

Subject: Guidance on ALJ Promotions and Reassignments

Sent: August 27, 2018

Dear Chief Administrative Law Judge/Designee -

On August 1, OPM provided guidance on the administrative law judge (ALJ) loan program in light of the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), and Executive Order 13843 of July 10, 2018, "Excepting Administrative Law Judges From the Competitive Service."

In a July 10, 2018 memorandum, OPM Director Jeff T.H. Pon advised that the regulations related to reassignments, merit promotions, and pay of ALJs remain in effect. However, agencies have asked OPM whether the *Lucia* decision affects how OPM will process requests to reassign or promote an ALJ, including what documentation is needed.

Following consultation with the Justice Department, we have concluded that there is no need to change the procedure for OPM's review and approval of a routine geographic reassignment of an ALJ under 930.204(f), or of the advancement of an ALJ's rate within pay level AL-3 under 5 C.F.R. 930.205(g).

However, where a promotion or reassignment will involve a significant position change, such as a promotion to a position classified at a higher level (AL-2 or AL-1) under 5 C.F.R. 930.204(e), a reassignment to a different bureau within the same department, or a reassignment to perform a significantly different kind of work within the department (*e.g.*, a change from adjudicating *ex parte* cases to adversarial trials, or from adjudicating benefits cases to regulatory enforcement cases), the agency's request to OPM should include documentation that the department head has approved the promotion or reassignment.