to process cases and 322 were only partially available to process cases (see Table 1 and Appendix E, Table 1).<sup>10</sup>

Table 1 FY 2006 Production		
Employment Status	Number of ALJs	Number of Cases Processed
Fully Available ALJs	895	434,498
Partially Available ALJs	322	124,262
<b>Total</b>	<b>1,217</b>	<b>558,760</b>

<sup>5</sup> Agreement between SSA and the Union, Article 26, Section 2.

<sup>6</sup> Agreement between SSA and the Union, Article 1, Section 2.

<sup>7</sup> All references to decisions and cases in this report pertain to SSA cases and not Medicare cases. The data file we received from ODAR's Case Processing and Management System (CPMS) contained slightly fewer cases than ODAR identified in workload reports published for FY 2006. See Appendix B for a detailed discussion of the scope and methodology of our review.

<sup>8</sup> Throughout this report, we use cases "processed" to refer to case decisions issued by an ALJ during FY 2006.

<sup>9</sup> The FY 2006 ODAR workload reports identified ALJ full-time equivalents as 1,111.77. However, for our review we did not use full-time equivalents. Rather, we obtained a data file from ODAR's CPMS of case decisions issued in FY 2006. This extract identified 1,217 ALJs as issuing case decisions in FY 2006.

<sup>10</sup> We considered partially available ALJs to be those who were reasonably expected to process fewer cases than fully available ALJs or were not employed by SSA during the entire year. See Page 5 of this report for further discussion of partially available ALJs. See Appendix D for the classifications of ALJs considered partially available and the number of ALJs in each classification.

## RESULTS OF REVIEW

We found that ODAR's ability to process projected hearing requests and address the growing backlog of cases will continue to be negatively impacted by the caseload performance of some ALJs if their status quo performance levels continue. To ensure claimants receive their hearing decisions as soon as possible and to be good stewards of the American taxpayer's funds, SSA must ensure that hearing requests are processed within acceptable timeframes and the backlog of cases is reduced to an appropriate level. To do so, SSA should establish a performance accountability process that allows ALJ performance to be addressed when it falls below an acceptable level.

## MANAGEMENT OF ALJ CASELOAD PERFORMANCE

While ODAR has taken actions to counsel some ALJs on the timeliness of their case processing, it does not have a formal performance accountability process in place to hold ALJs accountable for performance that is below an acceptable level. A formal performance accountability process may result in resistance from some ALJs based upon their misinterpretation of the qualified decisional independence provision. However, provisions in Federal legislation, the Union Constitution, and the Union agreement allow SSA to establish a reasonable production goal, provided the goal does not infringe on ALJs' qualified decisional independence.

The APA was enacted to protect ALJs' qualified decisional independence.<sup>11</sup> Specifically, safeguards were put in place to ensure that ALJ judgments were independent and ALJs would not be paid, promoted, or discharged arbitrarily or for political reasons.<sup>12</sup> To ensure ALJ independence, the APA grants ALJs certain specific exemptions from normal management control. For example, SSA may not establish a performance appraisal system for ALJs like it does for other Federal employees.<sup>13</sup> However, the APA does not prevent disciplinary actions against ALJs.<sup>14</sup> In fact, the Merit Systems Protection Board (MSPB) stated in the Matter of Chocallo,<sup>15</sup> "[t]he fact that an [ALJ] carries out his/her duties in a hearing room rather than an office does not provide an impenetrable shield from appraisal of performance."<sup>16</sup>

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<sup>11</sup> *Supra* note 2.

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. §4301 and 5 C.F.R. §930.206.

<sup>14</sup> An action may be taken against an ALJ only for good cause established and determined by the MSPB. See 5 U.S.C. §7521; see also 5 C.F.R. §930.211.

<sup>15</sup> Matter of Chocallo, 1 M.S.P.R. 605 (1980).

<sup>16</sup> *Id.*

Further, Federal legislation does not prevent SSA from establishing a performance accountability process wherein ALJs are held to reasonable production goals, as long as the goals do not infringe on ALJs' qualified decisional independence. Specifically, in the case of Nash v. Bowen,<sup>17</sup> the Second Circuit Court of Appeals upheld SSA's imposition of monthly production goals in efforts to eliminate the backlog and delays in processing cases.<sup>18</sup> In this case, ALJs claimed that such policies violated the ALJs' qualified decisional independence granted by the APA. The court focused on the intent of the APA and held that "...[the] setting of reasonable production goals, as opposed to fixed quotas, is not in itself a violation of the APA...Moreover, in view of the significant backlog of cases, it was not unreasonable to expect ALJs to perform at minimally acceptable levels of efficiency."<sup>19</sup> The MSPB expressed a similar view in the case of In re Sannier<sup>20</sup> when concerns arose over low productivity in one hearing office and ALJs were expected to process 40 cases per month.<sup>21</sup> The ALJs appealed the action to the MSPB, who held that "...so long as the agency's actions do not affect the ability of the ALJ to function as an independent and impartial decisionmaker, [the actions] are permissible."<sup>22</sup>

The Union Constitution provides that:

The association shall not enter into any agreement with SSA, HHS-DAB, or any other federal agency that creates case production standards and/or performance standards for Administrative Law Judges or which in any manner adversely impacts upon the right of an Administrative Law Judge to conduct a constitutional due process hearing according to the Administrative Procedure Act.<sup>23</sup>

Further, the agreement with the Union states that an ALJ's duties are "complex and varied" and "...are of such a character that the output produced or the results accomplished by such work cannot be standardized in relation to a given period of time."<sup>24</sup> However, we do not believe that the provisions in the Union Constitution or the agreement prevent SSA from establishing a reasonable production goal, provided the goal does not infringe on ALJs' qualified decisional independence.

While interpretation of the APA, the Union Constitution, and the Union agreement appear to allow a reasonable production goal to be established, SSA will need to document the methodology used to establish the goal. Furthermore, once a reasonable production goal has been established, SSA must be able to identify and maintain evidence to support that an ALJ performed below an acceptable level. In fact, in

<sup>17</sup> Nash v. Bowen, 869 F.2d 675 (2d Cir. 1989), *cert. denied*, 493 U.S. 812 (1989).

<sup>18</sup> Id.

<sup>19</sup> Nash v. Bowen, 869 F.2d at 680.

<sup>20</sup> In re Sannier, 45 M.S.P.R. 420 (1990); *aff'd* in Sannier v. M.S.P.B., 931 F.2d 856 (Fed. Cir. 1991).

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Article XIX, Union Constitution.

<sup>24</sup> Agreement between SSA and the Union, Article 5, Section 1.

SSA v. Brennan,<sup>25</sup> the MSPB held that an ALJ may be removed for substandard production; however, in Brennan the Agency did not offer statistical evidence that measured comparative productivity among ALJs.<sup>26</sup> Likewise, in SSA v. Goodman,<sup>27</sup> the MSPB concluded that SSA had established good cause to warrant an ALJ's removal based on low productivity; however, the evidence provided by SSA did not prove that the ALJ failed to achieve a minimally acceptable level of productivity. Therefore, SSA must determine the types of statistical information that can serve as evidence of substandard production.

SSA should work with legislative officials and others as the Agency deems appropriate to identify a performance accountability process that ensures all ALJs perform at a reasonable level, without infringing on ALJ qualified decisional independence. Further, SSA should document the performance accountability process, including methods to establish a reasonable production goal, identify and maintain statistical evidence of ALJ caseload performance, and determine what performance actions are needed for ALJs with production below an acceptable level.

### **PARTIALLY AVAILABLE ALJS**

This review focused on increasing the number of cases processed by fully available ALJs because ODAR does not track the number of hours each partially available ALJ is actually available to process cases. Therefore, we could not analyze the partially available ALJs' caseload performance. As a result, our analyses assumed that partially available ALJs will continue to process the same number of cases as they did in FY 2006.

SSA needs to establish a process to identify the availability of each partially available ALJ for case adjudication and establish acceptable levels of performance based on availability. Without a process to determine whether partially available ALJs process cases at a reasonable level, SSA cannot be assured that it receives appropriate value for the dollars spent employing partially available ALJs.

We believe it is important to note that Hearing Office Chief ALJs (HOCALJs) were included in the partially available ALJ classification for the purposes of our review. HOCALJs were excluded from our analysis of fully available ALJs because, although they are full-time employees, they are given the latitude to spend 25 to 50 percent of their time on management functions, depending on the size of the hearing office. However, we found it interesting that, in FY 2006, HOCALJs processed an average of 657 cases. This average was higher than the average of 485 cases processed by fully available ALJs in FY 2006, although HOCALJs are only partially available to adjudicate cases.

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<sup>25</sup> SSA v. Brennan, 19 M.S.P.R. 335, 340 (1984).

<sup>26</sup> Id.

<sup>27</sup> SSA v. Goodman, 19 M.S.P.R. 321 (1984).

## IMPACT OF DIFFERENT PRODUCTION LEVELS

In FY 2006, fully available ALJs processed varying numbers of cases (see Table 2). In fact, ALJs processed cases ranging from a low of 40 to a high of 1,805. The average and median number of cases processed by fully available ALJs in FY 2006 were 485 and 476, respectively.<sup>28</sup> ODAR informed us that there is currently no official minimum number of cases an ALJ is required to process.

Therefore, for our analysis, we evaluated the impact production levels of 400, 450, 500, and 550 cases would have on ODAR's case processing, given that these levels are within a reasonable tolerance of the average and median.<sup>29,30</sup> Specifically, we evaluated the impact of these production levels on ODAR's ability to process incoming hearing requests and reduce the backlog of cases within 5 years.<sup>31</sup> However, we are not recommending the establishment of a specific production level for ALJs nor are we suggesting that any of the production levels presented in this report are more appropriate than another. The production levels illustrated in this report are merely intended to provide SSA with information regarding the impact of various production levels on ODAR's workload. The establishment of a reasonable production level for ALJs is a management decision.

Table 2 Cases Processed by Fully Available ALJs in FY 2006	
Number of Cases	Number of ALJs
99 or Less	5
100-199	17
200-299	94
300-399	144
400-499	242
500-599	217
600-699	104
700-799	37
800-899	15
900-999	6
1,000-1,099	9
1,100 or More	5
<b>Total</b>	<b>895</b>

### Production Level of 400 Cases

In FY 2006, 260 of the 895 fully available ALJs processed fewer than 400 cases each. These ALJs represented about 29 percent of ODAR's fully available ALJs. If these ALJs increased their annual production to 400 cases each and the remaining fully available ALJs' production remained constant, the total production by fully available ALJs would have increased by 26,241 cases (6 percent) over actual FY 2006 production (see Appendix E, Table 3).

<sup>28</sup> The median of 476 cases indicates that 50 percent of the ALJs processed 476 cases or more while the other 50 percent of ALJs processed 476 cases or less.

<sup>29</sup> SSA has asserted that ALJs should be able to process 500 to 700 cases annually, according to the Statement of Michael J. Astrue, Commissioner of Social Security, testimony before the Senate Finance Committee, Addendum: Summary of Initiatives to Eliminate the SSA Hearings Backlog, May 23, 2007.

<sup>30</sup> See Appendix E for a detailed discussion of the methodology used for our analysis.

<sup>31</sup> SSA has an aggressive plan to eliminate the backlog by FY 2012. See Commissioner Astrue's testimony before the Senate Finance Committee, *supra* note 29.

At this level of production, over 26,000 claimants would have received their decisions more timely. However, even if the 260 ALJs processed 400 cases each and all other fully and partially available ALJs' production remained constant, it would not resolve all of the workload issues facing ODAR. In fact, ODAR would only be able to stay abreast of incoming hearing requests and make minimal reductions in the backlog during FYs 2008 and 2009. In the following 3 FYs, ODAR would not be able to process all projected hearing requests, and the backlog would increase.

If the 260 ALJs increased their annual production to 400 cases each and the remaining ALJs' production remained constant, additional ALJs would be needed for ODAR to process all incoming hearing requests and completely eliminate the excess backlog by FY 2012. In fact, we estimate 227 additional ALJs would need to be hired in FY 2008 (see Appendix E, Table 4).<sup>32</sup>

### **Production Level of 450 Cases**

During FY 2006, 372 of the 895 fully available ALJs processed fewer than 450 cases each. These ALJs represented approximately 42 percent of the fully available ALJs. If these ALJs increased production to 450 cases each and the remaining fully available ALJs' production remained constant, the total production by fully available ALJs would have increased by 42,223 cases (10 percent) over actual FY 2006 production (see Appendix E, Table 3).

At this level of production, over 42,000 claimants would have received their decisions sooner. If the 372 ALJs processed 450 cases each and all other fully and partially available ALJs' production remained constant, ODAR would be able to stay abreast of all incoming hearing requests and make progress in reducing the backlog during FYs 2008 through 2011. In FY 2012, ODAR would not be able to process all projected hearing requests and the backlog would increase.

If the 372 ALJs increased their annual production to 450 cases each and the remaining ALJs' production remained constant, additional ALJs would be needed for ODAR to process all incoming hearing requests and completely eliminate the excess backlog within 5 years. In fact, we estimate 158 additional ALJs would need to be hired in FY 2008 (see Appendix E, Table 5).<sup>33</sup>

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<sup>32</sup> Because of a 9-month learning curve for new ALJs, all additional ALJs would need to be hired in FY 2008 and would not be fully available to process at the designated production level until FY 2009. Further, our calculations were based on ALJs that had case decisions issued in FY 2006. Therefore, ODAR will have to perform its own calculations of increased production and the number of additional ALJs that will be needed once it selects a reasonable production level, while also considering ALJ attrition, newly projected hearing requests, and current backlog statistics.

<sup>33</sup> Id.

### **Production Level of 500 Cases**

In FY 2006, 502 of the 895 fully available ALJs processed fewer than 500 cases each. These ALJs represented approximately 56 percent of the fully available ALJs. If these ALJs increased production to 500 cases each and the remaining fully available ALJs' production remained constant, the total production by fully available ALJs would have increased by 64,243 cases (15 percent) over actual FY 2006 production (see Appendix E, Table 3).

At this level of production, over 64,000 claimants would have received their decisions more timely. If the 502 ALJs processed 500 cases each and the remaining fully and partially available ALJs' production remained constant, ODAR would be able to stay abreast of incoming hearing requests and make progress in reducing the backlog through FY 2012.

If the 502 ALJs increased their annual production to 500 cases each and the remaining ALJs' production remained constant, additional ALJs would be needed for ODAR to completely eliminate the excess backlog within 5 years. In fact, we estimate 87 additional ALJs would need to be hired in FY 2008 (see Appendix E, Table 6).<sup>34</sup>

### **Production Level of 550 Cases**

In FY 2006, 619 of the 895 fully available ALJs processed fewer than 550 cases each. These ALJs represented approximately 69 percent of the fully available ALJs. If these ALJs increased production to 550 cases each and the remaining fully available ALJs' production remained constant, the total production by fully available ALJs would have increased by 92,335 cases (21 percent) over actual FY 2006 production (see Appendix E, Table 3).

At this level of production, over 92,000 claimants would have received their decisions more timely. If the 619 ALJs processed 550 cases each and the remaining fully and partially available ALJs' production remained constant, ODAR would be able to stay abreast of incoming hearing requests and make progress in reducing the backlog through FY 2012.

If the 619 ALJs increased their annual production to 550 cases each and the remaining ALJs' production remained constant, additional ALJs would be needed for ODAR to completely eliminate the excess backlog within 5 years. In fact, we estimate 15 additional ALJs would need to be hired in FY 2008 (see Appendix E, Table 7).<sup>35</sup>

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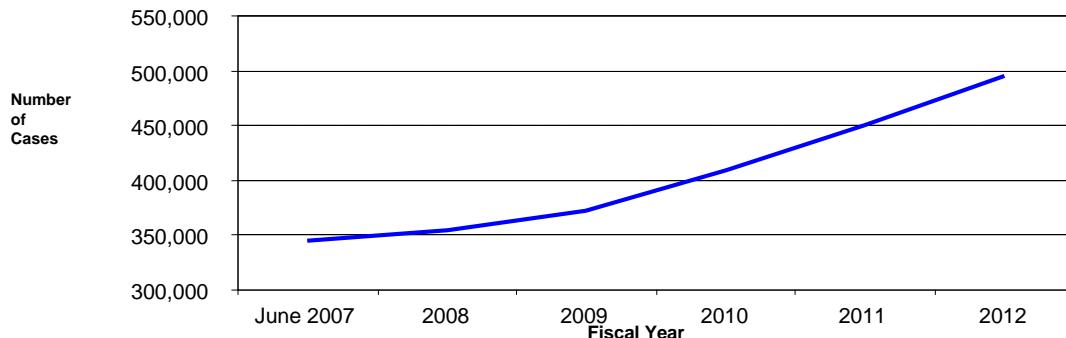
<sup>34</sup> Id.

<sup>35</sup> Id.

## Support for Reasonable Production Goals

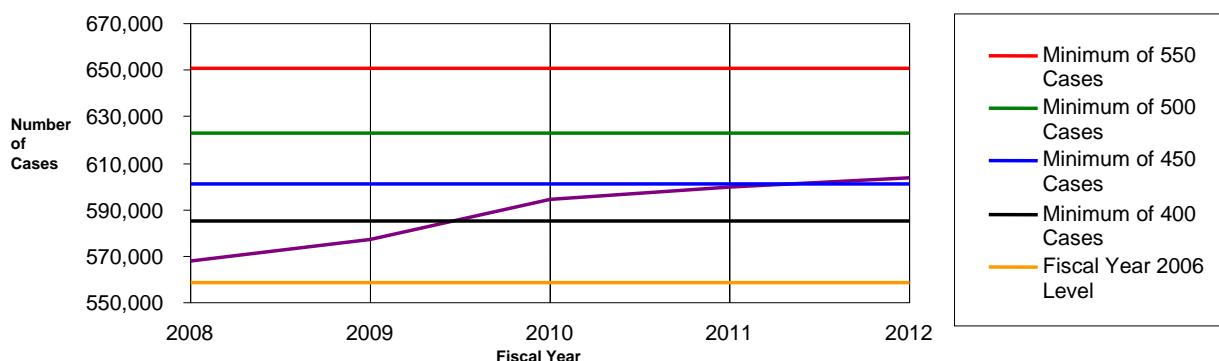
At the end of June 2007, there were over 745,000 cases pending at ODAR. SSA considers approximately 400,000 cases as a manageable pending level to keep workflow moving at all times.<sup>36</sup> As a result, there is a true excess backlog of about 345,000 cases. Based on the true backlog, we estimate that if ALJs continue to process cases at the FY 2006 level, and the number of fully and partially available ALJs each remain the same, the backlog will increase by about 150,000 cases by FY 2012 (see Figure 1 and Appendix E, Table 2).

**Figure 1: Change in True Backlog at FY 2006 Production Level**



However, if ALJs were held accountable for a reasonable production goal, ODAR could extend the number of years that annual hearing requests could be processed in total and see reductions in the backlog (see Figure 2 and Appendix E, Tables 2 and 3). For example, at the FY 2006 production level, ODAR would not be able to process all of the projected hearing requests over the next 5 years. However, if fully available ALJs performed at the production levels of 500 or 550 cases, ODAR would be able to process all hearing requests and make reductions in the backlog through FY 2012.

**Figure 2: Projected Hearing Requests Compared to Various Production Levels**



**Note:** The purple line represents the projected level of hearing requests.

<sup>36</sup> According to Commissioner Astrue's testimony before the Senate Finance Committee, *supra* note 24, 400,000 cases is the ideal national pending level. This number was calculated based on SSA considering 360 cases per ALJ an ideal pending level. Therefore, the national ideal pending level will vary based on the number of ALJs.

We analyzed the fully available ALJs based on tenure to determine whether ALJs with certain years of service were more likely to perform below each production level (see Table 3). We found that, regardless of tenure, there was a large percentage of fully available ALJs who did not process cases at any of the four production levels we analyzed.

**Table 3  
FY 2006 Production by Tenure**

Tenure (Years)	Total ALJs	ALJs With Less Than 400 Cases		ALJs With Less Than 450 Cases		ALJs With Less Than 500 Cases		ALJs With Less Than 550 Cases	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
10 or Less	371	111	29.92%	155	41.78%	207	55.80%	256	69.00%
11-20	381	109	28.61%	160	41.99%	222	58.27%	273	71.65%
21-30	101	25	24.75%	36	35.64%	50	49.50%	65	64.36%
31 or More	42	15	35.71%	21	50.00%	23	54.76%	25	59.52%
	<b>895</b>	<b>260</b>	<b>29.05%</b>	<b>372</b>	<b>41.56%</b>	<b>502</b>	<b>56.09%</b>	<b>619</b>	<b>69.16%</b>

### ALJ CASELOAD PERFORMANCE BY HEARING OFFICE AND REGION

We analyzed the fully available ALJs in 140 hearing offices<sup>37</sup> and 10 regions to determine whether certain locations had a higher percentage of fully available ALJs with performance below minimum production levels of 500 and 550 cases. Specifically, we identified the percent of fully available ALJs in each hearing office and region that processed fewer than 500 and 550 cases in FY 2006.

In 81 of the 140 hearing offices, more than 50 percent of the fully available ALJs processed fewer than 500 cases (see Table 4 and Appendix F).<sup>38</sup> Further, in 113 of the 140 hearing offices, more than 50 percent of the fully available ALJs processed fewer than 550 cases. The fact that these hearing offices had a large percentage of fully available ALJs that processed cases below these production levels is of concern, given the number of cases SSA believes that ALJs should be

**Table 4  
FY 2006 Performance by Hearing Office**

Percent of ALJs Below Production Level	Number of Offices	
	Minimum Production Level of 500 Cases	Minimum Production Level of 550 Cases
50 or More	81	113
40-49	17	9
30-39	10	5
20-29	21	5
10-19	4	2
Less Than 10	7	6
<b>Total</b>	<b>140</b>	<b>140</b>

<sup>37</sup> ODAR has 141 hearing offices and 5 satellite offices. However, our analysis identified 139 hearing offices and 1 satellite office where fully available ALJs processed cases in FY 2006.

<sup>38</sup> See Appendix F for a discussion of ALJ performance by tenure and hearing office.

able to process annually.<sup>39</sup> Therefore, SSA should assess the caseload performance of the hearing offices where a higher percentage of fully available ALJs processed cases below the level ODAR determines to be reasonable to ascertain why performance levels were not achieved and take appropriate corrective actions.

Further, over 65 percent of the fully available ALJs in the Seattle and Boston Regions processed fewer than 500 cases each (see Table 5). Conversely, less than 50 percent of the fully available ALJs in the Denver, Kansas City, and Philadelphia Regions processed less than 500 cases each in FY 2006, with ALJs in the Denver Region being most likely to process more than 500 cases each.<sup>41</sup>

Further, there were 8 regions where over 65 percent of the fully available ALJs processed fewer than 550 cases each. The Kansas City and Denver Regions were the only regions where 55 percent or less of the fully available ALJs processed fewer than 550 cases each. SSA should evaluate how the procedures used in some regions result in a higher percentage of ALJs processing cases at the level ODAR determines to be reasonable and share best practices with other regions.

**Table 5  
FY 2006 Performance by Region**

Region	Total ALJs	ALJs with Less Than 500 Cases		ALJs with Less Than 550 Cases	
		Number	Percent	Number	Percent
Seattle	29	20	68.97%	22	75.86%
Boston	44	29	65.91%	34	77.27%
Dallas	107	69	64.49%	79	73.83%
San Francisco	117	75	64.10%	92	78.63%
Chicago	129	75	58.14%	88	68.22%
New York	76	41	53.95%	51	67.11%
Atlanta	215	111	51.63%	141	65.58%
Philadelphia	107	51	47.66%	74	69.16%
Kansas City	40	19	47.50%	22	55.00%
Denver	30	11	36.67%	15	50.00%
	<b>894<sup>40</sup></b>	<b>501</b>	<b>56.04%</b>	<b>618</b>	<b>69.13%</b>

## CONCLUSION AND RECOMMENDATIONS

It is imperative that ALJs process cases at an acceptable level to reduce the emotional and financial impact of long processing times for the thousands of claimants awaiting decisions on their appeals. To ensure claimants receive timely and accurate decisions, ODAR management must have Agency support to establish a performance accountability process that maintains ALJ qualified decisional independence but holds ALJs accountable for reasonable levels of performance. ODAR must also have resources necessary to make timely and accurate decisions on expected hearing requests. This includes adequate support staff to prepare cases, schedule hearings, and perform other functions necessary to enable acceptable ALJ caseload performance. Otherwise, ODAR will not be able to process all incoming hearing requests or eliminate the backlog of cases.

<sup>39</sup> *Supra* note 29.

<sup>40</sup> One ALJ processed cases only at the Centralized Screening Unit and was not included in any region.

<sup>41</sup> See Appendix G for a discussion of ALJ performance by tenure and region.

Once a performance accountability process is established and the backlog of cases is eliminated, SSA must ensure that case backlogs do not recur in the future. To do so, SSA must continue to project future case receipts, ALJ attrition, and ALJ hiring. Further, new ALJs must be hired timely to maximize the use of ODAR's resources.

Therefore, we recommend SSA:

1. Establish a performance accountability process that does not infringe on ALJ qualified decisional independence but allows ALJ performance to be addressed when it falls below an acceptable level.
2. Establish a process to identify the availability of each partially available ALJ for case adjudication and establish acceptable levels of performance based on availability.
3. Assess the caseload performance of offices where a higher percentage of ALJs process cases below the level ODAR determines to be reasonable to ascertain why performance levels were not achieved and take appropriate corrective actions.
4. Evaluate how the caseload management procedures in some regions result in a higher percentage of ALJs processing cases at the level ODAR determines to be reasonable and share best practices with other regions.

## **AGENCY COMMENTS**

SSA agreed with our recommendations. The Agency's comments are included in Appendix H. The Agency also provided technical comments that we considered and incorporated, where appropriate.



Patrick P. O'Carroll, Jr.

# **Appendices**

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**APPENDIX A** – Acronyms

**APPENDIX B** – Scope and Methodology

**APPENDIX C** – Hearing Office Organization Chart

**APPENDIX D** – Classification of Administrative Law Judges in Fiscal Year 2006

**APPENDIX E** – Analysis of Production Levels

**APPENDIX F** – Fully Available Administrative Law Judges’ Performance by Tenure and Hearing Office

**APPENDIX G** – Fully Available Administrative Law Judges’ Performance by Tenure and Region

**APPENDIX H** – Agency Comments

**APPENDIX I** – OIG Contacts and Staff Acknowledgments

## **Appendix A**

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### **Acronyms**

ALJ	Administrative Law Judge
APA	Administrative Procedures Act
C.F.R.	Code of Federal Regulations
CPMS	Case Processing and Management System
CSU	Centralized Screening Unit
FY	Fiscal Year
HALLEX	Hearings, Appeals, and Litigation Law Manual
HOCALJ	Hearing Office Chief Administrative Law Judge
MSPB	Merit Systems Protection Board
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
SSA	Social Security Administration
Union	Association of Administrative Law Judges, International Federation of Professional and Technical Engineers
U.S.C.	United States Code

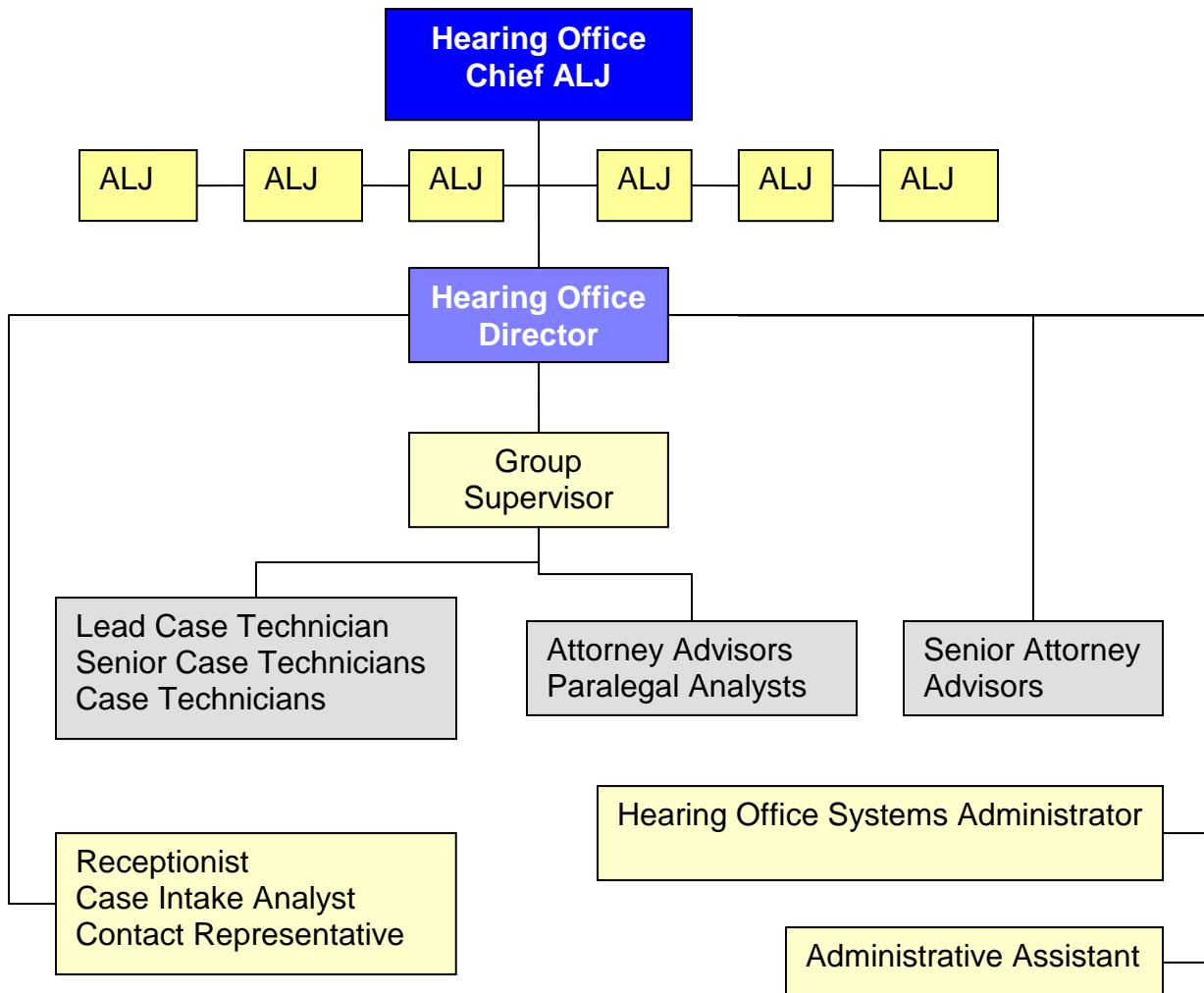
# **Scope and Methodology**

To accomplish our objective we:

- Reviewed applicable Federal laws and regulations and pertinent parts of the Hearings, Appeals, and Litigation Law manual related to administrative law judge (ALJ) hearings.
- Reviewed Fiscal Year (FY) 2005 and 2006 caseload analysis reports prepared by the Office of Disability Adjudication and Review (ODAR).
- Reviewed prior Office of the Inspector General, Government Accountability Office, and Social Security Advisory Board reports related to the ALJ hearings process.
- Reviewed the agreement between the Social Security Administration (SSA) and the Association of ALJs, International Federation of Technical and Professional Engineers.
- Interviewed SSA staff from ODAR's Office of Management and Office of the Chief ALJ.
- Reviewed the Commissioner's testimony before the Senate Finance Committee on May 23, 2007 on the initiatives to eliminate the SSA hearings backlog.
- Obtained information from ODAR officials on the number of projected hearing requests through FY 2012 and the employment classification for each ALJ in FY 2005 and 2006 (that is, senior ALJ, Chief ALJ, new, retired, etc.).
- Obtained data extracts from ODAR's Case Processing and Management System of 519,149 cases processed by ALJs in FY 2005 and 558,760 cases processed by ALJs in FY 2006. These files contained 210 cases and 218 cases, respectively, less than ODAR identified in workload reports published for FYs 2005 and 2006. However, the differences of less than 1 percent each FY are immaterial.
- Compared the number of cases processed by each ALJ in FY 2005 and FY 2006 to various production levels. We identified similar results in both FYs, which indicates that the results of our review are not unique to FY 2006.

We conducted our review in Kansas City, Missouri, and Falls Church, Virginia, between April and August 2007. We determined the data used for this review were sufficiently reliable to meet our objective. The entity reviewed was the Office of the Chief ALJ within ODAR. We conducted our review in accordance with generally accepted government auditing standards.

## Hearing Office Organization Chart



## **Appendix D**

### **Classification of Administrative Law Judges in Fiscal Year 2006**

We obtained a data extract from the Office of Disability Adjudication and Review's (ODAR) Case Processing and Management System of 558,760 case decisions issued in Fiscal Year (FY) 2006. These cases were processed by a total of 1,217 administrative law judges (ALJ). With the assistance of ODAR's Audit Liaison, we classified these ALJs as either fully available or partially available. ALJs were considered partially available if they were reasonably expected to process fewer cases than fully available ALJs or were not employed by the Social Security Administration (SSA) during the entire year. Based on this classification, we determined there were 895 fully available ALJs and 322 partially available ALJs that processed cases in FY 2006.

Classification of Partially Available Administrative Law Judges		
ALJ Classification	Description	Number of ALJs <sup>1</sup>
HOCALJ <sup>2</sup>	The Hearing Office Chief ALJ (HOCALJ), in addition to deciding cases, has administrative and managerial responsibility for all personnel in the hearing office.	132
Retired	ALJs who retired during the year.	45
New	New ALJs are not counted as fully available to process cases for up to 9 months on duty.	39
Union	In accordance with the agreement between SSA and the Association of ALJs, Union representatives are allowed to use official time for the discharge of their duties.	22
Part-time	Part-time ALJs work less than 80 hours per pay period in case adjudication and are assigned cases on an as-needed basis determined by the hearing office workloads.	21
Leave	ALJs on leave for 20 or more consecutive workdays.	20

<sup>1</sup> Some ALJs may have been identified in more than one classification; however, we only included them in one classification. For example, a HOCALJ that retired during the year was only included in the Retired classification.

<sup>2</sup> The HOCALJ classification includes 37 Acting HOCALJs.

Classification of Partially Available Administrative Law Judges		
ALJ Classification	Description	Number of ALJs <sup>1</sup>
Separation	Senior ALJs whose appointments ended during the year.	11
RCALJ	The Regional Chief ALJ provides direction, leadership, management, and guidance to the regional office staff and hearing office staff, including ALJs.	10
Detail	ALJs may go on detail to conduct peer case reviews of other ALJs' decisions, act in management positions, or perform training.	10
Death	ALJs who died during the year.	5
Transfer	ALJs who transfer to ODAR may have a learning curve similar to new ALJs.	3
Resign	ALJs who resigned from SSA during the year.	2
Medicare	ALJs who processed more than 100 Medicare cases. <sup>3</sup>	2
<b>Total</b>		<b>322</b>

<sup>3</sup> Of the 8 ALJs that processed Medicare cases in Fiscal Year 2006, we considered the 2 that processed more than 100 Medicare cases to be partially available because they are reasonably expected to process fewer SSA cases.

# **Analysis of Production Levels**

We reviewed 558,760 case decisions issued by administrative law judges (ALJ) in Fiscal Year (FY) 2006.<sup>1</sup> There were 1,217 ALJs; 895 were considered fully available and 322 were considered partially available (see Table 1). We considered partially available ALJs to be those who were reasonably expected to process fewer cases than fully available ALJs or were not employed by SSA during the entire year. These ALJs include ALJs who worked less than 80 hours per pay period; all permanent and acting Regional and Hearing Office Chief ALJs; ALJs on detail; ALJs who processed more than 100 Medicare cases; ALJ Union representatives; ALJs who were new, retired, separated, removed, or resigned during the year; and ALJs who died or were on extended leave.<sup>2</sup>

The fully available ALJs processed an average of 485 cases each and a median of 476 cases each, which indicates statistically that the number of cases processed by the fully available ALJs appears to be evenly distributed. To determine the impact of maintaining current production levels, we identified the number of cases processed by each fully available ALJ in FY 2006 and the number of cases processed by all partially available ALJs.

**Table 1**  
**Fiscal Year 2006 Production**

<b>ALJs in FY 2006</b>	<b>Number of ALJs</b>	<b>Number of Cases Processed</b>
Fully Available ALJs	895	434,498
<i>Percent of Total</i>	74%	78%
Partially Available ALJs	322	124,262
<i>Percent of Total</i>	26%	22%
<b>Total</b>	<b>1,217</b>	<b>558,760</b>

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<sup>1</sup> This number of cases is different than the number the Office of Disability Adjudication and Review published in its workload reports as processed by ALJs in FY 2006. See Appendix B for the scope and methodology of our review.

<sup>2</sup> See Appendix D for the number of ALJs in each classification.

We then compared the FY 2006 production levels to the number of projected hearing requests for FY 2008 through FY 2012 (see Table 2). Specifically, we subtracted the total production from the projected hearing requests to arrive at the excess or deficit annual production for FY 2008 through FY 2012. We then applied the excess or deficit annual production to the true backlog at the end of the previous year to arrive at the true backlog for each year.<sup>3</sup>

Table 2 Production at Current Levels by Fully Available and Partially Available ALJs							
Fiscal Year	June 2007	2008	2009	2010	2011	2012	Total
Projected Hearing Requests		568,169	577,203	594,750	599,583	603,882	2,943,587
Total Annual Production		558,760	558,760	558,760	558,760	558,760	2,793,800
Excess (Deficit) Annual Production (Total Annual Production less Projected Hearing Requests)		(9,409)	(18,443)	(35,990)	(40,823)	(45,122)	(149,787)
True Backlog (Previous FY Backlog less Excess Annual Production)	345,110	354,519	372,962	408,952	449,775	494,897	

To determine the impact of establishing a reasonable production goal for ALJs, we analyzed production levels if the 895 fully available ALJs processed a minimum of 400, 450, 500, or 550 cases each per year (see Table 3). For this analysis, we assumed that the production of ALJs currently processing cases above each level (that is, 400, 450, 500, or 550 cases each) would remain constant. That is, we presumed that an ALJ who processed 1,805 cases in FY 2006 will continue to process 1,805 cases in future years. For the remaining fully available ALJs, who processed fewer than the production level, we presumed that they will increase production to the level being analyzed (that is, 400, 450, 500, or 550 cases each). Further, we assumed that the production level of partially available ALJs would remain constant.

Table 3 Total Production at Each Level				
	400 Cases	450 Cases	500 Cases	550 Cases
Number of Fully Available ALJs Below Each Production Level in FY 2006	260	372	502	619
FY 2006 Production by All Fully Available ALJs	434,498	434,498	434,498	434,498
Increased Production by Fully Available ALJs to Meet Level	26,241	42,223	64,243	92,335
Potential Production by All Fully Available ALJs (FY 2006 Production plus Increased Production)	460,739	476,721	498,741	526,833
FY 2006 Production by Partially Available ALJs	124,262	124,262	124,262	124,262
<b>Total Production</b>	<b>585,001</b>	<b>600,983</b>	<b>623,003</b>	<b>651,095</b>

<sup>3</sup> At the end of June 2007, there were over 745,000 cases in the backlog. SSA officials stated that, dependent on the number of ALJs, approximately 400,000 cases need to be in process at all times to keep workflow at hearing offices moving. As a result, in June 2007 there was a true backlog of about 345,000 cases.

We compared the resulting total production at each of the four levels with the projected hearing requests through FY 2012 and the current backlog of cases at the Office of Disability Adjudication and Review to identify the additional ALJs that would be needed to process all hearing requests and eliminate the excess backlog by FY 2012 (see Tables 4, 5, 6, and 7 below and on the following pages). Specifically, we calculated the true backlog at the end of each year based on each production level. We then divided the true backlog at the end of FY 2012 by the production level being analyzed and by 4 years to identify the number of ALJs that would be needed to eliminate the backlog by FY 2012.<sup>4</sup>

**Table 4  
Production Level of 400 Cases for Fully Available ALJs<sup>5</sup>**

Fiscal Year	June 2007	2008	2009	2010	2011	2012
Projected Hearing Requests		568,169	577,203	594,750	599,583	603,882
Total Annual Production		585,001	585,001	585,001	585,001	585,001
Excess (Deficit) Annual Production (Total Annual Production less Projected Hearing Requests)		16,832	7,798	(9,749)	(14,582)	(18,881)
True Backlog (Previous FY Backlog less Excess Annual Production)	345,110	328,278	320,480	330,229	344,811	363,692
<b>Additional ALJs</b> (FY 2012 True Backlog of 363,692 divided by 4 Years divided by 400 Cases per ALJ)						<b>227</b>

**Table 5  
Production Level of 450 Cases for Fully Available ALJs<sup>6</sup>**

Fiscal Year	June 2007	2008	2009	2010	2011	2012
Projected Hearing Requests		568,169	577,203	594,750	599,583	603,882
Total Annual Production		600,983	600,983	600,983	600,983	600,983
Excess (Deficit) Annual Production (Total Annual Production less Projected Hearing Requests)		32,814	23,780	6,233	1,400	(2,899)
True Backlog (Previous FY Backlog less Excess Annual Production)	345,110	312,296	288,516	282,283	280,883	283,782
<b>Additional ALJs</b> (FY 2012 True Backlog of 283,782 divided by 4 Years divided by 450 Cases per ALJ)						<b>158</b>

<sup>4</sup> Due to a 9-month learning curve for new ALJs, all additional ALJs would need to be hired in FY 2008 and would not be fully available to process cases at the production level until FY 2009. Therefore, over a 5-year period, the new ALJs would only significantly contribute to reducing the backlog in 4 years.

<sup>5</sup> If all fully available ALJs processed a minimum of 400 cases, the lowest producing ALJs would be performing at a level equal to approximately 84 percent of the current median of 476 cases.

<sup>6</sup> If all fully available ALJs processed a minimum of 450 cases, the lowest producing ALJs would be performing at a level equal to approximately 95 percent of the current median of 476 cases.

**Table 6**  
**Production Level of 500 Cases for Fully Available ALJs<sup>7</sup>**

Fiscal Year	June 2007	2008	2009	2010	2011	2012
Projected Hearing Requests		568,169	577,203	594,750	599,583	603,882
Total Annual Production		623,003	623,003	623,003	623,003	623,003
Excess (Deficit) Annual Production (Total Annual Production less Projected Hearing Requests)		54,834	45,800	28,253	23,420	19,121
True Backlog (Previous FY Backlog less Excess Annual Production)	345,110	290,276	244,476	216,223	192,803	173,682
<b>Additional ALJs</b> (FY 2012 True Backlog of 173,682 divided by 4 Years divided by 500 Cases per ALJ)						<b>87</b>

**Table 7**  
**Production Level of 550 Cases for Fully Available ALJs<sup>8</sup>**

Fiscal Year	June 2007	2008	2009	2010	2011	2012
Projected Hearing Requests		568,169	577,203	594,750	599,583	603,882
Total Annual Production		651,095	651,095	651,095	651,095	651,095
Excess (Deficit) Annual Production (Total Annual Production less Projected Hearing Requests)		82,926	73,892	56,345	51,512	47,213
True Backlog (Previous FY Backlog less Excess Annual Production)	345,110	262,184	188,292	131,947	80,435	33,222
<b>Additional ALJs</b> (FY 2012 True Backlog of 33,222 divided by 4 Years divided by 550 Cases per ALJ)						<b>15</b>

<sup>7</sup> If all fully available ALJs processed a minimum of 500 cases, the lowest producing ALJs would be performing at a level equal to approximately 105 percent of the current median of 476 cases.

<sup>8</sup> If all fully available ALJs processed a minimum of 550 cases, the lowest producing ALJs would be performing at a level equal to approximately 116 percent of the current median of 476 cases.

## ***Appendix F***

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# **Fully Available Administrative Law Judges' Performance by Tenure and Hearing Office**

We conducted analysis by tenure of the fully available administrative law judges (ALJ) that processed fewer than 500 and 550 cases in each hearing office in Fiscal Year (FY) 2006. There were 13 hearing offices of the 140 where all of the fully available ALJs processed less than 500 cases (highlighted in yellow). The median tenure of the ALJs at these 13 hearing offices was 9 years. However, there were 7 hearing offices where all of the fully available ALJs processed more than 500 cases (highlighted in orange on Page F-4). The median tenure of the ALJs at these 7 hearing offices was 17 years. There were 23 hearing offices where all of the fully available ALJs processed less than 550 cases (highlighted in green). The median tenure of the ALJs at these 23 hearing offices was 18 years. However, there were 6 hearing offices where all of the fully available ALJs processed more than 550 cases (highlighted in blue on Page F-4). The median tenure of the ALJs at these 6 hearing offices was 11 years.

Hearing Office	Region	Median Tenure of ALJs	Total Fully Available ALJs in Office	ALJS with Less Than 500 Cases		ALJS with Less Than 550 Cases	
				Number	Percent	Number	Percent
Atlanta, GA	Atlanta	10	9	9	100.00%	9	100.00%
Oklahoma City, OK	Dallas	11	8	8	100.00%	8	100.00%
Pasadena, CA	San Francisco	11	8	8	100.00%	8	100.00%
Miami, FL	Atlanta	5	7	7	100.00%	7	100.00%
Philadelphia, PA	Philadelphia	12	7	7	100.00%	7	100.00%
Knoxville, TN	Atlanta	15	6	6	100.00%	6	100.00%
New Haven, CT	Boston	9	6	6	100.00%	6	100.00%
San Francisco, CA	San Francisco	9	6	6	100.00%	6	100.00%
Peoria, IL	Chicago	2	5	5	100.00%	5	100.00%
New Orleans, LA	Dallas	16	3	3	100.00%	3	100.00%
Madison, WI (Satellite)	Chicago	11	2	2	100.00%	2	100.00%
Metairie, LA	Dallas	7	2	2	100.00%	2	100.00%
Richmond, VA	Philadelphia	32	2	2	100.00%	2	100.00%
Fort Lauderdale, FL	Atlanta	5	11	10	90.91%	10	90.91%
Chicago, IL	Chicago	10	10	9	90.00%	9	90.00%
Houston, TX	Dallas	16	9	8	88.89%	9	100.00%
Buffalo, NY	New York	9	8	7	87.50%	7	87.50%
Portland, OR	Seattle	12	8	7	87.50%	7	87.50%
Chattanooga, TN	Atlanta	12	7	6	85.71%	7	100.00%
Oakland, CA	San Francisco	12	7	6	85.71%	7	100.00%
Dallas-DT, TX	Dallas	11	7	6	85.71%	6	85.71%
Fresno, CA	San Francisco	10	7	6	85.71%	6	85.71%

Hearing Office	Region	Median Tenure of ALJs	Total Fully Available ALJs in Office	ALJs with Less Than 500 Cases		ALJs with Less Than 550 Cases	
				Number	Percent	Number	Percent
Oak Brook, IL	Chicago	20	7	6	85.71%	6	85.71%
Portland, ME	Boston	7	6	5	83.33%	6	100.00%
Queens, NY	New York	18	6	5	83.33%	6	100.00%
Evanston, IL	Chicago	18	6	5	83.33%	5	83.33%
White Plains, NY	New York	12	6	5	83.33%	5	83.33%
Cleveland, OH	Chicago	9	11	9	81.82%	9	81.82%
Johnstown, PA	Philadelphia	2	5	4	80.00%	5	100.00%
Eugene, OR	Seattle	15	5	4	80.00%	4	80.00%
Orange, CA	San Francisco	5	5	4	80.00%	4	80.00%
Atlanta-N, GA	Atlanta	12	9	7	77.78%	8	88.89%
Tampa, FL	Atlanta	12	13	10	76.92%	11	84.62%
San Antonio, TX	Dallas	12	17	13	76.47%	15	88.24%
Macon, GA	Atlanta	11	4	3	75.00%	4	100.00%
Bronx, NY	New York	7	4	3	75.00%	3	75.00%
San Rafael, CA	San Francisco	7	4	3	75.00%	3	75.00%
Indianapolis, IN	Chicago	15	11	8	72.73%	9	81.82%
Columbus, OH	Chicago	12	7	5	71.43%	5	71.43%
Phoenix, AZ	San Francisco	14	10	7	70.00%	10	100.00%
Syracuse, NY	New York	7	6	4	66.67%	6	100.00%
Las Vegas, NV	San Francisco	12	3	2	66.67%	3	100.00%
Manchester, NH	Boston	18	6	4	66.67%	5	83.33%
Alexandria, LA	Dallas	9	9	6	66.67%	7	77.78%
Kansas City, KS	Kansas City	5	9	6	66.67%	7	77.78%
San Diego, CA	San Francisco	11	9	6	66.67%	6	66.67%
Jackson, MS	Atlanta	5	3	2	66.67%	2	66.67%
Springfield, MO	Kansas City	15	3	2	66.67%	2	66.67%
Boston, MA	Boston	12	11	7	63.64%	8	72.73%
Seattle, WA	Seattle	15	11	7	63.64%	7	63.64%
Los Angeles-W, CA	San Francisco	14	8	5	62.50%	6	75.00%
Dayton, OH	Chicago	12	5	3	60.00%	4	80.00%
Downey, CA	San Francisco	12	5	3	60.00%	4	80.00%
Tulsa, OK	Dallas	11	5	3	60.00%	4	80.00%
Charlottesville, VA	Philadelphia	15	5	3	60.00%	3	60.00%
Colorado Springs, CO	Denver	9	5	3	60.00%	3	60.00%
Springfield, MA	Boston	1	5	3	60.00%	3	60.00%
West Des Moines, IA	Kansas City	18	5	3	60.00%	3	60.00%
Roanoke, VA	Philadelphia	11	7	4	57.14%	6	85.71%
Cincinnati, OH	Chicago	15	7	4	57.14%	4	57.14%
Greenville, SC	Atlanta	24	7	4	57.14%	4	57.14%
Dallas-N, TX	Dallas	9	9	5	55.56%	8	88.89%
Raleigh, NC	Atlanta	11	9	5	55.56%	8	88.89%

Hearing Office	Region	Median Tenure of ALJs	Total Fully Available ALJs in Office	ALJs with Less Than 500 Cases		ALJs with Less Than 550 Cases	
				Number	Percent	Number	Percent
Brooklyn, NY	New York	11	9	5	55.56%	6	66.67%
Mobile, AL	Atlanta	16	9	5	55.56%	6	66.67%
Albuquerque, NM	Dallas	11	9	5	55.56%	5	55.56%
Jacksonville, FL	Atlanta	12	11	6	54.55%	7	63.64%
Baltimore, MD	Philadelphia	25	11	6	54.55%	6	54.55%
Long Beach, CA	San Francisco	12	6	3	50.00%	5	83.33%
Lansing, MI	Chicago	4	4	2	50.00%	3	75.00%
Sacramento, CA	San Francisco	14	10	5	50.00%	7	70.00%
Fargo, ND	Denver	14	6	3	50.00%	4	66.67%
Hattiesburg, MS	Atlanta	7	6	3	50.00%	4	66.67%
Providence, RI	Boston	14	6	3	50.00%	4	66.67%
Minneapolis, MN	Chicago	12	10	5	50.00%	6	60.00%
Huntington, WV	Philadelphia	16	6	3	50.00%	3	50.00%
Stockton, CA	San Francisco	10	4	2	50.00%	2	50.00%
Albany, NY	New York	18	2	1	50.00%	1	50.00%
Dover, DE	Philadelphia	21	2	1	50.00%	1	50.00%
McAlester, OK	Dallas	7	2	1	50.00%	1	50.00%
Santa Barbara, CA	San Francisco	15	2	1	50.00%	1	50.00%
Birmingham, AL	Atlanta	13	13	6	46.15%	8	61.54%
Little Rock, AR	Dallas	11	11	5	45.45%	6	54.55%
Charleston, WV	Philadelphia	11	9	4	44.44%	6	66.67%
Oak Park, MI	Chicago	18	9	4	44.44%	6	66.67%
Philadelphia-E, PA	Philadelphia	9	7	3	42.86%	6	85.71%
San Bernardino, CA	San Francisco	5	7	3	42.86%	5	71.43%
Lexington, KY	Atlanta	12	7	3	42.86%	4	57.14%
Newark, NJ	New York	12	7	3	42.86%	4	57.14%
St. Louis, MO	Kansas City	12	7	3	42.86%	3	42.86%
Spokane, WA	Seattle	12	5	2	40.00%	4	80.00%
Voorhees, NJ	New York	9	5	2	40.00%	4	80.00%
Elkins Park, PA	Philadelphia	14	10	4	40.00%	7	70.00%
Billings, MT	Denver	2	5	2	40.00%	3	60.00%
Nashville, TN	Atlanta	12	5	2	40.00%	3	60.00%
Washington, D.C.	Philadelphia	13	5	2	40.00%	3	60.00%
Omaha, NE	Kansas City	9	5	2	40.00%	2	40.00%
Tucson, AZ	San Francisco	12	5	2	40.00%	2	40.00%
Greensboro, NC	Atlanta	13	8	3	37.50%	5	62.50%
Creve Coeur, MO	Kansas City	14	8	3	37.50%	4	50.00%
Los Angeles-DT, CA	San Francisco	7	6	2	33.33%	5	83.33%
Milwaukee, WI	Chicago	9	9	3	33.33%	6	66.67%
Harrisburg, PA	Philadelphia	12	6	2	33.33%	4	66.67%
Detroit, MI	Chicago	11	6	2	33.33%	3	50.00%
Houston-DT, TX	Dallas	4	6	2	33.33%	2	33.33%

Hearing Office	Region	Median Tenure of ALJs	Total Fully Available ALJs in Office	ALJs with Less Than 500 Cases		ALJs with Less Than 550 Cases	
				Number	Percent	Number	Percent
Fort Smith, AR	Dallas	2	3	1	33.33%	1	33.33%
Grand Rapids, MI	Chicago	2	3	1	33.33%	1	33.33%
Pittsburgh, PA	Philadelphia	13	10	3	30.00%	7	70.00%
Jericho, NY	New York	15	7	2	28.57%	4	57.14%
New York, NY	New York	16	11	3	27.27%	3	27.27%
Middlesboro, KY	Atlanta	9	4	1	25.00%	3	75.00%
Morgantown, WV	Philadelphia	10	4	1	25.00%	3	75.00%
Memphis, TN	Atlanta	12	8	2	25.00%	4	50.00%
Hartford, CT	Boston	9	4	1	25.00%	2	50.00%
Paducah, KY	Atlanta	13	4	1	25.00%	2	50.00%
San Jose, CA	San Francisco	11	4	1	25.00%	2	50.00%
San Juan, PR	New York	25	4	1	25.00%	2	50.00%
Charlotte, NC	Atlanta	23	4	1	25.00%	1	25.00%
Columbia, SC	Atlanta	13	4	1	25.00%	1	25.00%
Fort Wayne, IN	Chicago	9	4	1	25.00%	1	25.00%
Tupelo, MS	Atlanta	12	4	1	25.00%	1	25.00%
Denver, CO	Denver	11	9	2	22.22%	3	33.33%
Norfolk, VA	Philadelphia	12	5	1	20.00%	4	80.00%
Orlando, FL	Atlanta	16	10	2	20.00%	6	60.00%
Charleston, SC	Atlanta	12	5	1	20.00%	2	40.00%
Florence, AL	Atlanta	15	5	1	20.00%	2	40.00%
Fort Worth, TX	Dallas	11	5	1	20.00%	2	40.00%
Montgomery, AL	Atlanta	9	5	1	20.00%	2	40.00%
Salt Lake City, UT	Denver	17	5	1	20.00%	2	40.00%
Kingsport, TN	Atlanta	20	6	1	16.67%	1	16.67%
Wilkes-Barre, PA	Philadelphia	1	6	1	16.67%	1	16.67%
Orland Park, IL	Chicago	1	7	1	14.29%	4	57.14%
Savannah, GA	Atlanta	12	7	1	14.29%	3	42.86%
Wichita, KS	Kansas City	11	3	0	0.00%	1	33.33%
Flint, MI	Chicago	15	5	0	0.00%	0	0.00%
Louisville, KY	Atlanta	25	5	0	0.00%	0	0.00%
Shreveport, LA	Dallas	19	2	0	0.00%	0	0.00%
Evansville, IN	Chicago	10	1	0	0.00%	0	0.00%
Honolulu, HI	San Francisco	24	1	0	0.00%	0	0.00%
Ponce, PR	New York	24	1	0	0.00%	0	0.00%
			894 <sup>1</sup>	501	56.04%	618	69.13%

<sup>1</sup> One ALJ processed cases only at the Centralized Screening Unit (CSU). Since the CSU only assembles cases and drafts decisions for other offices, it was not included with the hearing offices.

## **Appendix G**

### **Fully Available Administrative Law Judges' Performance by Tenure and Region**

We conducted analysis by tenure of the fully available Administrative Law Judges (ALJ) in each region that processed fewer than 500 and 550 cases each in Fiscal Year (FY) 2006. The Seattle Region had the highest percentage of fully available ALJs that processed less than 500 cases. The median tenure of the ALJs in the Seattle Region was 12 years. However, the San Francisco Region had the highest percentage of fully available ALJs that processed less than 550 cases. The median tenure of the ALJs in the San Francisco Region was also 12 years. In comparison, the Denver Region had the lowest percentage of fully available ALJs that processed less than 500 and 550 cases. The median tenure of the ALJs in the Denver Region was 9 years.

FY 2006 ALJ Performance by Tenure and Region						
Region	Median Tenure of ALJs	Total Fully Available ALJs	ALJs with Less Than 500 Cases		ALJs with Less Than 550 Cases	
			Number	Percent	Number	Percent
Seattle	12	29	20	68.97%	22	75.86%
Boston	12	44	29	65.91%	34	77.27%
Dallas	11	107	69	64.49%	79	73.83%
San Francisco	12	117	75	64.10%	92	78.63%
Chicago	11	129	75	58.14%	88	68.22%
New York	12	76	41	53.95%	51	67.11%
Atlanta	12	215	111	51.63%	141	65.58%
Philadelphia	12	107	51	47.66%	74	69.16%
Kansas City	12	40	19	47.50%	22	55.00%
Denver	9	30	11	36.67%	15	50.00%
		<b>894<sup>1</sup></b>	<b>501</b>	<b>56.04%</b>	<b>618</b>	<b>69.13%</b>

<sup>1</sup> One ALJ processed cases only at the Centralized Screening Unit and was not included in any region.

## **Appendix H**

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### **Agency Comments**



## SOCIAL SECURITY

### MEMORANDUM

Date: January 11, 2008

Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.  
Inspector General

From: David V. Foster /s/  
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Administrative Law Judges' Caseload Performance" (A-07-07-17072)--INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the recommendations are attached.

Please let me know if we can be of further assistance. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Attachment:  
SSA Response

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT,  
"ADMINISTRATIVE LAW JUDGES' CASELOAD PERFORMANCE"  
(A-07-07-17072)**

Thank you for the opportunity to review and provide comments on this draft report. This audit evaluates the effect of varying levels of hypothetical Administrative Law Judge (ALJ) performance on the ability of the Office of Disability Adjudication and Review (ODAR) to process hearing requests and to address the hearing backlog.

We note that although the draft audit report is titled “Administrative Law Judges’ Caseload Performance,” the audit discussion is closely linked to the discussion of our backlog at the hearing level. We agree that the backlog of cases at the hearing stage has reached a critical level. We also agree that we must take steps to reduce the backlog and ensure a case backlog does not recur in the future. ALJ performance plays a part in achieving this goal. However, we must point out that it is not the only factor leading to the backlog, nor are improvements in this area able to resolve the backlog without other initiatives. Additionally, as pointed out in your report, we must also have adequate adjudicators to handle the hearings workload and we must be able to timely hire ALJs and staff to handle projected case receipts and offset ALJ attrition.

The draft report briefly mentions a need for adequate support staff in Conclusions and Recommendations, but the report fails to address the effect support staff has on ALJ caseload numbers. ALJ caseload performance directly correlates to the productivity of support staffing. ALJ hearing dockets may go unfilled when there are inadequate resources to pull the files. As a result, ALJs’ productivity may be hindered by reasons beyond their control.

We also note that the audit methodology treats all hearing dispositions equally; however, this is not the case. Many hearings are found to be unnecessary if the ALJ can issue a fully favorable decision based on the evidence on hand or on the record (OTR). ALJ productivity levels are generally much higher on OTRs compared to other hearing dispositions. In many hearing offices, OTRs are handled by Hearing Office Chief ALJs (HOCALJ). This likely explains why HOCALJs averaged more dispositions than fully available ALJs. OTR volumes are not discussed in the draft report so it cannot be determined if OTRs skewed performance levels among ALJs.

ODAR currently uses benchmarks and timeliness measures to address ALJ performance issues. The Office of the Chief Administrative Law Judge (OCALJ) has established benchmarks for processing cases through all major steps, from receipt of the request for hearing, to issuance of a decision by the ALJ. ALJs whose processing of cases takes longer than the benchmarks are counseled concerning the timeliness of their decisions. When counseling is ineffective, disciplinary measures would move progressively from counseling to reprimands, to actions before the Merit System Protection Board, including requests for suspension or termination, as appropriate. In addition, ODAR has formed a cross-component workgroup to review issues related to ALJ performance, including analysis of steps which will be required to establish an acceptable range of productivity under current case law. Until this analysis is completed, ODAR will continue to address issues related to ALJ productivity based upon timeliness.

We also must point out that while increasing accountability and productivity is critical to reducing the pending workload at the hearing level, it is our position that increased productivity and quality must go “hand-in-hand.” Consideration might be given to articulating this caution within the report.

We have reviewed the methodology used by OIG to determine the effect of ALJ performance at different levels upon the backlog of cases pending at the hearing level. Although we have not used OIG’s definition of “fully available” and “partially available” in the past, we believe that OIG’s analysis provides a valuable way of assessing the impact of hypothetical ALJ performance on the reduction of the backlog. Also, we appreciate the fact that OIG’s conclusions validate the appropriateness of establishing a performance accountability process for ALJs.

Our response to the specific recommendations is as follows.

Recommendation 1

Establish a performance accountability process that does not infringe on ALJ decisional independence, but allows ALJ performance to be addressed when it falls below an acceptable level.

Comment

We agree that we should establish a performance accountability process as well as a methodology to accurately and objectively assess ALJ performance. The establishment of a performance accountability system would be a logical step in bringing about improved performance, not only in the number of cases processed, but in the quality of the decisions as well. While we agree that this recommendation should be implemented, it should not be portrayed as the sole method of increasing dispositions. We also caution that development of a sustainable performance accountability system should be comprehensive and cover both productivity and quality by addressing legal sufficiency issues. The development of such a system will require significant analysis of data over an extended period of time. ODAR has begun working with the Deputy Commissioners for Quality Performance (DCQP) and Human Resources (DCHR) and the Office of the General Counsel (OGC) to develop such a standard. In the interim, we continue to approach productivity issues based on timeliness by taking appropriate actions with regard to ALJs who do not adjudicate their assigned workload within acceptable timeframes. We are also reviewing our business process with the hope of making changes which will result in more dispositions.

The development of performance standards should start by examining both ends of the productivity spectrum. It should include analysis of the performance of ALJs whose productivity is aberrant, either due to the low number of dispositions rendered or the high number of dispositions. This should include an analysis of the legal sufficiency of decisions made by adjudicators on both ends of the performance curve (as a prelude to appropriate action if legal sufficiency is lacking). For those ALJs who are both highly productive and whose decisions are legally sufficient, we should undertake an analysis of how they are able to maintain high levels of

productivity. The goal of such analysis would be to identify and share best practices. It is expected that productivity may be found to be related not only to the judge's ability, but to the ability of the support staff as well. Support staff plays a significant role in providing sufficient cases that are ready to be heard and writing decisions on cases heard by ALJs. They also provide screening of cases that can be expedited, such as durational denials and cases in which claimant impairments either meet or equal a listing.

The process of creating performance standards will be a time consuming and complex undertaking requiring careful deliberations and evaluations. It will also require a coordinated approach among all stakeholders that need to play a role (e.g., OGC, DCQP, DCHR, etc.). We expect to implement this recommendation in fiscal year (FY) 2009. While work proceeds on development of performance standards, OCALJ will continue its effort to hold ALJs accountable by monitoring the timeliness of their decisions and taking appropriate actions when timeliness standards are not met.

#### Recommendation 2

Establish a process to identify the availability of each partially available ALJ for case adjudication and establish acceptable levels of performance based on availability.

#### Comment

We agree. A process to measure the performance of partially available ALJs is needed to ensure that the performance goals and measurement standards are equitable between fully and partially available ALJs. We agree with the intent of this recommendation, subject to comments in recommendation 1. We anticipate implementation of this recommendation will require systems changes which must be prioritized with other Agency initiatives.

#### Recommendation 3

Assess the caseload performance of offices where a higher percentage of ALJs process cases below the level ODAR determines to be reasonable and take appropriate corrective actions.

#### Comment

We agree with this recommendation, subject to comments in recommendation 1. Assessment of the productivity of various office components might uncover more systemic problems in the office operations as a whole, not just ALJ performance. However, before this can be done, we would recommend that an assessment of individual ALJ performance be conducted, followed by appropriate corrective actions. We estimate that the required analysis of Hearing Offices can be completed by the end of FY 2008, but corrective actions will require on-site visits which will take substantially longer. We expect full implementation by the end of FY 2009.

Also, we believe that this assessment should be restricted to only those offices where a higher percentage of ALJs are performing below the established level. We will use our discretion as to which offices warrant assessment. We also suggest adding to the end of this recommendation “or ascertain why performance levels were not achieved.” This could cover situations when performance levels were not met due to unique circumstances unrelated to ALJ performance (e.g. extended office closures, etc.).

#### Recommendation 4

Evaluate how the caseload management procedures in some regions result in a higher percentage of ALJs processing cases at the level ODAR determines to be reasonable and share best practices with other regions.

#### Comment

We agree. OCALJ is planning to identify and begin analysis of highly productive offices by the end of FY 2008. We recognize the value of sharing best practices, but caution that the method of dissemination is critical to an effective outcome. Suggested best practices should be carefully screened before they are shared nationally. Depending on the number of best practices discovered, training delivery may need to take place over a period of time to allow staff to adequately absorb the new material. For this reason, full implementation will not be completed until the end of FY 2009.

## ***Appendix I***

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# **OIG Contacts and Staff Acknowledgments**

### ***OIG Contacts***

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### ***Acknowledgments***

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Brennan Kraje, Statistician

For additional copies of this report, please visit our web site at [www.ssa.gov/oig](http://www.ssa.gov/oig) or contact the Office of the Inspector General's Public Affairs Specialist at (410) 965-3218. Refer to Common Identification Number A-07-07-17072.

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OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

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## **Office of the Chief Counsel to the Inspector General**

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ORM supports OIG by providing information resource management and systems security. ORM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, ORM is the focal point for OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act of 1993.