



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACUS is an independent federal agency that develops recommendations to improve administrative process and procedure. ACUS also arranges for the interchange of useful information to carry out its mission. ACUS Information Interchange Bulletins are intended to help agencies and the public understand the administrative process. They should not be relied upon as legal documents.

Information Interchange Bulletin No. 035

Administrative Law Judge Basics

What are ALJs?

The administrative law judge (ALJ) position was created by the Administrative Procedure Act (APA) in 1946 to ensure fairness in administrative proceedings before federal agencies. ALJs serve as independent impartial arbiters in formal hearings. There are about 2,000 federal ALJs who preside over hearings and resolve a wide array of administrative disputes and claims.

What types of cases do ALJs hear?

ALJs hear and decide cases involving a number of federal laws and regulations. Cases may include enforcement, penalty, and sanction cases (e.g., enforcement cases heard by SEC ALJs); entitlement and benefits cases (e.g., benefit claims heard by SSA ALJs); and regulatory, ratemaking, and licensing cases (e.g., major licensing cases heard by FERC ALJs). Depending on the type of case and applicable law, hearings may be adversarial or inquisitorial in nature, and open or closed to the public.

What role do ALJs play in administrative adjudication?

ALJs preside over formal proceedings requiring a decision on the record after the opportunity for a hearing. Serving as both the judge and trier of fact, ALJs are authorized to:

- Conduct pre-hearing conferences;
- Issue subpoenas;
- Rule on motions, objections, and other procedural matters;
- Administer oaths and affirmations;
- Obtain written or oral testimony and examine parties, experts, and witnesses;
- Receive, admit or exclude, and independently review evidence and briefs; and
- Prepare and issue decisions containing written findings of fact and conclusions of law.

How are ALJs appointed?

In *Lucia v. Securities and Exchange Commission* (SEC), the Supreme Court held that SEC ALJs are “inferior Officers” of the United States, not mere employees, who must be appointed pursuant to the Appointments Clause. 138 S. Ct. 2044 (2018). The Office of the Solicitor General subsequently issued a memorandum entitled, *Guidance on Administrative Law Judges After Lucia v. SEC* (S. Ct.), interpreting and extending *Lucia* to apply to all ALJs throughout the federal government. The following sources provide authority and guidance for the constitutional appointment of ALJs:

Appointments Clause of the United States

The Appointments Clause establishes two tiers of officers: principal officers, who must be appointed by the President with the advice and consent of the Senate, and inferior officers, who must be appointed in the same manner unless Congress, by law, has vested their appointment in the President alone, in a court, or in a department head. U.S. Const. art. II, §2, cl. 2. In accordance with the Constitution, Congress has vested the appointment of ALJs in the heads of departments or agencies. Although department or agency heads may rely on agency human resource officials or other staff to assess applications, conduct interviews, and otherwise facilitate the ALJ hiring process, the final appointment must be made or approved by the department or agency head; this authority is non-delegable.

Executive Order 13843

On July 10, 2018, the President issued [Executive Order 13843](#), *Excepting Administrative Law Judges from the Competitive Service*, which removed ALJs from the competitive service and placed them in the “excepted service,” thereby eliminating the centralized examination and ratings system for selecting and hiring ALJs that was previously administered by the Office of Personnel Management.

Do the same rules apply to non-ALJ adjudicators?

Although their appointments are not uniformly governed by statute, the Solicitor General [opined](#) that *Lucia* applied with equal force to similarly situated non-ALJ adjudicators, who should be appointed as inferior officers in the same manner as ALJs. In *United States v. Arthrex*, the Supreme Court held that the unreviewable authority of administrative patent judges (APJs), non-ALJ adjudicators at the Patent Trial and Appeal Board, during inter partes review was incompatible with their appointment to an inferior office. The Court explained that an inferior officer must be directed and supervised, at some level, by a presidentially appointed and Senate confirmed official. 144 S. Ct. 1970 (2021). To remedy the Appointments Clause violation, the Court ordered that APJs’ decisions be subject to discretionary review by the USPTO Director.

Additional Resources

ACUS Rec. [92-7](#), The Federal Administrative Judiciary
ACUS Rec. [2019-2](#), Agency Recruitment and Selection of ALJs
Jack M. Beermann & Jennifer L. Mascott, [Research Report on Federal Agency ALJ Hiring After Lucia and Executive Order 13843](#) (May 29, 2019)
Jack Beermann, [The Future of Administrative Law Judge Selection](#) (Oct. 31, 2019) (originally published on The Regulatory Review)