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## Executive Order – Excepting Administrative Law Judges from the Competitive Service

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Tuesday, July 10, 2018



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

From: DR. JEFF T.H. PON, DIRECTOR

Subject:

Executive Order – Excepting Administrative Law Judges from the Competitive Service

On July 10, 2018, President Trump signed an Executive Order (EO) entitled “Excepting Administrative Law Judges from the Competitive Service.” The EO places

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the position of administrative law judge (ALJ) in the excepted service and directs the U.S. Office of Personnel Management (OPM) to pursue any necessary revisions to its regulations swiftly.

By the terms of the order, agencies may begin making Schedule E appointments to the position of ALJ immediately, without prior OPM approval. The order also eliminates the need for OPM to conduct additional ALJ competitive examinations. This guidance is intended to address several issues that may arise as agencies transition to this new appointment process for ALJs.

### **New Appointments and Conditions of Employment**

Section 3(a) of the EO places the position of ALJ in the excepted service beginning July 10, 2018. It further states that appointments to the position of ALJ are not subject to any examination or rating requirement, including the procedures of 5 Code of Federal Regulation (CFR) 302, Employment in the Excepted Service. However, an agency must follow the principle of veterans' preference as far as administratively feasible.

Incumbent ALJs will remain in the competitive service as long as they remain in their current position. ALJs appointed to positions in the excepted service will be covered by the agency's excepted service hiring policies.

Whether ALJs are in the competitive service or the excepted service, OPM's regulations continue to govern some aspects of ALJ employment, including those related to reassignments (5 CFR 930.204(f)), intra-agency details (5 CFR 930.207), interagency loans (5 CFR 930.208), senior ALJs (5 CFR 930.209), and reductions in force (5 CFR 930.210). Except as noted in the provisions immediately above, however, an agency need not obtain OPM's approval before appointing an individual to an ALJ position.

Like other excepted service appointments, ALJ appointments are generally subject to investigation, a determination of fitness, a determination of eligibility for logical and physical access to agency systems and facilities, and, where applicable, a determination of national security eligibility. Incumbents who remain in the competitive service and whose positions have been designated as public trust positions pursuant to 5 CFR 731.106 will continue to be subject to the periodic reinvestigation requirement of that section.

### **Qualifications and Licensure**

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Consistent with the requirement in Section 3(a)(ii) of the EO, the minimum qualification and licensure requirement for the position of ALJ is the possession of a

professional license to practice law and being authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution at the time of selection and any new appointment (other than of an incumbent ALJ to another ALJ position). For purposes of this requirement, judicial status is acceptable in lieu of “active” status in States that prohibit sitting judges from maintaining “active” status to practice law, and being in “good standing” is also acceptable in lieu of “active” status in States where the licensing authority considers “good standing” as having a current license to practice law. An agency may prescribe additional qualification requirements as necessary. Any agency specific requirements must be provided to potential applicants.

### **Status of Existing ALJ Competitive Service Register**

OPM will terminate the existing competitive service ALJ register. Eligible candidates currently listed on the register will be notified in writing of the termination and the disposition of their candidacy. We will provide additional information on the termination of the register at a later date.

Agencies with outstanding certificates of eligibles from the ALJ register should document any actions they have taken and return the certificates as soon as possible. ALJ eligibles selected but not yet appointed may be appointed under the Schedule E authority.

### **Status of Current ALJs Appointed to the Competitive Service**

An ALJ appointed prior to the effective date of the EO is an employee in the competitive service. Such an employee is subject to the requirements of the competitive service. An ALJ serving in the competitive service who accepts a new appointment after July 10, 2018, moves from the competitive service to the excepted service. Accordingly, an appointment of an ALJ by reinstatement (5 CFR 930.204(g)) or by interagency transfer (5 CFR 930.204(h)) is not available, as these are competitive service appointment methods. An ALJ serving in the competitive service may be promoted as allowed by 5 CFR 930.204(e).

### **Rates of Pay**

The Executive Order does not affect the ALJ pay system. The 2018 ALJ rates of pay and the provisions of 5 United States Code (U.S.C.) 5372 and 5 CFR 930.205 will apply to ALJs in the competitive and excepted service.

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### **Performance and Awards**

An agency may not rate the job performance of an ALJ appointed in the competitive or the excepted service.

An agency may not grant any monetary or honorary award or incentive under 5 U.S.C. 4502, 4503, or 4504, or under any other authority, to an ALJ appointed in the competitive or the excepted service.

### **Adverse Actions**

The procedures prescribed in 5 USC 7521 and 5 CFR part 1201 will apply to an agency action to remove, suspend, reduce in level, reduce pay, or furlough for 30 days or less of an ALJ in the competitive or excepted service.

### **Additional Information**

As noted above, OPM will promulgate proposed regulations to address any provisions in the regulations, including those at 5 CFR part 930 and others identified in Section 3(b)(i) of the EO, that are inconsistent with service in the excepted service or use language that is generally inapplicable to the excepted service (e.g., references to the concepts of “probation” or “suitability”).

The President’s EO is located at <https://www.whitehouse.gov/presidential-actions/executive-order-exceptin...> on the White House website. For additional information, agency Chief Human Capital Officers and/or Human Resources Directors may contact the following:

- Ms. Kimberly A. Holden, Deputy Associate Director for Talent Acquisition and Workforce Shaping, at [Kimberly.Holden@opm.gov](mailto:Kimberly.Holden@opm.gov), or (202) 606-8097 for information on excepted service employment;
- Ms. Leslie Pollack, Deputy Associate Director for HR Strategy and Evaluation Solutions, at [Leslie.Pollack@opm.gov](mailto:Leslie.Pollack@opm.gov), or (202) 606-3822 for information on ALJ program administration; and
- [media@opm.gov](mailto:media@opm.gov) for press inquiries.

Employees should contact their agency human resources offices for assistance.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

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From:  
DR. JEFF T.H. PON, DIRECTOR  
Thu, 09/13/2018

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From:  
MARK D. REINHOLD, ASSOCIATE DIRECTOR, EMPLOYEE SERVICES  
Fri, 09/07/2018

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### [Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839](#)

From:  
DR. JEFF T.H. PON, DIRECTOR  
Wed, 08/29/2018

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TBD  
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### [Fall Forum](#)

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Executive Conference Room, U.S. Office of Personnel Management

Full Council Meeting

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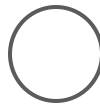
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