

OIG

Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Administrative Law Judge Allowance
Rates, Quality, and Length of Service

A-12-17-50247 | September 2017

MEMORANDUM

Date: September 18, 2017

Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Administrative Law Judge Allowance Rates, Quality, and Length of Service (A-12-17-50247)

The attached final report presents the results of the Office of Audit's review. The objective was to analyze Fiscal Year 2015 allowance and agree rates in relation to an administrative law judge's length of service.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gale Stallworth Stone

Attachment

Administrative Law Judge Allowance Rates, Quality, and Length of Service

A-12-17-50247



September 2017

Office of Audit Report Summary

Objective

To analyze Fiscal Year (FY) 2015 allowance and agree rates in relation to an administrative law judge's (ALJ) length of service.

Background

The ALJ decisional allowance rate has fluctuated from a high of 75.2 percent in FY 1994 to a low of 53.5 percent in FY 2015. The 53.5-percent decisional average allowance rate in FY 2015 was the lowest rate in 23 years.

The agree rate represents the Appeals Council's conclusion that the ALJ decisions were supported by substantial evidence and contained no error of law or abuse of discretion justifying a remand or reversal. The national goal for the agree rate is 85 percent.

The Office of Disability Adjudication and Review (ODAR) employs more than 1,400 ALJs, and their length of service ranges from fewer than 5 years to longer than 48 years.

Results of Review

In FY 2015, the most experienced ALJs had, on average, higher allowance rates than ALJs who had fewer years' experience. Also, on average, ALJs who had more experience had agree rates of about 84 percent—about 6 percent lower than the ALJs who had less than 5 years' experience.

We did not see a link between the amount or type of training an ALJ received and the high allowance and low agree rate pattern. The Agency also had no information on any pattern regarding a relationship between an ALJ's years of service and his/her quality and amount or type of training received. Therefore, we did not make any recommendations.

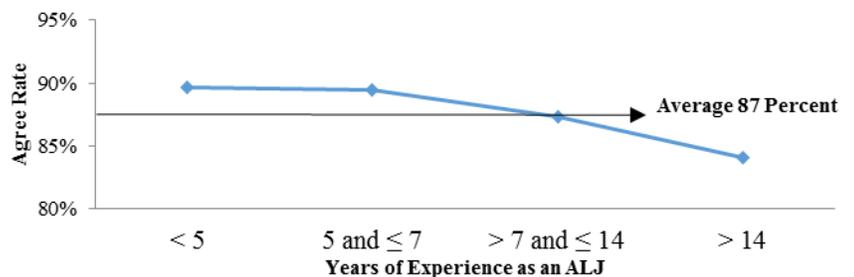
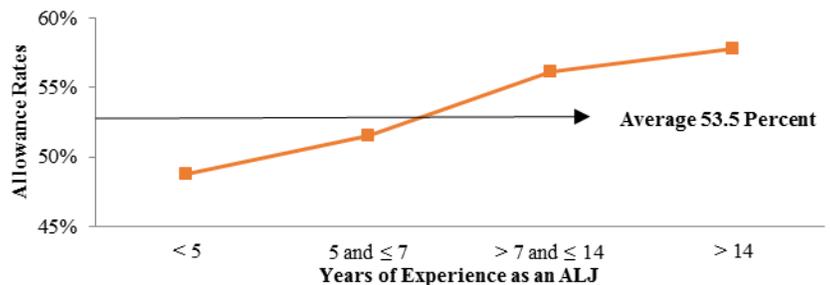


TABLE OF CONTENTS

Objective	1
Background	1
Allowance Rates	1
Agree Rates	1
Methodology	2
Results of Review	3
Allowance Rates	3
Agree Rates	5
ALJ Training	6
Conclusions	8
Agency Comments	8
Appendix A – Scope and Methodology	A-1
Appendix B – Hearing Type Analysis	B-1
Appendix C – Agree Rates	C-1
Appendix D – Administrative Law Judge Training	D-1
Appendix E – Agency Comments	E-1

ABBREVIATIONS

ALJ	Administrative Law Judge
FY	Fiscal Year
HMID	How MI Doing?
OCEP	ODAR Continuing Education Program
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
SSA	Social Security Administration
U.S.C.	United States Code

OBJECTIVE

Our objective was to analyze Fiscal Year (FY) 2015 allowance and agree rates in relation to an administrative law judge's (ALJ) length of service.

BACKGROUND

The Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR) directs a nation-wide field organization staffed with ALJs who conduct impartial hearings and make decisions on appealed determinations involving Old-Age, Survivors and Disability Insurance benefits and Supplemental Security Income payments.¹ ODAR employs more than 1,400 ALJs² whose length of service as a judge ranged from fewer than 5 years to longer than 48 years. A claimant who disagrees with an ALJ's decision may ask for a review by ODAR's Appeals Council. The Appeals Council may deny, dismiss, or grant the request. If the Appeals Council grants the request, it will either (1) issue a decision that affirms, modifies, or reverses the ALJ decision or (2) remand the case to the ALJ with instructions to conduct further proceedings. A claimant who disagrees with the Appeals Council's action can file a civil action in Federal court.

Allowance Rates

Allowance rates reflect the number of favorable ALJ decisions as a percentage of the number of requests for a hearing in a given year.³ The ALJ decisional allowance rate has fluctuated from a high of 75.2 percent in FY 1994 to a low of 53.5 percent in FY 2015. The 53.5-percent decisional average allowance rate in FY 2015 was the lowest rate in 23 years.

Agree Rates

The Agency has added quality and workload measures to assess the policy compliance and legal sufficiency of ALJ decisions. For instance, in FY 2013, ODAR began calculating a quality measure on appealed ALJ denial and dismissal decisions—known as the “agree rate.” The agree rate represents the extent to which the Appeals Council concludes the ALJ's decisions were supported by substantial evidence and contained no error of law or abuse of discretion justifying a remand or reversal.⁴ SSA's national goal for the agree rate is 85 percent.

¹ *Social Security Act*, 42 U.S.C. §§ 402, 423, and 1381 (2015).

² SSA, *Case Processing & Management System Management Information*, Caseload Analysis Report, National, ALJs Duty (September 25, 2015).

³ SSA, Office of Policy, *Social Security Disability Programs: Assessing the Variation in Allowance Rates*, ORES Working Paper No.98, p. 2, (August 2002).

⁴ SSA OIG, *Oversight of Administrative Law Judge Decisional Quality*, A-12-16-50106, p.1 (March 2017).

In January 2016, ODAR introduced the Compassionate And REsponsive Service plan for processing ODAR workloads. It states

We define high-quality decisions as policy-compliant and legally sufficient decisions. We have always had to operate in a high production environment, and the hearings process is no exception. Regardless of whether they ultimately receive benefits, the millions of people who apply for our benefits deserve timely decisions that are high quality. Quick decisions without quality or quality decisions without timeliness are not compassionate or responsive service.⁵

Methodology

To analyze allowance rates in relation to length of service, we reviewed 1,334 ALJs⁶ who had at least 200 dispositions in FY 2015. To determine quality in relation to length of service, we reviewed 1,151 ALJs⁷ who had at least 200 dispositions in FY 2015 and at least 10 requests for review processed by the Appeals Council over the 13-month period ended November 5, 2015.⁸

The ALJ's identification number determined their length of service. Generally, ALJ identification numbers are issued in order by the date in which the ALJ began his/her service as a judge at SSA. Therefore, the lower the ALJ identification number, the more experienced the ALJ.⁹

We sorted the ALJ identification numbers from smallest to largest and separated our two ALJ populations into four equally numbered¹⁰ groups, see Table 1. See Appendix A for more information on our scope and methodology.

⁵ SSA, *Leading the Hearings and Appeals Process into the Future: A Plan for Compassionate And Responsive Service*, p. 8, (January 13, 2016).

⁶ We removed nine ALJs who were outliers from our population. Eight ALJs had very low allowance rates, and one ALJ had a very high allowance rate.

⁷ We removed 15 ALJs who were outliers from our population because they had very low agree rates.

⁸ We only reviewed 1,151 ALJs for the quality analysis (and not the 1,334 used for the allowance rate analysis) to ensure we were only analyzing ALJs who had at least 10 decisions reviewed by the Appeals Council.

⁹ ODAR had 23 ALJs who were rehired annuitants, and 18 had more than 14 years of prior experience as an ALJ.

¹⁰ When we divided the 1,334 and 1,151 into 4 groups, the groups did not divide equally. Therefore, two groups in the allowance rate population had one more ALJ than the other two groups. One group in the agree rate population has one less ALJ than the other three groups.

Table 1: ALJ Allowance and Agree Rate Populations

Group	Years of Service as an ALJ	Number of ALJs for Allowance Rate Analysis	Number of ALJs for Agree Rate Analysis
1	Over 14	333	288
2	More than 7 but fewer than or equal to 14	333	288
3	At least 5 but fewer than or equal to 7	334	288
4	Fewer than 5	334	287
Total		1,334	1,151

RESULTS OF REVIEW

ALJs with the most experience, had, on average, higher allowance rates than ALJs with fewer years of experience. ALJs with the most experience had, on average, lower agree rates than ALJs with fewer years of experience. We were not able to determine why these trends were occurring; and the Agency had no information on any pattern regarding a relationship between an ALJ's years of service and his/her quality.

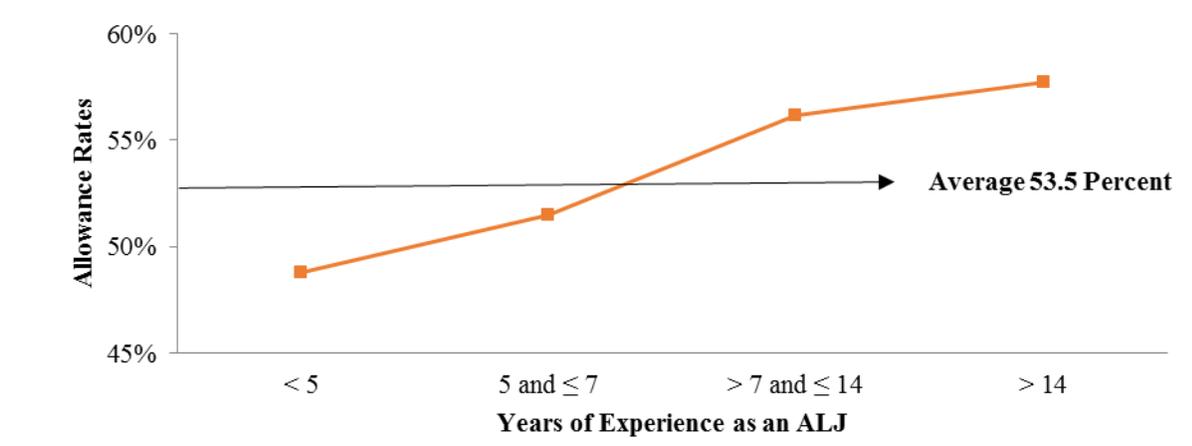
Allowance Rates

Individual ALJ decisional allowance rates¹¹ ranged from 19.9 to 90.9 percent, and the average national decisional allowance rate was about 53.5 percent.¹² We determined that ALJs who had more than 14 years of service, had, on average, higher allowance rates than ALJs with less experience, see Figure 1. ALJs in the most experienced group had an average allowance rate of 57.74 percent, or 4.2 percent above the average. ALJs in the least experienced group had an average allowance rate of 48.7 percent, or 4.5 percent below the average. The allowance rate of ALJs in the most experienced group was 9 percent above the ALJs who had fewer than 5 years of experience.

¹¹ We calculated decisional allowance rates by dividing allowances by total decisions (excluding dismissals).

¹² The median allowance rate of the 1,334 ALJs was 53 percent.

Figure 1: Allowance Rates by ALJ Length of Service



We determined that hearing offices were randomly assigning cases, and ALJs were deciding the same types of cases in the hearing office. We examined the cases characterized by Hearing Type¹³ and found that cases were similarly distributed by Hearing Type among the four ALJ groups. For more information on Hearing Type, see Appendix B.

ALJs¹⁴ in the most experienced group had allowance rates ranging from 19.2 to 89.8 percent, and their length of service ranged from about 14.5 years to over 48 years. In FY 2015, 61 percent of these ALJs had allowance rates above the 53.5-percent national average.

ALJs in the least experienced group had allowance rates that ranged from 19.2 to 86.1 percent, and their length of service ranged from fewer than 2 to about 5 years. In this group, only 32 percent of ALJs had allowance rates above the national average, see Table 2.

¹³ Hearing Type is a controlling piece of information establishing the computer record in the case control system. Hearing Type is a 2-position field, with the first field identifying the type of case, and the second field identifying the status of the claimant's benefit.

¹⁴ The median allowance rate for each group of ALJs was as follows: over 14 years of service - 58.9 percent; more than 7 but fewer than or equal to 14 years of service - 55.6 percent; at least 5 but fewer than or equal to 7 years of service - 51.1 percent; and fewer than 5 years' experience - 48.5 percent.

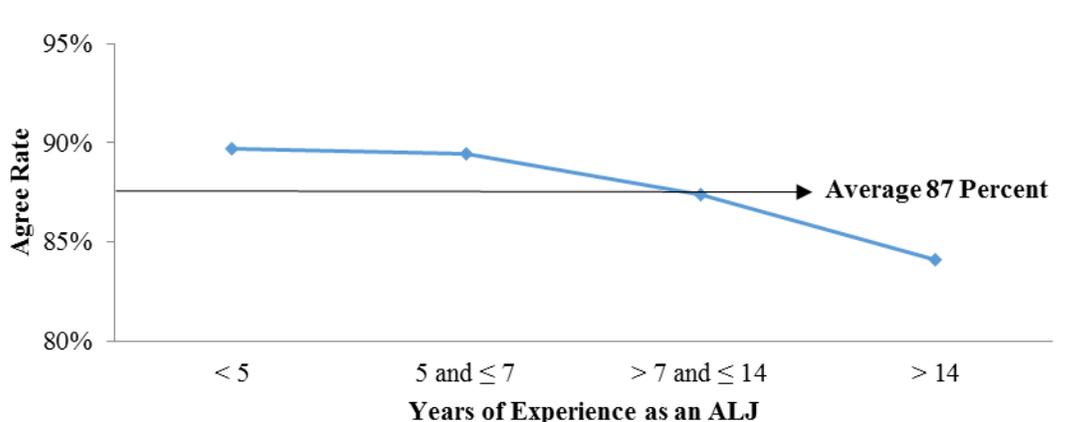
Table 2: ALJ Allowance Rates and Length of Service

Group	Years of Service as an ALJ	ALJs with Allowance Rates 53.5 Percent and Higher	ALJs with Allowance Rates Below 53.5 Percent	Totals
1	Over 14	202	131	333
2	More than 7 but fewer than or equal to 14	195	138	333
3	At least 5 but fewer than or equal to 7	150	184	334
4	Fewer than 5	106	228	334
Totals		653	681	1,334

Agree Rates

ALJ agree rates ranged from 59.3 to 100 percent.¹⁵ Our review showed that ALJs who had more than 14 years of service had, on average, lower agree rates than all the other groups, see Figure 2. The most experienced ALJs had average agree rates of about 84 percent, which was 6 percent below the average of ALJs with fewer than 5 years' experience. The national goal for agree rates is 85 percent. Average agree rates for ALJs in all groups were above the national goal except for those in the most experienced group (over 14 years' experience).

Figure 2: Agree Rates by ALJ Length of Service



¹⁵ The median agree rate for the 1,151 ALJs was 89 percent.

ALJs in the most experienced group had agree rates that ranged from 59.3 to 100 percent.¹⁶ In FY 2015, about 47 percent of these ALJs had agree rates below the 85-percent national goal. ALJs in the least experienced group had agree rates that ranged from 60.5 to 100 percent. Of the ALJs in this group, about 17 percent had agree rates below the national goal, see Table 3.

Table 3: ALJ Agree and Length of Service¹⁷

Group	Years of Service as an ALJ	Agree Rate			Totals
		85 Percent and Higher	65 and < 85 Percent	Below 65 Percent	
1	Over 14	154	124	10	288
2	More than 7 but fewer than or equal to 14	195	89	4	288
3	At least 5 but fewer than or equal to 7	232	56	0	288
4	Fewer than 5	237	48	2	287
Totals		818	317	16	1,151

ALJ Training

We reviewed ALJ training information to determine whether it could be a factor in the high allowance and low agree rate pattern as ALJs gained more experience. However, we could not determine why these trends were occurring; and we did not see a link between the amount or type of training an ALJ received and the high allowance and low agree rate pattern. The Agency also had no information on any pattern regarding a relationship between an ALJ's years of service and his/her quality and amount or type of training received.

ODAR provides training to new and existing ALJs. (See Appendix D for more information on ALJ training.) For example, in January 2012, ODAR began offering all hearing offices the national quarterly ODAR Continuing Education Program (OCEP) broadcasts on prevalent adjudication topics identified through its quality reviews. OCEP training includes mandatory training and in-office discussion for all ALJs, decision writers, and other designated staff. Professional development for ALJs and others who attend OCEP training includes such topics as continuing disability reviews, advanced topics in vocational expert evidence, and submission of evidence.

¹⁶ The median agree rate for each group of ALJs is as follows: over 14 years of service - 85.7 percent; more than 7 but fewer than or equal to 14 years of service - 88.3 percent; at least 5 but fewer than or equal to 7 years of service - 90.2 percent; and fewer than 5 years of service - 90.3 percent.

¹⁷ See Appendix C for this information in pie chart form.

Additionally, regional offices provide training as needed. For example, the San Francisco Region collaborated with the Office of Appellate Operations to develop skill-based *Advanced ALJ Training* to address ALJ productivity and accuracy. The training included ALJ peer-level feedback based on their adjudicative experiences, refresher training on policy topics, round table discussions on workload management, technology tools, and mock hearings.

ODAR also provides annual judicial training for experienced ALJs. Judicial training is offered in two, 3-day sessions for training in disability adjudication topics. In prior years, annual judicial training was mandatory for ALJs. This training began in 2008 and was given to all ALJs, but, since then, this training has been given to about 300 ALJs each year. ODAR tracks the ALJs who attend the training each year and sends invitations to the ALJs who did not attend training the previous years. Some of the topics included *Legally Sufficient Decisions* and *Vocational Expert Testimony*. See Table D–1 in Appendix D for more information on judicial training topics.

When we examined ODAR’s judicial training attendance records, we initially identified 16 ALJs who had not attended any judicial training over the last 7 years. We presented this information to ODAR, which provided additional information stating that some of these ALJs watched a taped version of the judicial training but did not attend in person. After accounting for these ALJs, we found that seven of the more experienced ALJs had not received judicial training over the last 7 years; and four of these seven ALJs had agree rates that were below the 85-percent national goal, see Table 4. SSA informed us that one of the seven ALJs was scheduled for this year’s virtual judicial training. Further, judicial training is just one type of training that ODAR offers ALJs.

Table 4: ALJs Who Had not Attended Annual Judicial Training over the Last 7 Years

Group	Years of Service as an ALJ	Number of ALJs Who Had Not Attended Training	Number of ALJs with Agree Rates Below 85 Percent
1	Over 14	3	2
2	More than 7 but fewer than or equal to 14	3	2
3	At least 5 but fewer than or equal to 7	1	0
4	Fewer than 5 ¹⁸	Excluded	Excluded
Totals		7	4

¹⁸ We excluded the ALJs in the least experienced group from this analysis since they recently received training when they became ALJs. See SSA, OIG, *Training of New Administrative Law Judges at the Office of Disability Adjudication and Review, A-12-11-11126* (October 13, 2011).

CONCLUSIONS

ALJs with the most experience had, on average, higher allowance rates and lower agree rates than less experienced ALJs. ALJs who had fewer than 5 years' experience had, on average, lower allowance rates and higher agree rates than any other group. Since we could not determine why these trends were occurring, and the Agency had no information on any pattern regarding a relationship between an ALJ's years of service and his/her work quality, we did not make any recommendations.

AGENCY COMMENTS

SSA did not have any comments; see Appendix E.

A handwritten signature in black ink that reads "Rona Lawson". The signature is written in a cursive, flowing style.

Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objectives, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals, and Litigation Law Manual.
- Reviewed previous Office of the Inspector General reports related to administrative law judge (ALJ) and hearing office workloads.
- Analyzed hearing type data.
- Interviewed ODAR management.
- Obtained a list of ALJs who attended annual training from Fiscal Years (FY) 2010 through 2016 and analyzed ALJ training information.
- Obtained FY 2015 allowance rate data from Data.gov and identified ALJs who had at least 200 dispositions.
- Obtained agree-rate data from ODAR for the 13-month period ended November 5, 2015 and analyzed agree rates related to individual ALJs who had at least 200 dispositions in FY 2015 and who had at least 10 requests for review processed by the Appeals Council.
- Obtained a Master ALJ List from ODAR with all ALJs SSA had hired as of October 31, 2016 and the date each became an ALJ. However, our review of the Master ALJ List found there were many dates of hire missing. Therefore, we did not use the Master ALJ List. Instead, we determined an ALJ's length of service using the ALJ's identification number. Generally, SSA issues ALJ identification numbers in order by the date in which an ALJ began his/her service as a judge. Therefore, the lower the ALJ identification number, the more experienced the ALJ, and the higher the ALJ identification number, the less experienced the judge.
- Sorted the ALJ identification numbers from smallest to largest and separated our two ALJ populations into four equally¹ numbered groups based on length of service. See Table A-1.

¹ When we divided the 1,334 and 1,151 into 4 groups, the groups did not divide equally. Therefore, two groups in the allowance rate population had one more ALJ than the other two groups. One group in the agree rate population has one less ALJ than the other three groups.

Table A-1: ALJ Allowance and Agree Rate Populations

Group	Years of Service as an ALJ	Number of ALJs for Allowance Rate Analysis	Number of ALJs for Agree Rate Analysis
1	Over 14	333	288
2	More than 7 but fewer than or equal to 14	333	288
3	At least 5 but fewer than or equal to 7	334	288
4	Fewer than 5	334	287
Total		1,334	1,151

We found the Case Processing and Management System data were sufficiently reliable to meet our objective. The entity reviewed was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted our review between August 2016 and March 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B – HEARING TYPE ANALYSIS

Administrative law judges (ALJ) issued 663,129 dispositions in Fiscal Year 2015. We reviewed the hearing types¹ that were in each of the four groups—based on ALJ length of service—for both the allowance and agree rate populations.²

New requests for hearings represented about 80 percent of all dispositions, and second requests for hearings represented about 14 percent. New and second requests for hearings were similarly distributed by percentage among the four groups. See Table B-1.

Appeals Council remands showed a higher percentage of ALJs in the most experienced group with a higher number of dispositions. The percent of Appeals Council remands increased as the ALJs gained more experience. See Table B-2.

Table B-1: Allowance Rate Hearing Types

Years of Service as an ALJ	New Hearing	2 nd Request	Appeals Council Remands	Court Remands
Over 14	23%	22%	30%	25%
More than 7 but fewer than or equal to 14	25%	26%	26%	30%
At least 5 but fewer than or equal to 7	25%	25%	24%	25%
Fewer than 5	23%	24%	17%	17%
Dispositions left ³	4%	3%	3%	3%

¹ Hearing type is a controlling piece of information establishing the computer record in the case control system. Hearing type is a 2-position field, with the first field identifying the type of case, and the second field identifying the status of the claimant's benefit.

² The analysis includes the 9 outlier ALJs in the allowance rate population and the 15 outlier ALJs in the agree rate population.

³ Dispositions left are the cases from ALJs who had fewer than 200 dispositions; these decisions were not part of our analysis.

Table B–2: Agree Rate Hearing Types

Years of Service as an ALJ	New Hearing	2nd Request	Appeals Council Remands	Court Remands
Over 14	20%	20%	26%	23%
More than 7 but fewer than or equal to 14	22%	23%	24%	26%
At least 5 but fewer than or equal to 7	22%	22%	21%	23%
Fewer than 5	22%	22%	17%	17%
Dispositions left	14%	13%	12%	11%

Appendix C – AGREE RATES

The pie charts show the agree rate¹ by national average (Figure C–1), most experienced administrative law judges (ALJ) (Figure C–2), and least experienced ALJs (Figure C–3) as of November 2015. The Social Security Administration’s agree rate goal is 85 percent.

Figure C–1: National ALJs by Agree Rate

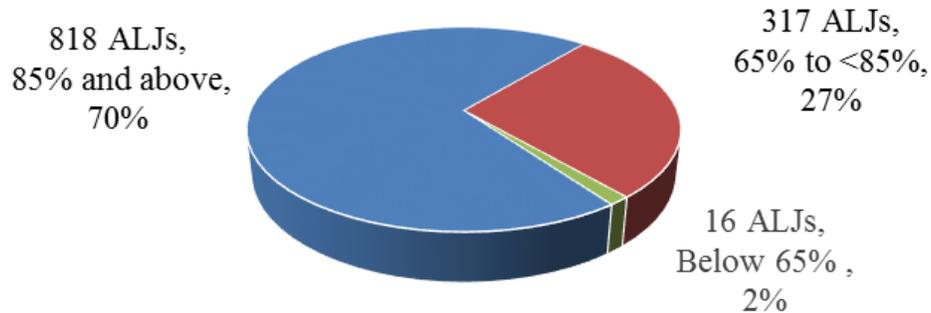
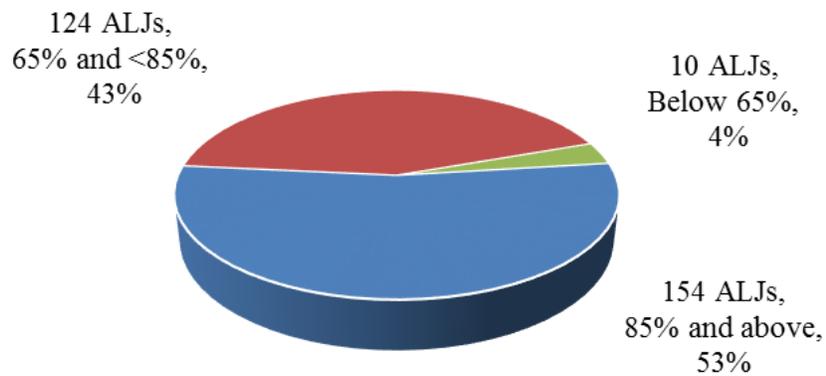
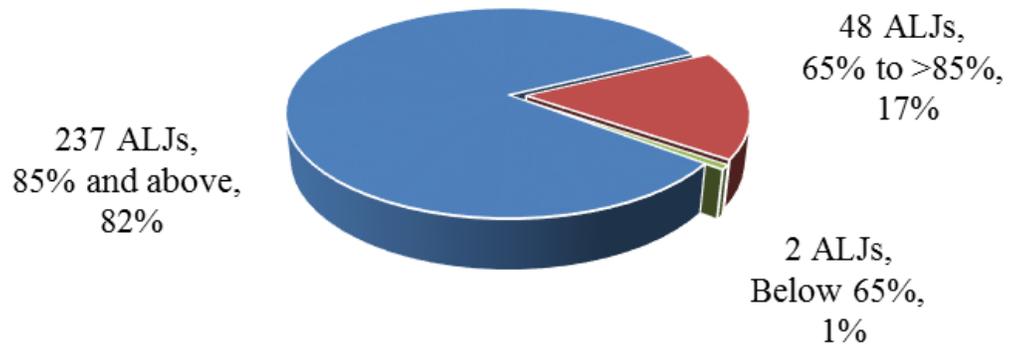


Figure C–2: Most Experienced ALJs by Agree Rate



¹ The agree rate represents the Appeals Council’s conclusion that the ALJ decisions were supported by substantial evidence and contained no error of law or abuse of discretion justifying a remand or reversal.

Figure C-3: Least Experienced ALJs by Agree Rate



Appendix D– ADMINISTRATIVE LAW JUDGE TRAINING

The Social Security Administration’s Office of Disability Adjudication and Review (ODAR) offers different types of training to Administrative Law Judges (ALJ).

New ALJ Training¹

In August 2006, ODAR began creating a three-phase training program to develop newly hired ALJs. This training involves on-the-job training, completion of video-on-demand sessions, classroom training, and mentoring from experienced ALJs. The training phases are as follows.

- Phase One: On-the-job and video-on-demand training.
- Phase Two: 4-week traditional classroom training.
- Phase Three: Mentoring from experienced ALJs.

Annual Judicial Training

ODAR provides annual judicial training for experienced ALJs. Table D–1 is a summary of the topics covered at this training.

**Table D–1: Topics at ALJ Judicial Training
(Fiscal Years 2010 Through 2016)**

ALJ Training Topic	FYs
Legally Sufficient Decisions	2011 - 2016
Ethics and Professionalism	2010 - 2016
Vocational Expert Testimony	2011 - 2016
Fee Petitions and Fee Agreements	2013 – 2016
Caseload Management	2011
Quality Decisions Through Effective and Efficient ALJ Instructions	2010, 2011
Video Hearings	2011, 2015
Top 5 Remands - Dismissals	2015, 2016
Top 5 Remands - Decisions	2014, 2015
So you think you want to be a Hearing Office Chief ALJ?	2012 - 2016
Challenges Past and Present	2016

¹ In addition to the three phases of new ALJ Training, approximately 1 year after entry on duty, ALJs return for a mandatory week of in-person supplemental training. The training is in a seminar setting, with discussion of topics related to policy and judicial duties, including conducting hearings. Topics include dismissals, vocational issues, file review, note taking, efficient hearing techniques, post-hearing development, and drafting decision writer instructions.

ALJ Training Topic	FYs
Continuing Disability Reviews/Age 18 Redeterminations	2015, 2016
Professionalism and ALJs as Leaders: Commitment to Quality	2011
Docket Hearing Management	2012
Effective Adjudication	2013
Best Practices as an ALJ	2013
The <i>Administrative Procedure Act</i> and Professionalism	2014, 2015
Note Taking to Improve Quality of Instructions, Credibility Analysis and Decisions	2015
Writing Concise Decisional Instructions	2016
Appeals Council Policy Discussions	2015, 2016
Idea Sharing for Redesigning Hearings	2016
National Case Assistance Center Updates	2016

Remand Reason Training

In 2014, SSA's Office of Appellate Operations launched Remand Reason Training Modules. The first Module² was launched on June 2, 2014 to ALJs, senior attorney adjudicators, and decision writers via a management information system called *How MI Doing?* (HMID)³ to issue specific training material tied directly to reasons for Appeals Council and Court remands.

HMID

ODAR uses agree-rate information in HMID to provide timely and direct feedback on remanded cases. Once in HMID, ALJs are provided with policy guidance and in-depth training material related to the reasons their cases were remanded. HMID allows ALJs to monitor their personal workloads and compare their performance to other ALJs in their hearing office, their region, and nationally. However, ALJs are not required to use HMID and ODAR does not track the use of HMID by ALJs.

² Other topics of modules include dismissals, mental impairments, residual functional capacity, and onset/closed period dates. In addition, training topics included earnings after onset date, opinion evidence, credibility, past relevant work, special medical-vocational profiles, drug addiction and alcoholism, and evaluating obesity.

³ The Remand Reason training modules were added to the HMID tool. ALJs are not required to use HMID and ODAR does not track the use of HMID by ALJs.

Appendix E – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: September 14, 2017 **Refer To:** SIJ-3

To: Gale S. Stone
Acting Inspector General

From: Stephanie Hall /s/
Acting Deputy Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, “Administrative Law Judge Allowance Rates, Quality, and Length of Service” (A-12-17-50247)--INFORMATION

Thank you for the opportunity to review the draft report. We appreciate OIG’s work in this area. We have no further comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

MISSION

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