



United States Government Accountability Office

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Report to the Chairman, Subcommittee  
on Social Security, Committee on Ways  
and Means, House of Representatives

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June 2021

# SOCIAL SECURITY DISABILITY

## Process Needed to Review Productivity Expectations for Administrative Law Judges

**GAO@100**  
A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-341](#), a report to the Chairman, Subcommittee on Social Security, Committee on Ways and Means, House of Representatives

## Why GAO Did This Study

SSA's approximately 1,350 judges play a major role in processing and adjudicating requests for hearings to help ensure individuals who do not agree with the determination on their claim for Social Security disability benefits receive due process. SSA receives hundreds of thousands of hearing requests each year and has historically had a large backlog. GAO was asked to review SSA's productivity expectations for its judges.

This report examines (1) how SSA set productivity expectations for judges and the extent to which judges have met them over time, (2) reported factors affecting the ability of judges in selected offices to meet the annual productivity expectation, and (3) SSA's management of judges' productivity. GAO obtained and analyzed SSA data on judges' productivity from fiscal years 2005-2020; surveyed and held 13 virtual discussion groups with judges in six hearing offices selected for geographic location, average productivity, and average case size; reviewed relevant federal laws and agency policies and documents; and interviewed officials from SSA and the association representing judges.

## What GAO Recommends

GAO is making two recommendations, including that SSA establish and implement a process for periodically reviewing productivity expectations for judges and determine whether the expectations are reasonable. SSA generally agreed with both recommendations.

View [GAO-21-341](#). For more information, contact Elizabeth H. Curda at (202) 512-7215 or [curdae@gao.gov](mailto:curdae@gao.gov).

June 2021

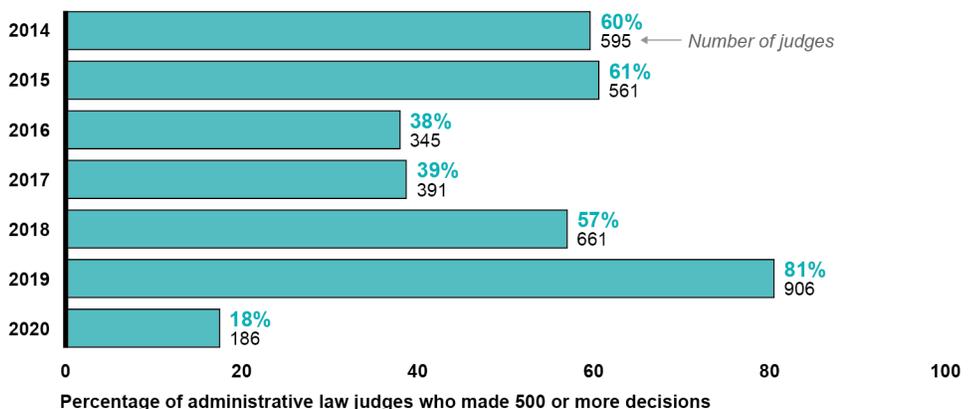
## SOCIAL SECURITY DISABILITY

### Process Needed to Review Productivity Expectations for Administrative Law Judges

## What GAO Found

The Social Security Administration's (SSA) administrative law judges review, process, and adjudicate requests for hearings on disability benefits. In 2007, the agency set an expectation—which SSA reported was based on trend data and some regional managers' input—for judges to issue 500-700 dispositions (decisions and dismissals) each year, and the extent to which they have met this expectation has varied over time. SSA did not document the expectation-setting process in 2007, nor has it formally reviewed the expectation since. Judges in discussion groups held by GAO questioned the basis of the expectation and 87 percent of judges GAO surveyed (47 of 54) said the expectation was too high. The extent to which judges met the annual and related expectations has fluctuated over the years (see figure). Without periodic reviews, SSA cannot be assured that its expectations appropriately allow judges to balance productivity with other expectations, such as quality, given changing conditions over time.

**Administrative Law Judges Who Met or Exceeded SSA's Annual Productivity Expectation, Fiscal Years 2014-2020**



Source: GAO analysis of Social Security Administration (SSA) data. | [GAO-21-341](#)

Judges in selected hearing offices cited a variety of factors affecting their ability to meet the annual expectation. The top factor cited by judges GAO surveyed was the size of case files, which have increased five-fold on average since the expectation was established, according to SSA data. The COVID-19 pandemic introduced other factors in 2020, resulting in fewer hearings being conducted.

SSA monitors judges' productivity and takes various actions when expectations are not met, ranging from informal conversations to formal discipline. In addition, judges in 11 of 13 discussion groups viewed telework restrictions as a consequence for not meeting expectations. Additionally, judges GAO surveyed reported feeling pressured to meet the expectations. For instance, 87 percent of judges surveyed (47 of 54) said that SSA placed too much emphasis on productivity, and some expressed concerns about their work quality and work-life balance. SSA officials said they do not formally seek feedback from judges on the expectations. However, without feedback or other gauges of pressure, SSA lacks information that could help it appropriately balance productivity timely case processing while maintaining high-quality work and employee morale.

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## Abbreviations

ALJ	administrative law judge
HOCALJ	Hearing Office Chief Administrative Law Judge
COVID-19	Coronavirus Disease 2019
DDS	Disability Determination Services
DOL	Department of Labor
HHS	Department of Health and Human Services
OIG	Office of the Inspector General
SSA	Social Security Administration
SSI	Supplemental Security Income
VA	Department of Veterans Affairs

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June 17, 2021

The Honorable John B. Larson  
Chairman  
Subcommittee on Social Security  
Committee on Ways and Means  
House of Representatives

Dear Chairman Larson,

The Social Security Administration (SSA) administers two large disability programs—Disability Insurance and Supplemental Security Income. In fiscal year 2019, these programs received more than 2.3 million claims and paid about \$185 billion in benefits. As of December 2019, approximately 12.3 million adults with disabilities and their eligible dependents received benefits from these programs.<sup>1</sup> Claimants who are dissatisfied with SSA’s determinations on their claim can appeal by requesting a hearing before an SSA administrative law judge (ALJ) who, in general, reviews the case, holds a hearing, and decides whether to award or deny benefits.<sup>2</sup> SSA receives hundreds of thousands of requests for a hearing each year and has a history of large backlogs at the hearings level.<sup>3</sup> At the end of fiscal year 2020, more than 418,000 disability requests for hearing cases were pending, and the average wait for a request for a hearing to be processed was about 1 year. In an effort to reduce its long-standing backlog and decide cases in a timelier manner, SSA set productivity expectations for the agency as a whole, for

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<sup>1</sup>The 12.3 million adults with disabilities described here do not include individuals who receive Supplemental Security Income benefits because they are 65 or over and meet the program’s income and asset requirements.

<sup>2</sup>For readability in this report, we are using the terms administrative law judge (ALJ) and judge interchangeably.

<sup>3</sup>We reported in 2020 that most applicants for disability benefits who appealed SSA’s initial disability determination experienced wait times of over 1 year. We also reported that during fiscal years 2014 through 2019, 1.3 percent of applicants experienced bankruptcy prior to receiving a final benefit decision, and during fiscal years 2008 through 2019, 1.2 percent of applicants died. GAO, *Social Security Disability: Information on Wait Times, Bankruptcies, and Deaths among Applicants Who Appealed Benefit Denials*, [GAO-20-641R](#) (Washington, D.C.: Aug. 13, 2020). We use the term backlog to refer to the hearings backlog, unless otherwise noted.

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its 163 hearing offices across the country, and at the individual level for its judges.

SSA's approximately 1,350 ALJs play a major role in processing requests for hearings and helping ensure claimants receive due process; however, over the years, judges and SSA have disagreed about some policies and practices, including those related to productivity. You asked us to examine the agency's performance expectations regarding productivity (productivity expectations) for judges.<sup>4</sup> This report examines (1) how SSA set its productivity expectations for administrative law judges and the extent to which judges have met these expectations over time, (2) reported factors affecting the ability of judges in selected offices to meet the annual productivity expectation, and (3) how SSA manages judges' productivity.

To address all three objectives, we reviewed relevant federal laws, our previous reports, reports from SSA's Office of the Inspector General (OIG), and conducted interviews and virtual site visits to six hearing offices. We interviewed agency officials from SSA's national office, including those from its Office of Hearings Operations, and met with staff from its Office of the General Counsel. We interviewed officials from the Association of Administrative Law Judges (AALJ), the union representing the agency's judges.<sup>5</sup> Additionally, we conducted virtual site visits to the following six hearing offices: Baltimore, Maryland; Elkins Park, Pennsylvania; Oak Park, Michigan; Oakland, California; Orland Park, Illinois; and Sacramento, California.<sup>6</sup> We selected these offices for variety in geographic location, median claims processed per judge, and average case file size, and because each office had at least eight judges. We interviewed the Hearing Office Chief ALJ (HOCALJ) of the six selected

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<sup>4</sup>In this report, we focused on performance expectations for judges related to productivity and did not examine other performance expectations, such as those related to quality. However, the performance expectations for judges also encompass other such aspects of performance. For instances, decisions that judges make are expected to be legally sufficient.

<sup>5</sup>We also examined a 2015 work analysis study that AALJ commissioned, which analyzed SSA's productivity expectations for judges.

<sup>6</sup>We originally planned to visit these offices in person, but due to the Coronavirus Disease 2019 (COVID-19) pandemic, we conducted interviews and discussion groups via videoconference or phone.

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offices, as well as the Regional Chief ALJ from two of the three selected office regions.

We also sent a survey to all 58 judges in the selected offices and received 54 completed questionnaires for a 93 percent response rate. We used the survey results to develop questions for subsequent discussion groups with the judges who responded to the questionnaire. We conducted 13 discussion groups with a total of 42 judges.<sup>7</sup> The results of the survey, the discussion groups, and interviews conducted with judges in the selected offices are not generalizable to all SSA judges. Also, while most of our questions to judges in selected offices were about normal operations, we also asked about how operations during the Coronavirus Disease 2019 (COVID-19) pandemic were affecting their productivity. We also reviewed grievances filed on behalf of ALJs (and related documents, such as arbitration decisions) that raised issues related to judges' ability to meet SSA's productivity expectations.

To address our first research objective, we also reviewed relevant SSA documents and analyzed SSA data. We reviewed SSA memos that established current productivity expectations for judges, other relevant agency guidance and documents, and the agency's strategic plan and annual performance reports. Additionally, we obtained and analyzed SSA data related to judges' ability to meet the productivity expectations over time. Specifically, we analyzed data from fiscal years 2005 through 2020 on the number of dispositions each judge made each year.<sup>8</sup> The number of judges each fiscal year ranged from 1,155 to 1,722. We analyzed data from fiscal years 2014 through 2020 on judge availability for hearings, the average number of hearings each judge scheduled, and the percentage of cases that exceeded SSA's case processing expectations for judges. We reviewed data for these time frames based on data availability and when various ALJ productivity expectations were established. For these and other data we reviewed, we assessed their reliability and found them to be sufficiently reliable for the purposes of our reporting objectives.

To address our third research objective, we obtained and reviewed available SSA data on disciplinary and counseling actions taken against judges due to failure to meet productivity expectations. Specifically, we reviewed relevant data on reprimands, removals, and suspensions from

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<sup>7</sup>We held two to three discussion groups for each of the six selected offices.

<sup>8</sup>Dispositions include both decisions made by ALJs on the merits of the case as well as case dismissals.

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fiscal years 2008 through 2020 and on telework restrictions and directives from fiscal years 2018 through 2020, based on data availability.

To assess SSA's performance with regard to our objectives, we applied standards for internal control in the federal government and key practices from our prior work. Specifically, we applied principles related to evaluating performance and holding individuals accountable, implementing control activities through policies, having clear documentation of control systems, and internally communicating quality information to achieve objectives.<sup>9</sup> In addition, regarding SSA's efforts to reassess productivity expectations, we applied practices that agencies can use to enhance management decision-making that we have previously identified.<sup>10</sup> Regarding SSA's efforts to seek input from employees and stakeholders and support a work-life balance, we applied key practices used by public sector organizations that we previously identified.<sup>11</sup> For additional methodological details, see Appendix I.

We conducted this performance audit from July 2019 to June 2021 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.

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## Background

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### SSA Disability Programs

ALJs within SSA make decisions on appeals following a request for a hearing primarily for two programs in SSA: the Disability Insurance and

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<sup>9</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>10</sup>GAO, *Highlights of a GAO Forum: High Performing Organizations: Metrics, Means, and Mechanisms for Achieving High Performance in the 21st Century Public Management Environment*, [GAO-04-343SP](#) (Washington, D.C.: Feb. 13, 2004) and GAO, *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005).

<sup>11</sup>GAO, *Results-Oriented Cultures: Creating a Clear Linking Between Individual Performance and Organizational Success*, [GAO-03-488](#) (Washington, D.C.: Mar. 14, 2003) and GAO, *Federal Workforce: Additional Analysis and Sharing of Promising Practices Could Improve Employee Engagement and Performance*, [GAO-15-585](#) (Washington, D.C.: July 14, 2015).

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Supplemental Security Income programs.<sup>12</sup> Disability Insurance benefits are based on prior earnings levels for recipients with a Social Security work record, while Supplemental Security Income provides cash benefits to recipients with limited income and resources.

Although these two programs have different purposes and target populations, the disability criteria for adults are the same for both. Generally, to be considered eligible for either program as an adult based on a disability, individuals must have a medically determinable physical or mental impairment that (1) has lasted or is expected to last for at least a continuous period of 1 year or expected to result in death, and (2) prevents them from engaging in any substantial gainful activity.<sup>13</sup>

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## Disability Benefits Application and Appeals Process

To apply for benefits, a claimant must first file an application online, by telephone, mail, or in person at a local Social Security field office. Staff in SSA field offices receive the application and determine whether the claimant meets nonmedical eligibility requirements, such as work history and earnings. If they do, their applications are then forwarded to state Disability Determination Services (DDS) offices for a medical determination.<sup>14</sup> DDS staff—generally a team comprised of disability examiners and medical consultants—review the claimant’s eligibility based on the medical and vocational requirements. Specifically, DDS examiners assemble any medical and vocational information for the claim. This can involve referring the claimant for consultative exams with physicians or psychologists if recent medical records are unavailable. DDS examiners use this information to make an initial disability determination. Claimants who are dissatisfied with the initial DDS determination may request a “reconsideration” of the claim, which is

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<sup>12</sup>ALJs issue decisions and dismissals, and they also make other types of decisions for SSA’s programs.

<sup>13</sup>42 U.S.C. §§ 423(d)(1) and 1382c(a)(3)(A). Substantial gainful activity is work activity that involves significant physical or mental activities that is done for pay or profit, regardless of whether profit is realized. 20 C.F.R. §§ 404.1572, 416.972. For 2021, SSA set substantial gainful activity as monthly earnings above \$2,190 for blind individuals and \$1,310 for non-blind individuals. Children under the age of 18 must meet different disability criteria to be eligible for SSI. Specifically, they must have a medically determinable physical or mental impairment that causes marked and severe functional limitations and that has lasted or is expected to last for a continuous period of at least 1 year or result in death. 42 U.S.C. § 1382c(a)(3)(C).

<sup>14</sup>The work performed by DDS offices is federally financed and carried out under SSA disability program laws, regulations, policies, and guidelines.

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conducted by a DDS examiner who was not involved in the original determination.

If the claimant is dissatisfied with the reconsideration, he or she may appeal the determination by requesting a hearing before an ALJ.<sup>15</sup> In general, cases are randomly assigned to ALJs within the area each hearing office serves, in the order in which the requests are received. In prior work, we have reported on SSA's increased practice of transferring cases from hearing offices with backlogs to those with greater capacity in order to reduce appeals processing times.<sup>16</sup> The ALJ reviews the claimant's file, including any additional evidence the claimant submitted after the initial or reconsideration determinations, and in most cases conducts a hearing. At the hearing, the ALJ may hear testimony from the claimant, medical experts on the claimant's medical condition, and vocational experts regarding the claimant's past work and ability to work in jobs currently available in significant numbers in the national economy. Claimants who are not satisfied with the ALJ's decision at the hearings level may submit a request for review to the SSA Appeals Council—comprised of administrative appeals judges and appeals officers—who decide whether to grant review of the ALJ's decision. Finally, claimants can appeal to federal district court if they are not satisfied with the action taken by the Appeals Council.

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## SSA's Hearings Operations

Hearings operations staff, including ALJs, are organized in 163 hearing offices and three satellite offices within 10 regions across the country. In addition, SSA has assistance centers—known as national hearing centers and national case assistance centers—that provide additional case processing capacity nationwide.

The Chief ALJ oversees and manages all aspects of the hearings operations, including formulating and developing policies and program expectations for ALJs. The Chief ALJ is also responsible for establishing and maintaining an effective business process for all functions related to claims appealed to the hearings level. Each region is headed by a Regional Chief ALJ, who is responsible for the operations of hearing offices in their respective region. In each hearing office, a HOCALJ

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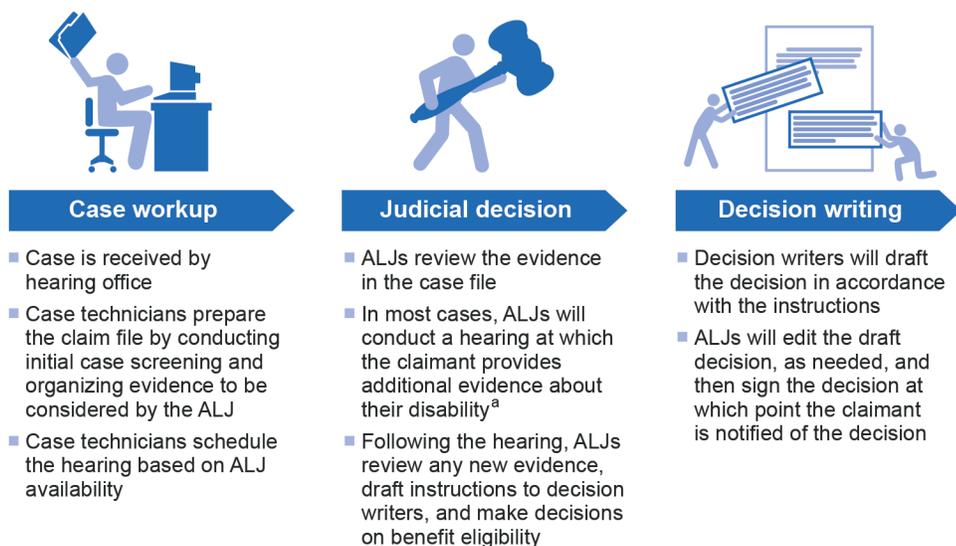
<sup>15</sup>In some cases, ALJs may be able to make a decision without a hearing. For example, an ALJ can decide to issue a fully favorable decision based on the evidence of record.

<sup>16</sup>GAO, *Social Security Disability: Better Timeliness Metrics Needed to Assess Transfers of Appeals Work*, [GAO-18-501](#) (Washington, D.C.: July 19, 2018).

oversees day-to-day operations and is the supervisor of all ALJs in their office, and they oversee the work of all office employees.

SSA's hearings are conducted by about 1,350 ALJs who are assisted by case technicians, decisions writers and other support staff. Case technicians or clerks are responsible for locating and compiling evidence related to the case and maintaining ALJ docket calendars, among other tasks. ALJs preside over the hearings, make decisions, and provide directions to decision writers on the content needed in each decision and on the rationale supporting the resolution of each issue necessary to ultimately decide the claim. Decision writers are generally attorneys or paralegals who write most ALJ decisions. Decision writers draft the decisions to be factually correct, in compliance with the drafting instructions and policy, and with proper analysis of the legal issues of the claim. These staff play key roles at each stage of the hearings process (see fig. 1).

**Figure 1: Social Security Administration's Administrative Law Judge (ALJ) Hearings Process**



Source: GAO analysis of Social Security Administration (SSA) policies and guidance documents. | GAO-21-341

<sup>a</sup>During the hearing, the ALJ may hear testimony from the claimant, medical experts on the claimant's medical condition, and vocational experts regarding the claimant's past work and jobs currently available in significant numbers in the national economy and other matters. Claimants can be represented by an attorney or non-attorney, such as a professional disability representative, relative, or social worker, who can act on their behalf during the hearing process. Representatives can aid claimants by helping with obtaining medical records to support the appeal and attending the hearing or acting on their behalf during the hearing.

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## The Administrative Law Judge Position

The position of ALJ was created by the Administrative Procedure Act,<sup>17</sup> which was enacted in 1946 to ensure fairness and due process in federal agency proceedings involving rulemaking and adjudications.<sup>18</sup> ALJs serve in a number of executive branch agencies, although SSA employs the vast majority. ALJs preside and make decisions at adjudicatory proceedings. Although ALJs are hired by and serve as employees of executive branch agencies like SSA, the Office of Personnel Management (OPM) plays a role in reviewing and approving the agency's actions related to the ALJ position classification and pay.<sup>19</sup>

One of the primary goals behind the creation of the ALJ position is to ensure that judges can make decisions free from influence or coercion from the agency.<sup>20</sup> The Administrative Procedure Act provides for ALJs to have qualified decisional independence, with some oversight from agencies. Qualified decisional independence means that ALJs can make decisions independently but must follow their agency's policies and procedures when they do so. Federal law also excludes ALJs from evaluations under a formal performance appraisal system and requires that certain disciplinary and non-disciplinary actions against ALJs be for good cause established and determined by the Merit Systems Protection Board. The Administrative Procedure Act also authorizes agencies to review ALJ decisions. If SSA determines that an ALJ has not followed its policies and procedures, it can issue a directive to the ALJs to comply, and if that is unsuccessful, it can bring a disciplinary action before the Merit Systems Protection Board.

In terms of productivity, the ALJ position at SSA requires ALJs to work in a high volume environment, and this requirement is communicated to ALJs when they apply, are interviewed for the position, and in other ways, according to SSA. For instance, the ALJ position description states that someone hired into this position must be able to exercise effective docket

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<sup>17</sup>Pub. L. No. 79-404, § 11, 60 Stat. 237, 244 (1946). When the Administrative Procedure Act was enacted in 1946, ALJs were called hearing examiners. This title was changed to administrative law judges in 1978. Pub. L. No. 95-251, 92 Stat. 183 (1978).

<sup>18</sup>Daniel T. Shedd, *Administrative Law Judges: An Overview*. RL34607. Congressional Research Service. (Apr. 13, 2010).

<sup>19</sup>In July 2018, the President signed an Executive Order that specified that all appointments of ALJs made on or after July 10, 2018 must be made under Schedule E of the excepted service. Exec. Order No. 13,843, 83 Fed. Reg. 32,755 (July 10, 2018).

<sup>20</sup>Shedd, *Administrative Law Judges: An Overview*. Congressional Research Service, 2010.

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management and time-management skills by efficiently scheduling cases, hearing and deciding a high volume of cases, and timely moving cases towards dispositions, among other actions. According to SSA, the agency also asks questions related to these requirements of ALJ candidates and through reference checks during the interview process. Additionally, the high volume environment is discussed in the training that ALJs receive, according to SSA, and the need for ALJs to balance conducting a high number of dispositions while meeting policy requirements.

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## SSA's Backlog of Hearings Appeals and Efforts to Address It

SSA has struggled with its hearings backlog over the years, as we have previously reported.<sup>21</sup> For instance, from 1985 to 1995 there was an over five-fold increase in pending requests for hearings, which we reported was the result of both a surge in requests for hearing appeals and SSA's inattention to several long-standing problems, such as fragmented program accountability.<sup>22</sup> From fiscal year 1997 through 1999, the hearings backlog was nearly eliminated before growing again in fiscal year 2000. At that time, we identified several factors that contributed to the backlog, including an increase in disability applications, substantial turnover and losses in SSA staff, and poor planning and implementation by SSA of prior agency initiatives.<sup>23</sup> In 2007, SSA began to implement a plan entitled *Summary of Initiatives to Eliminate the SSA Hearings Backlog*, which included 38 initiatives aimed at eliminating the hearings appeals backlog and preventing its recurrence. Partly because of SSA's challenges in addressing this workload, federal disability programs have been on our High-Risk List since 2003.<sup>24</sup>

SSA has recently reported progress in addressing the backlog. Prior to the pandemic, the number of cases pending went from a high of over 1 million in fiscal year 2016 to about 575,000 in fiscal year 2019. This was

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<sup>21</sup>SSA measures its progress in addressing the backlog by tracking the number of pending claims and the average wait time for a hearing decision. Previously, SSA defined an optimal pending number—the number of claims SSA considers optimal for work to continually move through the hearings-level process—and subtracted that number from total number of claims awaiting decisions. Currently, SSA defines backlog elimination as achieving an average processing time of 270 days.

<sup>22</sup>GAO, *Social Security Disability: Backlog Reduction Efforts Under Way; Significant Challenges Remain*, [GAO/HEHS-96-87](#) (Washington, D.C.: July 11, 1996).

<sup>23</sup>GAO, *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, [GAO-08-40](#) (Washington, D.C.: Dec. 7, 2007).

<sup>24</sup>GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, [GAO-19-157SP](#) (Washington, D.C.: Mar. 6, 2019).

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due in part to a decrease in the number of hearing requests received, as well as to an increase in the number of dispositions made over these years.<sup>25</sup> The agency had a fiscal year 2021 goal to eliminate the backlog, but due to the pandemic no longer expects to meet this goal, according to its fiscal year 2021 operating plan.<sup>26</sup>

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## SSA Used Some Information to Establish Productivity Expectations That Judges Have Met to Varying Degrees, but SSA Has Not Formally Assessed Its Annual Expectation Since 2007

In an effort to reduce a backlog of hearing requests, SSA established a productivity expectation in 2007 for all fully available judges (judges able to hold hearings on a full-time basis throughout the year) to issue 500-700 dispositions each fiscal year. SSA continues to use this annual expectation as its primary productivity measure for ALJs and has not formally reassessed it since it was established almost 14 years ago. At the time the expectation was established, SSA reported that the agency reviewed trend data on judges' dispositions and consulted with some regional management officials, but this process was not documented. Judges in nine of our 13 discussion groups from six hearing offices said they did not understand the basis for the annual expectation or the process SSA used to develop it. SSA also used the annual expectation to develop additional productivity expectations for judges in 2014, including a monthly expectation for scheduling hearings and additional time frame expectations in which to process cases. The percentages of judges who met the annual and related productivity expectations has fluctuated over the years, and such fluctuation may be driven by a variety of factors, including specific events such as the COVID-19 pandemic in 2020.

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<sup>25</sup>From fiscal year 2016 to fiscal year 2019, the number of hearing requests that SSA received dropped by 28 percent, and the number of dispositions conducted increased by 22 percent, according to data from SSA.

<sup>26</sup>SSA's current target for fiscal year 2021 is to reduce the pending caseload to 370,000 and the average processing time to 310 days. See SSA *Fiscal Year 2021 Operating Plan*. Baltimore, MD.

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**SSA Reported Establishing the Annual Productivity Expectation for Judges by Reviewing Trend Data and Consulting with Some Regions' Management in 2007 but Did Not Document This Process**

SSA established an expectation in 2007 for all fully available administrative law judges to issue 500-700 legally sufficient dispositions each year, referred to in this report as the annual productivity expectation. This expectation was communicated in a memo from the Chief ALJ at the time and was one of 38 initiatives planned by the agency to eliminate its hearings-level backlog, which has fluctuated over time and remains.<sup>27</sup> In meeting this annual productivity expectation, judges need to ensure their decisions on benefits claims are legally sufficient—able to withstand legal scrutiny—and are not simply awarded or denied to meet the expectation, according to the 2007 memo and subsequent SSA guidance to judges. SSA officials said this annual expectation continues to be the primary measure of productivity that judges work towards.

SSA officials said, and the 2007 memo indicates, that the expectation was established using historical data and input from some judges at that time, but the agency has no documentation that identifies the specific information considered. In the 2007 memo, the agency's Chief ALJ at the time reported that based on historical data and the input and experience of a number of ALJs, he believed the expectation was reasonable.<sup>28</sup> Current SSA officials told us that the Office of the Chief ALJ at the time set the expectation after consulting with some regions' management and reviewing historical data throughout the regions showing that most judges were already issuing at least 500 dispositions each year.

Although no documentation identifies the specific data SSA reviewed, our analysis of the historical data indicates that less than half of ALJs decided 500 or more cases in the 3 fiscal years prior to setting the expectation. Specifically, the percentage of judges who decided 500 or more cases was 34 percent in fiscal year 2005, 41 percent in 2006, and 43 percent in 2007.<sup>29</sup> These data include every judge who issued at least one disposition, including those who did not work the full year (e.g., newly hired or retired) and those who were considered "partially available" for

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<sup>27</sup>The memo uses the word "decisions" rather than "dispositions", but according to SSA officials, the expectation is for 500-700 dispositions each year, which encompasses both decisions and dismissals. SSA's other initiatives to reduce the backlog included hiring additional judges, increasing overtime allocations, and enhancing electronic hearing office management information.

<sup>28</sup>In a 2009 report, we also stated that SSA told us it considered average judge production in developing the 500-700 dispositions expectation. ([GAO-09-398](#))

<sup>29</sup>According to SSA data, there were 1,233 judges in fiscal year 2005, 1,217 judges in fiscal year 2006, and 1,155 judges in fiscal year 2007.

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hearings due to other official duties (e.g., office management). However, given that fully available judges make up the majority of judges, as we describe later, this indicates that a sizable number of fully-available judges did not meet the expectation in the years before SSA set it.<sup>30</sup>

Judges we spoke with from selected offices said they did not understand the basis of the annual productivity expectation. In nine of 13 discussion groups we held with six hearing offices, ALJs said they did not know what the annual productivity expectation was based on. For instance, ALJs in two groups said they thought the expectation was arbitrary, and an ALJ in another group said that she would like SSA to explain the basis of the expectation. An ALJ in one of our discussion groups said that the expectations should be tied to an understanding of what judges do. Similarly, several HOCALJs and one Regional Chief ALJ we interviewed said they do not know exactly how SSA determined the expectation or understand what the expectation was based on, and one noted that she had the same questions as ALJs who asked her about this.

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<sup>30</sup>SSA does not have data on ALJ availability for years prior to fiscal year 2014. However, the percentage of ALJs who were fully available for all 12 months from fiscal year 2014 to 2020 ranged from 55 to 73 percent.

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**Productivity Expectations at Other Selected Agencies with Administrative Law Judges:** The Social Security Administration (SSA) has the highest number of administrative law judges among federal agencies; however, other agencies also have administrative law judges or other judges who hear appeals for benefits. We examined the three agencies with the highest number of such judges after SSA: the Department of Health and Human Services (HHS), Office of Medicare Hearings and Appeals, the Department of Veterans' Affairs (VA), Board of Veterans' Appeals and the Department of Labor (DOL). These three agencies have expectations to assess the productivity or timeliness of cases for the agency as a whole, but, unlike SSA, have not established individual-level productivity expectations for their judges, according to information provided by each agency.

- HHS's 163 judges (as of September 2020) who hear appeals for Medicare benefits are generally statutorily required to make decisions within a certain time period (90 days), but the agency does not have other individual production expectations for its judges.
- VA Board of Veterans' Appeals has agency-wide expectations related to the number of decisions its 101 judges (as of September 2020) make on VA disability benefit appeals; however it does not have individual-level expectations for each judge.
- DOL establishes district- and agency-level expectations rather than individual-level expectations for its 37 judges (as of September 2020) who hear a wide variety of cases, such as claims for black lung benefits and whistleblower disputes. According to agency officials, it is impractical and unrealistic to set individual-level expectations for judges given the variety of cases they are assigned.

Source: GAO analysis of information from HHS, VA, and DOL. | GAO-21-341

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## SSA Used the Annual Productivity Expectation to Develop Additional Related Expectations

SSA set additional productivity expectations to help support achievement of the annual productivity expectation, including scheduling a certain number of hearings each month and processing cases within certain time frames. In 2014, after SSA reached a collective bargaining agreement with the ALJs' union regarding telework, SSA's Chief ALJ at the time expressed concern about how telework might affect the quality and timeliness of hearings and decisions and issued guidance describing undefined terms in the agreement.<sup>31</sup> To help ensure that telework did not diminish their mission, SSA set new expectations for each ALJ to schedule a certain number of hearings each month and time frames

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<sup>31</sup>The memo describes what management would generally consider a "reasonably attainable number of cases for a hearing" and when a case in an ALJ-controlled status would be considered "seriously delinquent."

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within which to move cases along before they become “seriously delinquent.”<sup>32</sup>

## Monthly Scheduling Hearings Expectation

SSA expects each ALJ to schedule a reasonably attainable number of cases to hear, which SSA interprets as an average of at least 50 hearings per month to meet SSA’s monthly scheduled hearing expectation.<sup>33</sup> This expectation was communicated in 2014, but not fully implemented until fiscal year 2017. According to SSA, it was implemented in 6-month phases starting in fiscal year 2016 when the monthly expectation increased from an average of 40 to 45 scheduled hearings and then to an average of 45 to 50 in fiscal year 2017.<sup>34</sup> A memo to HOCALJs from the Chief ALJ in 2017 reiterated that the expectation of 50 scheduled hearings per month on average constituted a reasonable number, and indicated that meeting this expectation would be the basis for approving telework requests beginning in April 2017.

SSA officials and over half of ALJs we surveyed said that achieving the monthly scheduled hearings expectation should result in meeting the annual productivity expectation. According to SSA, the expectation to schedule 50 hearings per month on average is based on what SSA officials believe would be necessary to meet the annual expectation of 500-700 dispositions. If an ALJ scheduled 50 hearings per month on average for all 12 months of the year, they would schedule 600 hearings, which should result in 500 dispositions or more, given that some scheduled hearings do not result in a disposition, according to SSA’s

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<sup>32</sup>If judges did not meet the monthly scheduling expectation or had one or more cases in a seriously delinquent status, SSA stated that it could restrict their ability to telework under the terms of the collective bargaining agreement, which we discuss in further detail later in this report. SSA generally applies all productivity expectations to both teleworking and non-teleworking judges, although restricting a judge’s ability to telework would only affect teleworking ALJs. SSA first established service delivery targets for case processing in 2007 (then known as “benchmarks for quality case processing”) and established seriously delinquent timeframes and the potential for telework restrictions if judges did not meet these expectations in 2014.

<sup>33</sup>According to SSA, this expectation does not apply if a judge has extenuating circumstances, such as military duty, bereavement, and illnesses.

<sup>34</sup>The 6-month phases correspond to SSA’s telework periods. The expectation was an average of 40 scheduled hearings per month for the October 2015 to March 2016 telework period and then an average of 45 scheduled hearings per month for the April 2016 to September 2016 telework period. The expectation then increased to an average of 45 to 50 scheduled hearings per month for the October 2016 to March 2017 telework period.

Chief ALJ.<sup>35</sup> Meeting the monthly scheduling expectation should help ensure that the annual expectation is met, according to ALJs in four of our 13 discussion groups. Among the 54 judges who responded to our survey, 74 percent (40 of 54) reported that the average number of hearings they scheduled each month greatly or very greatly affected their ability to meet the annual expectation. ALJs in three of our discussion groups told us that scheduling additional hearings is not difficult and generally increases their ability to meet the annual expectation. However, judges in three of these groups also said they have to balance the number of hearings they schedule with the work needed to prepare for and complete each hearing.

## Case Status Timeframes Expectations

SSA expects ALJs to move cases through the appeals process in a timely way and not allow cases to become what SSA considers “seriously delinquent.” As a case moves through the appeals process, it is assigned a status and tracked in the agency’s Case Processing and Management System. The four main case processing statuses that ALJs are responsible for—known as ALJ-controlled statuses—are: pre-hearing review, post-hearing review, editing, and signing (see Table 1).

**Table 1: Case Status Timeframes Expectations for SSA’s Administrative Law Judges (ALJ)**

	Service delivery target	Seriously delinquent time frame
<b>ALJ Review (Pre-hearing)</b> (review files and order evidence, if needed).	5 days	30 days or greater
<b>ALJ Review (Post-hearing)</b> (review testimony, consider any additional evidence, and prepare instructions for decision writer).	10 days	30 days or greater
<b>ALJ Edit</b> (review and edit the draft decision prepared by decision writers).	7 days	30 days or greater
<b>ALJ Sign</b> (review and sign the final decision).	1 day	10 days or greater

Source: GAO analysis of Social Security Administration (SSA) memos. | GAO-21-341

ALJs are responsible for specific tasks at each stage before passing the case to the next stage, according to SSA’s procedures. For instance, after an ALJ holds a hearing, the case generally goes into a post-hearing review status during which the ALJ is responsible for reviewing the case, preparing a decision, and passing the case to a decision writer, an attorney who receives the judge’s decision and instructions and writes the

<sup>35</sup>For instance, a scheduled hearing may be postponed if more evidence needs to be collected in order for an ALJ to decide the case or if a supplemental hearing—an additional hearing on the same case—is needed.

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formal decision. For each status, SSA sets both service delivery targets and time frames for considering a case to be seriously delinquent. For example, the service delivery target for moving a case through post-hearing review status is 10 days, and is considered seriously delinquent at 30 days. SSA phased in the seriously delinquent time frame expectations using the same phased approach it used to implement the monthly scheduled hearings expectation.

SSA has limited documentation that describes some steps it took to establish a basis for the monthly scheduling and case processing expectations, but the agency did not share this information with ALJs. SSA officials said the agency sought and incorporated comments from Regional Chief ALJs when it established the service delivery targets in 2007, but did not document the input provided or specify any other sources or methods for setting the targets. Additionally, prior to issuing the 2014 memo describing expectations for monthly scheduling hearings and seriously delinquent timeframes, the Chief ALJ at the time sent an email to share her analysis with and seek input from Regional Chief ALJs. This analysis included the number of hearings scheduled by each judge in 2013 and estimates of how many judges would be affected if the monthly scheduled hearings expectation was set at various levels, such as 50, 45, or 40 hearings per month. The email also described the Chief ALJ's analysis of the number of judges that may be affected by setting the seriously delinquent time frames at certain thresholds based on current data. Although ALJ management at the time took steps to establish a basis for these expectations, such information was not communicated to all ALJs. Instead, the 2014 memo that was issued to all judges describes the purpose and rationale for the additional productivity expectations, but does not provide details on any analysis or information the agency used to arrive at specific numbers.

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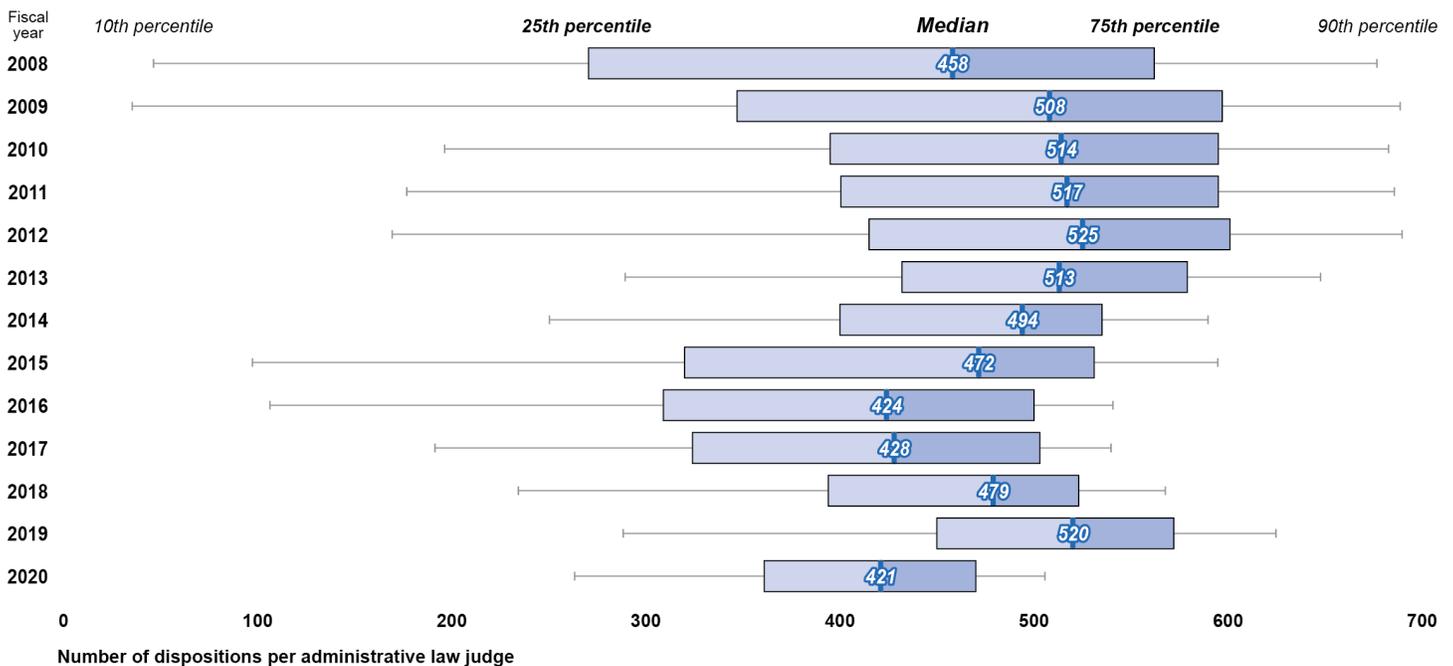
The Percentage of Judges Who Met Expectations Has Fluctuated Over Time, With 18 to 81 Percent of All Fully Available Judges Meeting the Annual Expectation Each Year

Annual Productivity Expectation

SSA data shows that the median number of dispositions per ALJ has fluctuated each year after 2007 when the annual expectation was

established. Prior to fiscal year 2014, however, SSA did not track the extent to which judges were available, and the 500 disposition expectation does not apply to judges who worked less than 12 months or were considered partially available. SSA expects partially available judges to meet a reduced expectation based on their percentage of availability. Still, the median number of dispositions per judge for all judges ranged from a high of 525 in fiscal year 2012 to a low of 421 in fiscal year 2020, and fluctuated over the years. (See fig. 2).

**Figure 2: Distribution of Dispositions per Administrative Law Judge at SSA, Fiscal Years 2008 Through 2020**



Source: GAO analysis of Social Security Administration (SSA) data. | GAO-21-341

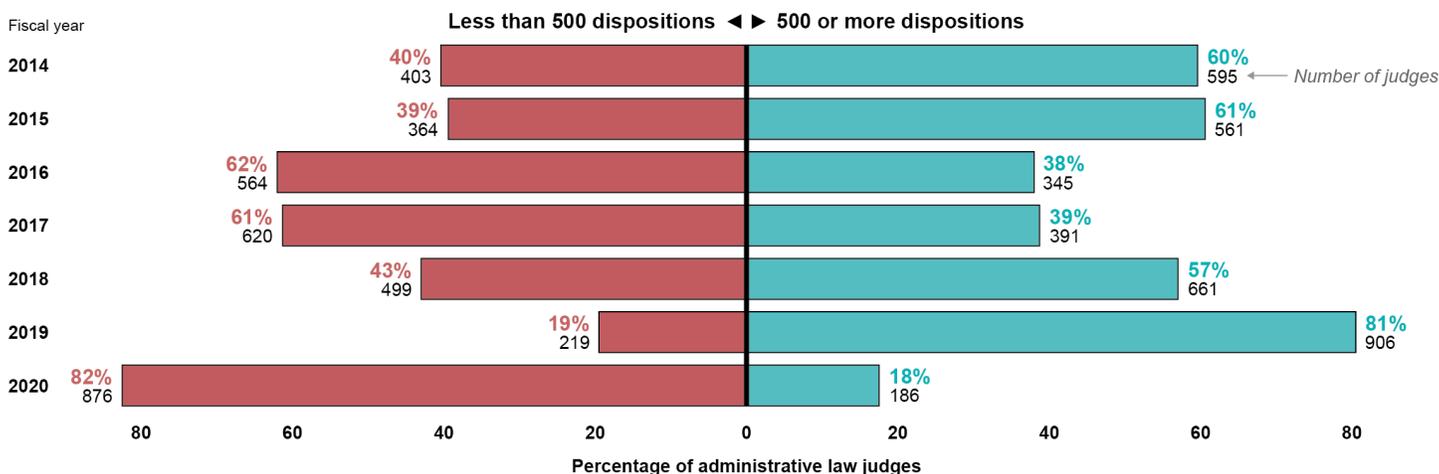
Note: In fiscal year 2020, SSA took multiple actions in response to the COVID-19 pandemic that resulted in fewer dispositions, according to SSA. These actions included closing hearing offices to the public and suspension of dismissals for untimely filing or failure to appear for a hearing.

Since fiscal year 2014, the percentage of judges fully available for the entire year who met the annual productivity expectation has also fluctuated, according to SSA data.<sup>36</sup> These judges, about 1,000 in a given year, are expected to issue at least 500 dispositions each year, but are

<sup>36</sup>Fully available ALJs are those who are available to hold hearings full time, according to SSA. Prior to fiscal year 2014, SSA had data on ALJ dispositions but not on ALJ availability.

allowed to exceed 700 dispositions if given permission, according to SSA's Chief ALJ. The percentage of ALJs who met the expectation by issuing 500 or more dispositions each year varied from a high of 81 percent in fiscal year 2019 to a low of 18 percent in fiscal year 2020. (See figure 3).

**Figure 3: Fully Available Administrative Law Judges Who Met or Did Not Meet SSA's Annual Expectation of 500 or More Dispositions, Fiscal Years 2014 through 2020**



Source: GAO analysis of Social Security Administration (SSA) data. | GAO-21-341

Notes: These data are for judges who were fully available for hearings for the entire year. It does not include those who did not work the full year (e.g., newly hired or retired) and those who were partially available for hearings due to other official duties (e.g., office management). In fiscal year 2020, SSA took multiple actions in response to the COVID-19 pandemic that resulted in fewer dispositions, according to SSA. These actions included closing hearing offices to the public and suspension of dismissals for untimely filing or failure to appear for a hearing.

A majority of judges who were partially available met their reduced annual productivity expectations from fiscal years 2014 through 2020, according to our analysis of SSA data. Most of SSA's partially available judges are HOCALJs who oversee and manage the judges in their office and National Hearing Center judges who hold hearings via videoconference and manage some support staff.<sup>37</sup> At the end of fiscal year 2020, there were 151 and 55 of these judges, respectively. Because these judges

<sup>37</sup>SSA also adjusts the percentage of availability for judges who are newly hired and for union officers. The percentage of availability for newly hired judges increases each month from 0 percent in their first full month to 95 percent of their time in their eighth full month. Union officers are available for hearings from 10 percent to 40 percent of the time depending on their role. We did not analyze the productivity of these judges because they are relatively small in number and fluctuate quite a bit each year.

have other official duties, SSA reduces their annual productivity expectation to reflect their limited availability for reviewing cases, holding hearings, and making decisions. SSA expects judges in the National Hearing Centers to be available 90 percent of the time for hearings and are therefore expected to meet 90 percent of the annual productivity expectation. Likewise, HOCALJs are available either 75 or 50 percent of their time to decide cases, depending on the number of judges in their hearing office, so they have a commensurate productivity expectation. See table 2 for a comparison of these judges and the percentage who met their annual expectation.

**Table 2: Percentages of SSA Administrative Law Judges Who Met Their Annual Dispositions Expectation Based on Their Levels of Availability, Fiscal Years (FY) 2014 through 2020**

Type of administrative law judge (ALJ) <sup>a</sup>	Percentage of availability	Annual expectation for number of dispositions	Range for the percentage of judges who met their annual expectation, FY 2014-2020
Fully available	100%	500	18 to 81%
National Hearing Center	90%	450	51 to 93%
Hearing Office Chief ALJ in an office with fewer than 10 judges	75%	375	54 to 97%
Hearing Office Chief ALJ in an office with 10 or more judges	50%	250	77 to 97%

Source: GAO analysis of Social Security Administration (SSA) data. | GAO-21-341

<sup>a</sup>These judges were those available for all 12 months of the fiscal year. We excluded judges who were not available for at least 1 month of the year, including those who were hired or who retired during the year as well as judges whose availability percentage changed during the year.

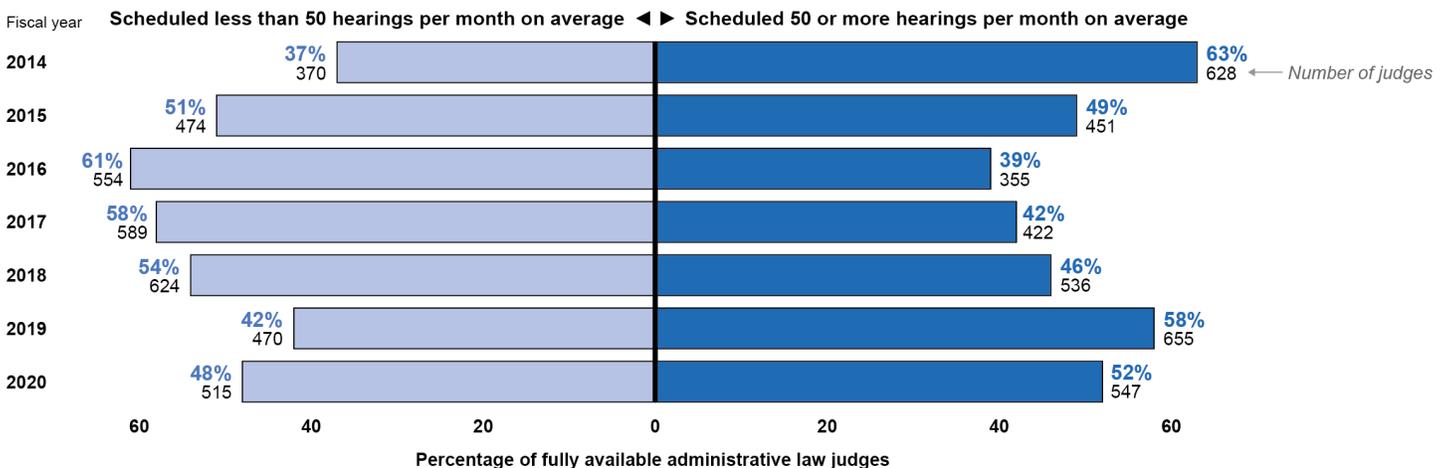
Partially available judges may be more likely to meet their annual expectation than fully available judges for several reasons. First, these judges may spend more time than anticipated adjudicating cases. For example, three of the six HOCALJs we interviewed said they spent more time adjudicating cases than planned. These judges may also take additional cases from ALJs in their office who need help or need to take leave unexpectedly, according to some HOCALJs we interviewed. Another reason a higher percentage of HOCALJs meet their annual productivity expectation may be their level of experience, as ALJs who are selected to become HOCALJs typically have been top judges throughout their careers, according to SSA. Finally, judges in the National Hearing Centers may be more likely to meet their annual productivity expectation because they have a different support staff model than fully available ALJs. Judges in the National Hearing Centers are assigned two attorney advisors who under their direct supervision help prepare their

cases for review and write their decisions, while non-National Hearing Center ALJs are provided centralized support staff.<sup>38</sup>

### Monthly Scheduled Hearings Expectation

The percentage of fully available judges who scheduled an average of 50 or more hearings per month also fluctuated from fiscal year 2014 through fiscal year 2020, according to SSA data. The percentage of ALJs meeting the current monthly expectation tracked with the fluctuations for the annual productivity expectation over the same time period. However, this expectation included a start-up period, and scheduling 50 or more hearings per month did not become the expectation until April 2017 (see figure 4).

**Figure 4: Fully Available Administrative Law Judges at SSA Who Scheduled Less Than 50 or 50 or More Hearings per Month on Average, Fiscal Years 2014 through 2020**



Source: GAO analysis of Social Security Administration (SSA) data. | GAO-21-341

Note: This figure does not reflect the changing expectation over these years. SSA issued guidelines in fiscal year 2014, began a start-up period from fiscal years 2016 to 2017, and did not fully implement the expectation until April 2017.

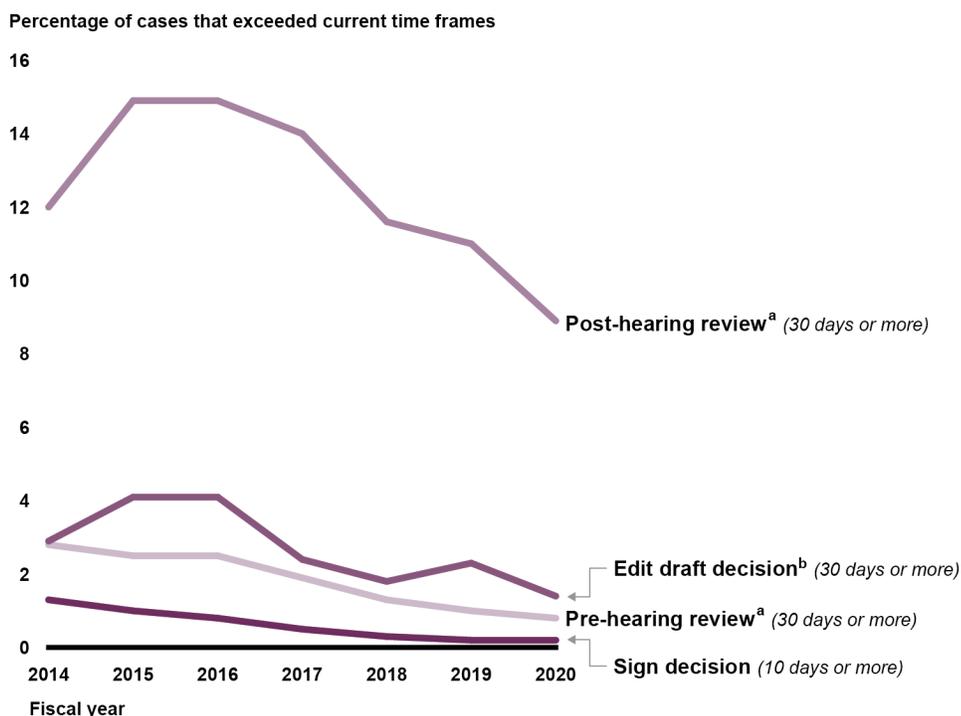
### Case Status Time Frames Expectations

Since fiscal year 2014 when SSA established seriously delinquent case status time frames, ALJs have made some progress in processing cases more efficiently, according to SSA data. For example, the average number of days cases remained in a case processing status that is controlled by ALJs reduced overall, according to our analysis. Additionally, the percentage of cases that exceeded SSA's time frames

<sup>38</sup>SSA considers National Hearing Center ALJs to be management ALJs. In addition to their duties and responsibilities related to case adjudication, these ALJs are expected to perform management or supervisory duties for their attorney advisors, according to SSA.

for seriously delinquent cases has decreased since fiscal year 2014 for all four case statuses we examined. (See figure 5).

**Figure 5: Percentage of Cases in Administrative Law Judge Controlled Statuses That Exceeded Current Time Frames for Seriously Delinquent Cases, Fiscal Years 2014 through 2020**



Source: GAO analysis of Social Security Administration (SSA) data. | GAO-21-341

<sup>a</sup>SSA’s guidelines for this status included a start-up period during fiscal years 2014 and 2015, in which the seriously delinquent timeframe started at 60 days or more in fiscal year 2014, changed to 45 days or more in fiscal year 2015, and then to 30 days or more in fiscal year 2016 and after.

<sup>b</sup>SSA’s guidelines for this status included a start-up period during fiscal years 2014 and 2015, in which the seriously delinquent timeframe started at 45 days or more in fiscal year 2014, changed to 30 days or more in fiscal year 2015 and after.

### Possible Explanations for Fluctuating Productivity

Officials at SSA and its Office of the Inspector General (OIG) cited several policy and staffing changes, along with changes due to the COVID-19 pandemic, which could explain some of the fluctuations in the extent to which judges met the productivity expectations over time. A regulatory change effective in April 2015 generally requires claimants to

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submit all evidence known to them that relates to the disability claim.<sup>39</sup> According to SSA and the OIG, this change resulted in larger amounts of information for staff and judges to review, and negatively affected judges' ability to meet the annual dispositions expectation in the following years.<sup>40</sup> The OIG also explained that, at about the same time, a renewed focus on quality resulted in judges spending more time on their cases and reduced the number of decisions they could make.<sup>41</sup> In addition, having fewer support staff affected judges' ability to meet the annual productivity expectation, according to the OIG report. For example, having insufficient numbers of decision writers was cited as a top factor that led to a large backlog of written decisions in fiscal year 2017, according to the OIG.<sup>42</sup> In a prior report, we also discussed how varying ratios of support staff per judge, including decision writers, can affect judges' productivity.<sup>43</sup> In fiscal years 2018 and 2019, SSA hired almost 700 decision writers, which SSA officials said contributed to the increased percentage of judges who met the annual productivity expectation in those years. SSA officials also attributed the increase to the agency's increased oversight of judges. However, these officials said the decrease in fiscal year 2020 was largely related to the COVID-19 pandemic.

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## SSA Has Not Formally Assessed the Annual Expectation Since It Was Established

A Congressional Committee and the Association of Administrative Law Judges (AALJ), the union representing ALJs, have called for SSA to conduct a study that assesses the length of time it takes judges to make a decision on a claim. Specifically, a 2014 U.S. House of Representatives' Committee on Oversight and Government Reform staff report on the quality of ALJ decisions stated that past SSA and OIG reports suggested the annual production expectation was too high and concluded the

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<sup>39</sup>Submission of Evidence in Disability Claims, 80 Fed. Reg. 14,828 (Mar. 20, 2015), codified at 20 C.F.R. §§ 404.1512, 416.912.

<sup>40</sup>For example, see SSA Office of the Inspector General, *Factors Related to Decreased Administrative Law Judge Productivity*, A-12-18-50289 (Baltimore, MD.: Sept. 11, 2017).

<sup>41</sup>This renewed focus on quality was due in part to instances of high profile reports of improper decisions made by certain judges. See SSA Office of the Inspector General, *Administrative Law Judges with Both High Dispositions and High Allowance Rates*, A-12-14-24092 (Baltimore, MD.: Nov. 14, 2014).

<sup>42</sup>SSA's Office of the Inspector General, *Decision-writing Backlog in the Office of Hearings Operations*, A-12-18-50579 (Baltimore, MD.: Mar. 29, 2019).

<sup>43</sup>[GAO-18-501](#).

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expectation had no legitimate basis.<sup>44</sup> The report also stated that the pressure ALJs experienced to meet SSA's annual productivity expectations resulted in some judges making improper benefit decisions. The committee recommended that SSA conduct an independent study, based on empirical data, of the amount of time it takes ALJs to conduct their work and immediately suspend all productivity expectations until the study was completed. According to the report, in response to the Committee's recommendations, the Acting Commissioner of SSA elected not to conduct the study or suspend the expectations.<sup>45</sup> AALJ officials stated that, over the years, AALJ has called for SSA to conduct a study that identifies the various work duties and responsibilities ALJs perform in adjudicating cases and measures the amount of time it takes ALJs to perform them. AALJ commissioned its own work study, published in 2015, that concluded SSA's productivity expectations were established without regard for how long it takes for ALJs to process cases. The study recommended that SSA conduct its own study based on the amount of labor required to adjudicate cases.<sup>46</sup>

SSA has not formally assessed ALJ's annual expectation since it was established in 2007 and stated it has no plans to do so in the future. SSA officials said the annual expectation of 500-700 dispositions is a long-standing expectation and that the expectation is communicated consistently to judges when they are hired, during initial training, and through recurring emails and office-level meetings. Although SSA has not conducted a formal assessment, SSA officials said the agency constantly reviews ALJ productivity expectations by monitoring management information and discussing productivity and performance with ALJ supervisors. Judges in 11 of 13 discussion groups, including those who

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<sup>44</sup>U.S. House of Representatives Committee on Oversight and Government Reform, *Misplaced Priorities: How the Social Security Administration Sacrificed Quality for Quantity in the Disability Determination Process*, Dec. 18, 2014.

<sup>45</sup>In an e-mail to ALJs Chief ALJ Debra Bice said to continue operating under the performance expectations, according to the report.

<sup>46</sup>Cheryl Paulin, Ph.D., Leaetta M. Hough, Ph.D., Joseph Caramagno, *Administrative Law Judge Work Analysis Study*, Human Resource Research Organization, Alexandria, VA, Nov. 12, 2015. The findings were limited because, according to the study's authors, the findings were based on responses from only 31 judges who responded through a convenience sample. AALJ officials stated that they could not attest to the validity of this study because it was commissioned under prior AALJ leadership.

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said they generally met the annual productivity expectation, questioned the basis and appropriateness of the annual expectation.

Although SSA has not reassessed the annual expectation for ALJs, it has reviewed and revised other supporting expectations for ALJ productivity and other productivity expectations that are not related to ALJs. For example, SSA revised the service delivery target for the post-hearing review status expectation in fiscal year 2020 by extending the time to complete this status by several days.<sup>47</sup> According to SSA officials, the agency revised targets to adapt its business process to better meet the needs of claimants. SSA has reviewed and revised other agency expectations related to productivity in hearing operations that are not specific to ALJs. For instance, one of the agency's key expectations is to improve customer service in the hearings process by prioritizing individuals who have waited the longest for a hearing decision, and SSA updates this expectation on an annual basis. SSA has also reviewed and revised the productivity expectations for hearing office decision writers, as described earlier. According to SSA, it also continually reviews and updates various procedures that personnel follow for case processing.

Our prior work on best practices in establishing performance management systems has found that high performing organizations regularly reassess their performance management systems, driven by a fact-based understanding. Specifically, we have found that high-performing organizations continuously assess and benchmark performance.<sup>48</sup> These organizations evaluate their efforts using fact-based understandings of how their activities contribute to accomplishing the mission and broader results and optimize their efforts through continuous improvement.<sup>49</sup> Similarly, we have found that high-performing organizations continuously review their performance management systems to support their strategic and performance goals.<sup>50</sup> By reassessing ALJs' annual expectation on a periodic basis, and the supporting expectations as needed, SSA will be better positioned to ensure that judges can continue to both address the hearings appeals

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<sup>47</sup>The service delivery target for the post hearing case review was revised from 7 days (originally established in 2007) to 10 calendar days.

<sup>48</sup>[GAO-04-343SP](#).

<sup>49</sup>[GAO-05-927](#).

<sup>50</sup>[GAO-03-488](#).

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backlog and take the time required to make quality decisions, especially in light of various external factors that can affect their ability to meet these expectations over time.

Additionally, federal internal controls call on management to have clear documentation of their control systems and internally communicate the necessary quality information to achieve an entity's objectives.<sup>51</sup> As described earlier, SSA did not clearly document how it established the annual productivity expectation and, subsequently, has not communicated this information to judges. Accordingly, judges in our discussion groups questioned the basis of the annual productivity expectation. Additionally, although there was limited documentation regarding how the related productivity expectations for scheduled hearings and case processing were established, this information was only shared among ALJ management and not communicated to all ALJs. Unless SSA clearly documents the basis of and resulting decisions from a reassessment of its productivity expectations, and explicitly and transparently communicates this information, ALJs will continue to lack an understanding of the basis of SSA's productivity expectations.

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## Judges Reported a Number of External Factors Affecting Their Ability to Meet the Annual Productivity Expectation

A range of factors, many of which are outside ALJs' control, can affect their ability to meet the annual expectation.<sup>52</sup> Among the factors ALJs we surveyed said had the greatest impact on their ability to meet the annual expectation were case file size, the quality of work conducted by support staff, and whether claimants or their representatives submitted new evidence right before, during, or right after the hearing. The COVID-19 pandemic also introduced factors that judges told us made it more difficult to meet the annual expectation in fiscal year 2020, including claimants electing to postpone their hearings, not appearing for their hearings, and struggling with technological issues.

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<sup>51</sup>[GAO-14-704G](#).

<sup>52</sup>Based on a review of relevant publications (including prior GAO and SSA OIG reports), interviews with SSA and AALJ officials, and pre-tests with four judges, we developed a survey asking the judges in our selected hearing offices to rate the extent various items were factors affecting their ability to meet the annual productivity expectation. We asked ALJs in each hearing office to complete the survey and used their responses to guide our discussion groups with them.

## Reported Factors Include Case File Size, Quality of Work by Support Staff, and Claimant Actions

A variety of factors affect ALJs' ability to meet SSA's annual expectation, according to the judges we surveyed and spoke with from six selected hearing offices. These factors fall into several categories: case characteristics, support provided to ALJs, actions taken by the claimant, and individual ALJ characteristics or work practices. The factors in the first three categories tend to be external factors, outside of the control of ALJs, while the factors in the last category are generally internal factors or those within the control of ALJs (see table 3).

**Table 3: Number and Percent of Surveyed Administrative Law Judges (ALJ) Who Reported that Factors Had a Great or Very Great Impact on Their Ability to Meet SSA's Annual Productivity Expectation**

Factor	Number of ALJs (Percent of ALJs Out of 54)
<b>External Factors</b>	
<i>Case Characteristics</i>	
*Case file sizes	44 (81%)
*Quality of case development from Disability Determination Services responsible for developing medical evidence for initial eligibility determinations	27 (50%)
Postponed hearings	13 (24%)
Case dismissals (e.g., claimants not appearing at their hearing)	8 (15%)
<i>Claimant Actions</i>	
*Claimants/representatives introducing new evidence just before, during, or just after the hearing	28 (52%)
Claimants requesting representation just before or during the hearing	24 (44%)
Claimants having representation	20 (37%)
Claimants withdrawing their request for a hearing	9 (17%)
Claimants/representatives requesting on-the-record decisions in cases when a fully favorable decision can be made at the hearing.	2 (4%)
<i>Supports for ALJs</i>	
*Overall quality of work conducted by decision writers	39 (72%)
*Overall quality of work conducted by case technicians and other support staff	33 (61%)
*Overall number of case technicians and other support staff	28 (52%)
Overall number of decision writers	23 (43%)
Use of centralized scheduling system for arranging hearings	21 (39%)
Use of pooled support staff (instead of having dedicated support staff)	20 (37%)
Reliability of SSA's technology systems	18 (33%)
<b>Internal Factors</b>	
<i>Individual ALJ Characteristics or Work Practices</i>	
*The number of hearings scheduled each month on average	40 (74%)
Use of telework	25 (46%)

Factor	Number of ALJs (Percent of ALJs Out of 54)
Working non-compensated time and/or forfeiting annual leave or credit hours	19 (35%)
Use of planned leave	19 (35%)
Years of experience as an ALJ	18 (33%)
Screening of cases to identify which ones can be decided quickly	14 (26%)
Conducting non-adjudicatory administrative work	12 (22%)
Use of vocational experts in hearings	12 (22%)
Use of unplanned leave	10 (19%)
Use of supplemental hearings	7 (13%)
Use of medical experts in hearings	6 (11%)

Legend: \* Indicates that one-half or more of judges surveyed reported this factor as having a great or very great impact on their ability to meet the annual productivity expectation.

Source: GAO survey of Social Security Administration (SSA) administrative law judges in selected hearing offices. | GAO-21-341.

Notes: Of our survey of 58 ALJs, four did not respond to the survey. Results are not generalizable to all ALJs.

The factors most often cited as having the most impact by the 54 ALJs who responded to our survey tended to be external issues outside their control. In contrast, fewer ALJs cited factors that they had some measure of control over as having a great or very great impact, such as screening of cases or the use of planned leave. One exception was the number of hearings judges schedule each month, as we described earlier in this report. Although SSA’s general expectation is that judges schedule 50 hearings on average each month, judges from 10 of 13 discussion groups said they have some control over the specific number of hearings they schedule each month and how they are scheduled.

## Case Characteristics

**File size.** Case file sizes was a top factor cited by the most ALJs we surveyed as affecting productivity. Specifically, 81 percent (44 of 54) rated case file size as greatly or very greatly impacting their ability to meet their annual expectation, and 61 percent (33 of 54) rated it as a top-three factor. Judges in all of the 13 discussion groups said case files that contain large numbers of pages, particularly the medical section, take more time to review effectively. Judges from 10 of our discussion groups and one-half of the six HOCALJs we spoke with agreed that case files can routinely contain thousands of pages. In order to make a legally sufficient and fair decision, ALJs from three of the discussion groups told us they have to review the entire case file to identify any medical opinions that will help them determine whether the claimant meets the criteria for disability benefits. For example, ALJs from three discussion groups we met with one-half of the HOCALJs we interviewed told us that judges

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cannot skim through files because within hundreds of pages of medical notes, there may be a few sentences with key information that could affect the decision. If judges miss this information, the claimant may appeal the case to the Appeals Council, which could vacate the decision or send the case back to the ALJ to conduct additional proceedings.<sup>53</sup> SSA officials said that ALJs are accustomed to having large case files and many have developed policy-compliant ways to efficiently review these cases. Yet, judges from seven of the 13 discussion groups said it can take hours to review large case files, which reduces the time available for reviewing other cases.

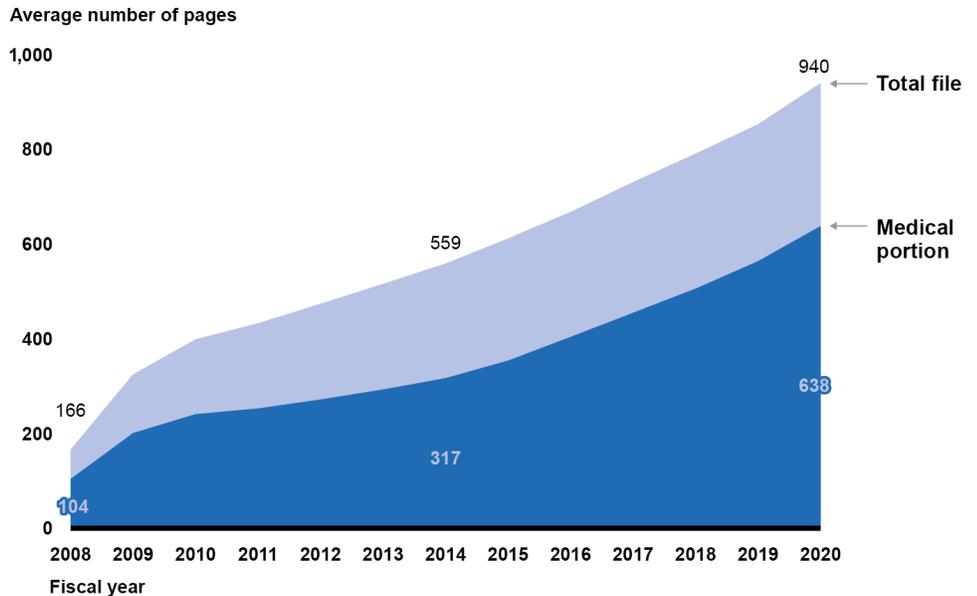
Case file sizes, including the medical portion, have increased substantially since SSA established the annual expectation, according to SSA data. From fiscal years 2008 through 2020, the average number of pages in each case's medical file increased from 104 to 638, and the total number of pages on average in a case file increased from 166 to 940, about a five-fold increase. (See fig. 6).<sup>54</sup> Our review of SSA case file data found that the average case file size varied for all of SSA's 10 regions. For example, in fiscal year 2020, the average medical file size per region ranged from 574 to 718 pages and the average total file size per region ranged from 864 to 1,028 pages. However, the average number of pages per file increased over time across all regions, for both the medical portion and the total file.

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<sup>53</sup>The extent to which the Appeals Council agrees with ALJ decisions is tracked by SSA, and ALJs are expected to keep this rate below a certain threshold, according to SSA policy.

<sup>54</sup>In addition to the medical portion, pages in the case file include information on past employment and whether a claimant has worked long enough to qualify for benefits, among other administrative information.

**Figure 6: Average Number of Pages in SSA Appeals Case Files, Fiscal Years 2008 through 2020**



Source: GAO analysis of Social Security Administration (SSA) case file page-count data. | GAO-21-341

Note: We calculated the annual average page count for both medical files and the total case file by averaging the annual averaged page count for all hearing offices as well as for SSA's National Hearing Centers, National Adjudication Team, and Special Review Cadre.

The increase in case file sizes over time may be due, in part, to a change in SSA requirements. As described earlier, in April 2015, new regulations went into effect requiring claimants to submit all medical evidence they are aware of that relates to a disability claim.<sup>55</sup> SSA's Chief ALJ told us that the new regulations initially flooded ALJs with evidence, but he believed that the amount of evidence being submitted has since leveled off. However, case file sizes have continued to increase since 2015. Moreover, although SSA officials also stated that the impact of the new regulations on ALJ productivity may have diminished over time, as ALJs have developed additional ways to efficiently review cases, as described, ALJs in our discussion groups continued to identify case file size as the factor most affecting their ability to meet the annual productivity expectation.

Case files may also be large due to the care claimants have received from certain healthcare providers or in certain areas, or if the case

<sup>55</sup>See 20 C.F.R. §§ 404.1512(a) and 416.912(a).

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contained duplicate medical records, according to judges from four of the discussion groups. For example, judges from two discussion groups said claimants who receive care from the Department of Veterans Affairs tend to have larger case files, sometimes with thousands of pages. Also, two HOCALJs and judges from two discussion groups said the size of the files can depend on the extent to which claimants can access or have better access to health care in their state. Claimants with larger files may live in an area where access to health care is more readily available. SSA data on average case file sizes showed that there was large variation at different hearing offices across the United States.<sup>56</sup> In addition, judges from five of our discussion groups said claimant representatives will often send voluminous records in support of their clients, but the records may include information already collected. Judges from one discussion group said there is no way of knowing if there are duplicate records until they review the case file.

#### Helping to Address Case File Size

“The main factor affecting productivity is case file size. The agency is doing everything it can technologically to assist [judges], but case files are getting bigger everywhere, and likely because records are now electronic and representatives can submit the records electronically.”

Source: GAO Interview with a Hearing Office Chief Administrative Law Judge. | GAO-21-341

SSA has attempted to address the rising page counts through technology improvements and a pilot program, although the effectiveness of these efforts is unknown. SSA officials told us they introduced new software in June 2020, known as the Duplicate Identification Process, to identify potential duplicate records in the case files for legal assistants to review and remove, if appropriate. This process could reduce the number of pages ALJs have to review. One HOCALJ said that he believes the software will help keep medical record sizes at manageable levels but that it was too early to determine the effectiveness of the system. SSA also piloted a program in fiscal year 2016 in which senior attorney advisors reviewed case files with more than 1,000 pages of medical information prior to the hearing. Under the pilot, these advisors summarized the information in the file, identified key medical opinions for the ALJ, and determined whether a case could be quickly approved. SSA suspended the pilot in December 2016 to allow hearing offices to focus on the growing decision-writing backlog, according to SSA. SSA officials said they have not determined if the pilot will resume, but noted there was not enough substantial data available to determine its effectiveness.

**Case development.** Judges we surveyed identified the quality with which cases were developed as another characteristic affecting productivity. One-half of the ALJs we surveyed (27 of 54) responded that the quality of the cases developed by state Disability Determination Services (DDS)

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<sup>56</sup>For example, in fiscal year 2020, the number of average pages ranged from 640 pages (Jackson, Mississippi hearing office) to 1,290 pages (Cincinnati, Ohio hearing office).

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greatly or very greatly affected their ability to meet the annual expectation; and 9 percent (5 of 54) rated it as a top-three factor. State DDS staff are responsible for collecting medical and vocational evidence when claimants initially apply for benefits, and the quality and amount of evidence collected can either reduce or create additional work for ALJs. For example, one ALJ who responded to our survey said large claim files may not have enough medical analysis for judges to make eligibility determinations, so they must gather additional medical information, such as from claimants and medical professionals, to make a decision.

## Claimant Actions

**New evidence.** A large number of ALJs we surveyed rated the introduction of new evidence as a factor affecting productivity. Over one-half of the judges we surveyed (28 of 54) responded that their ability to meet the annual expectation was greatly or very greatly affected when claimants or their representatives introduced new evidence just before, during, or just after a hearing, and 28 percent of judges (15 of 54) said it was a top-three factor. Judges from four of the 13 discussion groups said new evidence causes delays in decision making because it requires additional time for the judge to review the new evidence. Judges from two of our discussion groups said that obtaining new evidence can require judges to hold a supplemental hearing, which takes additional time and does not count toward their annual expectation.<sup>57</sup> Judges from one of these discussion groups said that by the time they receive the new evidence—which can sometimes take weeks or months—they may no longer recall the details of the case and may need to spend additional time reviewing the claim again.

In 2017, new regulations went into effect generally requiring claimants or their representatives to inform the agency about or submit any written evidence to SSA no later than 5 business days before the date of the scheduled hearing.<sup>58</sup> A judge from one of the discussion groups said this requirement helped address the issue to some degree, while judges from seven discussion groups said it did not because claimants or their representatives can still introduce new evidence late as long as they inform SSA about it at least 5 days in advance.

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<sup>57</sup>SSA counts each case that ALJs decide as one disposition toward the annual expectation, even if the case requires ALJs to conduct supplemental hearings.

<sup>58</sup>Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process, 81 Fed. Reg. 90,987 (Dec. 16, 2016), amending 20 C.F.R. §§ 404.935(a) and 416.1435(a).

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## Support for ALJs

### Administrative Law Judges' Comments on Having Quality Draft Decisions

"If it takes a long time to edit a draft decision, it's time taken away from reviewing other cases, writing and reviewing instructions for other decision writers, and other steps needed to close cases."

"Having quality decision [drafts] to edit from the decisions writers make judges' jobs easier and thus, take less time. However, poor decision writer quality will lead to [judges] having to spend hours in fixing the draft before they sign it."

Source: GAO discussion group with administrative law judges. | GAO-21-341.

**Decision writing quality.** Among the judges surveyed, 72 percent (39 of 54) responded that the quality of work by decision writers greatly or very greatly affected their ability to meet the annual productivity expectation, while 28 percent (15 of 54) rated it as a top-three factor.<sup>59</sup> Judges from two discussion groups explained that decision writers who produce high-quality drafts make it easier to quickly review and edit decisions and move through cases more efficiently. However, judges from seven of the discussion groups said they often receive decision drafts with errors such as misspelled words, grammatical issues, incomplete sentences, or missing sections. ALJs from seven of the discussion groups and one HOCALJ we spoke with said it can take hours to edit poorly drafted decisions, which reduces time for other cases. A judge from one of the discussion groups told us they budget extra time to edit decision drafts from certain decision writers.<sup>60</sup>

The quality of work by decision writers may be affected by their own productivity expectations, according to ALJs in three of our discussion groups. Specifically, a number of judges from one hearing office said that decision writers have their own stringent productivity expectations to meet, which can result in them working too quickly and producing drafts with errors. According to a recent SSA OIG report, in 2017, SSA implemented the Decision Writer Productivity Index to measure how long it takes decision writers to draft decisions for a case. According to the report, decision writers regularly met the minimum standards set by this

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<sup>59</sup>Decision writers, who are generally attorneys or paralegals, write most ALJs' decisions after hearings are completed and the ALJ has made their decision. ALJs instruct decision writers on the content to be included in the written decision and the decision writers are expected to provide the draft decision to ALJs for their review before being signed by the ALJ. Each decision draft is expected to comply with the ALJ's instructions, be factually correct, be prepared in a timely manner, be compliant with SSA policy, and have proper spelling, punctuation, and grammar.

<sup>60</sup>According to SSA, its procedures allow ALJs to alert management if a case requires significant editing and management will generally send the case back to the decision writer for corrections.

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productivity index and the agency increased the expected number of decisions for decision writers in 2018 and again in 2019.<sup>61</sup>

**Quality of other support.** Among the judges surveyed, 61 percent (33 of 54) responded that the quality of work by case technicians and other staff greatly or very greatly affected their ability to meet the annual expectation, and 22 percent (12 of 54) said it was a top-three factor. ALJs rely on support staff to prepare cases for their review before hearings and to ensure hearings are scheduled, among other tasks, and judges from seven of the discussion groups said the quality of support staff work varied. Support staff who fully prepare cases enable ALJs to efficiently review cases and hold hearings. In contrast, poor quality work, such as failing to include all relevant medical information in the file, can lead to delays in conducting their work, according to ALJs from four of these discussion groups.<sup>62</sup> SSA's OIG has also reported similar issues in the past. For example, in some cases, the OIG report found that judges had to order additional hearings or spend time preparing the cases themselves when support staff did not properly prepare cases for hearings.<sup>63</sup>

According to SSA, it has taken additional steps in recent years to address potential issues with decision writing and other case support.<sup>64</sup> In 2018, SSA introduced software that analyzes disability claim data and the text of hearing decisions to identify potential quality issues. According to SSA, decision writers can run this software on their draft decision before sending it for review to judges, and, in 2019, SSA required all decision

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<sup>61</sup>When SSA established the Decision Writer Productivity Index in fiscal year 2017, the agency set the minimum standard for each decision writer to be successful at 70 percent of the national average. In fiscal year 2018, the minimum standard was set at 80 percent, and in fiscal year 2019, at 95 percent. SSA's Office of the Inspector General, *Decision-writing Backlog in the Office of Hearings Operations*, A-12-18-50579, Baltimore, MD. March 29, 2019.

<sup>62</sup>SSA counts each case that ALJs decide as one disposition toward the annual expectation, even if the case requires ALJs to conduct supplemental hearings.

<sup>63</sup>SSA, Office of the Inspector General, *Workload Review of the Office of Hearings Operations' Atlanta and New York Regions*, A-12-18-50285, Baltimore, M.D., May 2, 2018. The OIG reported conducting almost 100 interviews with ALJs, management, and staff in six New York Region hearing offices, six Atlanta Region hearing offices, and the two regional offices, asking them to describe why they thought there was a disproportionate number of hearing offices in their respective region with high average processing times.

<sup>64</sup>We did not evaluate these efforts, including their effectiveness, as part of our review.

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writers to attend training to use this software. Additionally, SSA told us it updated its quality review processes in 2019 to allow additional analysis of the frequency of errors, including those that may occur in decision writing or case processing. According to SSA, managers can use such analyses to identify general training needs of hearing office staff.

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### COVID-19 Introduced Other Factors That Judges Said Has Made It Difficult for Them to Meet Their Expectations

Judges from 12 of the 13 discussion groups we spoke with said that the pandemic has negatively affected their ability to meet SSA's productivity expectations, as fewer hearings were being conducted.<sup>65</sup> In March 2020, SSA closed its hearing offices and began conducting all hearings by phone or video conference, rather than in person, as we reported in November 2020.<sup>66</sup> SSA also gave claimants the option of either holding their hearing by phone or postponing it. When the pandemic was declared a public health emergency, some claimants elected to postpone their hearings until SSA resumed in-person hearings, with one in four claimants declining phone hearings. In the following months, more claimants elected to hold their hearings by phone. About 10 percent of claimants had declined a phone hearing from when the pandemic was declared a public health emergency until October 2020, according to SSA.

ALJs in all of our discussion groups noted several other logistical and technological challenges in conducting hearings during the pandemic. Judges in eight of the discussion groups cited technology issues with the phone system which, for example, can result in dropped calls and make phone hearings take longer than in-person hearings. We also heard from judges in five of the discussion groups that they had challenges with scheduling or obtaining medical evidence from consultative exams since many doctors were not seeing patients in person, and consultative examinations were paused. According to SSA, it restarted consultative examinations in June 2020.

Judges in nine of our discussion groups also said they had fewer dismissals due to SSA policy in response to the pandemic. Under normal circumstances, cases for claimants who do not show for their hearing

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<sup>65</sup>We conducted discussion groups in the summer of 2020. As we previously stated in our report, our review of fiscal year 2020 data showed that 18 percent of fully available judges met the annual expectation.

<sup>66</sup>GAO, *COVID-19: Urgent Actions Needed to Better Assure an Effective Federal Response*, [GAO-21-191](#) (Washington, D.C.: Nov. 30, 2020). (See app. I enclosure on SSA Service Delivery.)

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would be dismissed, and dismissed cases count towards an ALJ's annual expectation. However, SSA's policy from March 2020 through August 2020 was to reschedule hearings for all claimants who missed their scheduled phone hearing, rather than to dismiss these cases. According to SSA, judges were not able to reach about 12 percent of claimants for hearings in the early months of the pandemic.<sup>67</sup> Additionally, if a hearing was postponed the same day it was scheduled, ALJs were not able to fill the time slot with another hearing, according to one judge we spoke with.

Judges in seven of our 13 discussion groups and several HOCALJs we spoke with in July and August 2020 indicated that SSA did not communicate about whether judges or hearing offices would be held to the agency's productivity expectations during the pandemic. Although four of the six HOCALJs and both Regional Chief ALJs we spoke with said it was generally understood that ALJs would not be expected to meet the expectation during the pandemic, judges in seven of our discussion groups said it was unclear whether they would face consequences for missing the productivity expectation. During two of the discussion groups, judges said they assumed there would be no consequences, while a few of these judges were concerned they would be held to the expectation. Additionally, two of the six HOCALJs we interviewed said that they were still receiving e-mails from SSA during that time encouraging them to meet office-wide productivity goals.

SSA sent emails to ALJs in June 2020 and March 2021 acknowledging that the pandemic may be negatively affecting ALJs' ability to meet the annual productivity expectation.

- In June 2020, SSA's Chief ALJ e-mailed all ALJs acknowledging that, due to a number of issues, ALJs' workload had reduced and that changes to the process may have hampered ALJs' ability to issue 500 legally sufficient dispositions in fiscal year 2020.
- In March 2021, SSA's Chief ALJ e-mailed all ALJs and said that he heard from many ALJs expressing concern that their workload was reduced and acknowledged that the unique factors created by the pandemic would likely result in many of them not adjudicating as many cases as they had in past years. While acknowledging that ALJs may have difficulty meeting the annual productivity expectation and SSA may not have enough cases to fill their dockets, in this

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<sup>67</sup>Between April 16 and May 27, 2020, SSA reported 24,950 claimants who declined a phone hearing and 15,109 claimants who SSA was not able to reach for their scheduled phone hearing.

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email, the Chief ALJ also asked judges to continue to submit their calendars of their hearing availabilities for an average of at least 50 hearings per month to allow management to address any workload spikes and redistribute work across the agency.

SSA officials also told us that they will not hold ALJs responsible for any failure to meet expectations for reasons beyond their control during the pandemic. According to SSA officials, when they evaluate whether an ALJ meets expectations, they consider whether they are able to schedule a sufficient number of hearings for the ALJ. If they are not able to do so, or if the ALJ is unable to conduct a hearing or issue a disposition for reasons beyond their control during the pandemic, they will not hold the ALJ responsible for any failure to meet the expectations.

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## SSA Monitors Judges' Productivity and Takes Various Actions When Expectations Are Not Met, but Has Not Sought Feedback on the Expectations

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### SSA Managers Regularly Track and Communicate With Judges Regarding Their Progress in Meeting Productivity Expectations

SSA uses the agency's electronic monitoring system and other electronic reporting tools to monitor ALJs' progress toward meeting the annual expectation and related hearings and case processing expectations, according to SSA officials. Specifically, SSA uses its Case Processing Management System to measure whether ALJs are on track to meet the annual dispositions expectation. SSA also uses its Disability Adjudication Reporting Tool to monitor whether ALJs are meeting the monthly expectation for scheduling hearings, and the reports from the How MI Doing? system to monitor dispositions, cases scheduled, and average case processing time on an ongoing basis.<sup>68</sup> SSA officials also said that HOCALJs and ALJs have access to the How MI Doing? dashboard that

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<sup>68</sup>We have reported on the use of some these tools in prior work. In our report we noted that SSA developed an early monitoring system that tracked multiple metrics of ALJ performance and have "alarm thresholds" to indicate when an ALJ's metrics fall outside a given threshold. See GAO, *Social Security Disability: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions*, [GAO-18-37](#) (Washington, D.C.: Dec. 7, 2017).

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shows how close individual ALJs are to reaching the annual expectation. This dashboard also identifies all of the cases on which ALJs are currently working, and indicates whether any cases are past the service delivery targets. During our interviews with HOCALJs and during a couple of our discussion groups we heard that some judges found the dashboard useful in tracking their progress toward SSA's various productivity expectations. For example, one HOCALJ said the system displayed whether a judge was on pace to meet the annual expectation by showing the number of decisions and average processing time graphically.

According to SSA's Chief ALJ, the agency provides daily information to managers on ALJ productivity, including whether ALJ's are meeting their expectations, although managers we interviewed described different ways of using this information. Five of the six HOCALJs we spoke with said they receive regular emails and reports that identify ALJs who are not scheduling 50 hearings per month on average or have cases that are past the service delivery targets. HOCALJs we interviewed described differing approaches for deciding how and when to talk with ALJs about such situations. For instance, four of six HOCALJs said they conduct "collegial conversations" via email or in person when cases are determined to have exceeded service delivery targets.<sup>69</sup> Two HOCALJs said that they disregard emails noting when ALJs have missed service delivery targets and only speak with them when their cases are considered to be seriously delinquent (e.g., 30 days or longer). The case status reports and monitoring systems do not include reasons why cases have exceeded service delivery targets, but a few HOCALJs said they are in frequent contact with the ALJs to better understand why they are not meeting those targets. For example, some cases may slip past their target dates while an ALJ is on leave. In these cases, one HOCALJ said they will contact their Regional Chief ALJ and explain why certain ALJs are behind.

In addition to monitoring judges' productivity, SSA sometimes use other efforts, such as additional training or staff support, to help ALJs meet their productivity expectations. According to the Chief ALJ, judges who struggle to move cases in a timely manner may receive training on how they can better manage their caseload. Managers may also work directly with ALJs to provide additional support. For example, one Regional Chief ALJ said struggling ALJs in her region were paired with experienced ALJs

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<sup>69</sup>When ALJs are not meeting productivity expectations, SSA guidance provides a series of corrective actions, the first being a "collegial conversation," which is meant to help HOCALJs understand the impediments ALJs may be facing in meeting their expectations.

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who shared tips and tricks on managing their caseloads. Half of the HOCALJs we spoke with said they may direct support staff to help ALJs who are not meeting the productivity expectations. For instance, two HOCALJs asked staff attorneys or decision writers to help with reviewing cases prior to the hearing. According to SSA, decisions about assigning additional staff support are made on a case-by-cases basis and are not a standard practice.

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## SSA Used Directives and Reprimands in Some Cases, but Judges Considered Telework Restrictions the Main Consequence for Not Meeting Productivity Expectations

### Directives

SSA issues directives to judges who fail to comply with the agency's expectations to schedule hearings and move cases in a timely manner, or with other policies or procedures. Directives order judges to take specific actions within a certain period of time.<sup>70</sup> SSA issues two types of directives when judges are not meeting productivity expectations: workload directives, such as for cases in delinquent status, and scheduling directives for an insufficient number of scheduled hearings. In fiscal years 2018 through 2020, SSA issued such directives to 109 judges, some of whom received multiple directives.<sup>71</sup> (See table 4 for the number of ALJs who received at least one workload or scheduling directive by fiscal year.)

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<sup>70</sup>According to SSA, directives are not considered a form of disciplinary action, although, a judge's failure to comply with a directive can result in a disciplinary action.

<sup>71</sup>SSA issued 358 directives to these judges during this timeframe. Specifically, the agency issued 322 workload directives and 36 scheduling directives. SSA can also issue policy directives which are not related to productivity.

**Table 4: Number of SSA’s Administrative Law Judges Who Received at Least One Type of Directive in Fiscal Years (FY) 2018 through 2020**

Type of directive	FY 2018	FY 2019	FY 2020
<b>Workload directives:</b> Directive made to administrative law judges (ALJ) to move specific cases that are in an ALJ-controlled status considered “seriously delinquent” or to manage their overall docket more effectively. (Seriously delinquent cases are those past a SSA specified timeframe, such as 30 days.)	41	48	43
<b>Scheduling directives:</b> Directive made to ALJ to schedule an average of 50 hearings a month.	15	12	3

Source: Data provided by the Social Security Administration (SSA) | GAO-21-341

Notes: This table shows the number of ALJs who received directives during each fiscal year, some of whom received multiple directives. Additionally, prior to 2018, the agency did not reliably track data on directives by type, according to SSA officials.

## Reprimands and Other Disciplinary Actions

In some instances, SSA takes disciplinary action against judges who did not follow directives. Based on available data for fiscal years 2008 through 2020, SSA reprimanded a total of 48 ALJs who did not follow directives for performance or productivity-related reasons.<sup>72</sup> Thirty-six of these judges were reprimanded for not meeting SSA’s case status time frames and having cases linger in a seriously delinquent status. The other 12 judges were reprimanded for issues related to scheduling a sufficient number of hearings. The Chief ALJ said that he or other ALJ management officials, after consulting with his office, determines if disciplinary action is appropriate by looking at various factors that may explain why a judge is under-performing. If a judge continues to under-perform after a reprimand, the Office of the Chief ALJ might start proceedings to either suspend or remove the judge.<sup>73</sup> Of those who were

<sup>72</sup>A reprimand is considered formal discipline and will stay in a person’s official personnel folder for up to one year and affects judges’ ability to telework or transfer to different offices. According to SSA, the majority of reprimands issued to judges from fiscal years 2008 through 2020 were for misconduct issues rather than productivity. Specifically, out of 172 total reprimands from fiscal years 2008 through 2020, 120 were for misconduct, 48 were for performance or productivity, and four were for policy compliance issues.

<sup>73</sup>Before removing a judge or taking any other actions covered by 5 U.S.C. § 7521, SSA must first seek a finding of good cause by the Merit Systems Protection Board. According to its website, the Merit Systems Protection Board is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of federal merit systems.

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reprimanded for failure to meet productivity expectations in years 2008 through 2020, none were suspended, but two were removed.<sup>74</sup>

## Telework Restrictions

SSA can restrict ALJs' ability to telework when they do not meet productivity expectations, and can do so by not approving an ALJ's telework application or by restricting telework after an ALJ's telework application has been approved, according to agency officials. In order to approve ALJs applications for telework, ALJs need to show their HOCALJ that they can meet the expectations of scheduling at least 50 hearings a month on average and moving cases in a timely way, according to SSA's guidance. Before potentially restricting telework that has already been approved, SSA advises a judge of the need to schedule additional hearings or move seriously delinquent cases, and that failure to do so may result in the agency restricting telework privileges. If judges do not address the scheduling or case processing issues identified by SSA management, SSA might restrict their telework until the issues are addressed.<sup>75</sup> SSA officials said telework restrictions can last for as little as 1 day, but the length of time depends on how long it takes ALJs to address the issue that led to the restriction.<sup>76</sup>

SSA collects some data on telework restrictions. Specifically, it collects data on the number of cure letters the agency sent to judges advising them that their telework will be restricted if they do not move cases that are seriously delinquent. However, SSA said it does not track the number of notices it issues to ALJs who do not schedule a sufficient number of cases for a hearing (e.g., 50 or more hearings per month). Additionally, the agency collects data on the number of telework restrictions that were due to an ALJ not addressing the actions specified in the cure letter or for not scheduling a sufficient number of cases for a hearing. However, the number of restrictions are likely an undercount due to the way data are reported. These numbers also do not include telework applications that SSA did not approve. (See table 5 for the number of telework-related actions SSA issued in in the last 3 years, based on available data.)

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<sup>74</sup>SSA reported being able to collect data on directives and cure letters starting in fiscal year 2018, but has collected data on reprimands, suspensions, and removals before then.

<sup>75</sup>In 2017, SSA initiated a centralized scheduling system to assist ALJs with scheduling hearings. ALJs are asked to provide their availability for 6 months, and the scheduling system automatically arranges hearings for the times ALJs identify as being available.

<sup>76</sup>In recent years, some grievances have been filed that raised issues such as judges having their telework restricted or being reprimanded for not scheduling enough hearings.

**Table 5: SSA’s Telework-related Actions for Administrative Law Judges, Fiscal Years (FY) 2018 Through 2020**

Type of action	FY 2018	FY 2019	FY 2020
<b>Cure letters:</b> Notices sent to administrative law judges (ALJ) that they need to move cases that SSA considers “seriously delinquent” or the agency will restrict their ability to telework. (Seriously delinquent cases are in an ALJ-controlled status past a SSA specified timeframe, such as 30 days.) <sup>a</sup>	80	53	36
<b>Restricted telework:</b> SSA restricts telework for judges who do not address issues listed in the cure letter or who do not schedule a sufficient number of cases for a hearing (e.g., 50 or more hearings per month) <sup>b</sup>	7	7	7

Source: Data provided by the Social Security Administration (SSA) | GAO-21-341

Notes: Prior to fiscal year 2018, the agency did not reliably track data on these actions, according to SSA officials.

<sup>a</sup>These data also do not include notices sent to ALJs restricting their telework due to scheduling an insufficient number of hearings.

<sup>b</sup>These data likely undercount the number of ALJs with telework restrictions based on the way the data are reported, according to SSA officials. These data also do not include the telework applications that SSA denies.

SSA does not consider restricting telework as a means for managing judge productivity; however, judges in our discussion groups viewed telework restrictions as the primary consequence they face when not meeting productivity expectations. According to SSA, in fiscal year 2020 in the months prior to the pandemic, 78 percent of on-duty judges participated in telework.<sup>77</sup> SSA officials told us they do not use telework to manage ALJ productivity but they do hold teleworking ALJs accountable to the same expectations as all other ALJs. However, judges from 11 of the 13 discussion groups said that a restriction on the ability to telework was the primary consequence judges may face when not meeting the expectation of scheduling 50 hearings a month or moving cases through each phase of the review process according to set time frames. In two of our 13 discussion groups, judges said that keeping their ability to telework was a motivation in scheduling 50 hearings per month on average. In two other discussion groups, judges said they were afraid of losing their ability to telework if they did not meet the expectation.

Although SSA restricts telework for some ALJs with productivity issues, teleworking can actually improve productivity, according to the ALJs we surveyed and many of the ALJs in our discussion groups. Specifically, 46 percent of the judges we surveyed (25 of 54) said their use of telework

<sup>77</sup>Since March 2020 when the pandemic was declared a public health emergency and SSA closed its hearing offices, ALJs have engaged in maximum telework.

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had a very great or great impact on their ability to meet the annual expectation. ALJs in five of our discussion groups said telework improved their productivity by reducing the level of office distractions, saving time spent commuting, or allowing them to work longer hours. Accordingly, during two of our discussion groups judges suggested it was counterproductive for SSA to restrict telework since it improves productivity. According to SSA, it holds ALJs who request to telework accountable to the productivity expectations that apply to all ALJs as required by the Telework Enhancement Act of 2010, and the inability to meet these expectations results in telework restrictions as an accountability measure.<sup>78</sup>

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## Although Many Judges Reported Pressure to Meet Expectations, SSA Has Not Sought Feedback from Judges about the Expectations

Many judges we surveyed and those from all but one of our discussion groups expressed some concern about the pressure they felt to meet productivity expectations. Concerns expressed included that SSA's emphasis on productivity was negatively affecting the quality of their work, the expectations were too high, and they had to work long hours to meet the expectations, which affected their work-life balance.

### Examples of Administrative Law Judges' Comments on Social Security Administration's Emphasis on Productivity

"The expectation is to always arrive at the correct decision but if there is a constant push on numbers then more decisions will be favorable because they are quicker."

"Productivity and quality of decision are related. If productivity increases, quality decreases. The pendulum has swung hard towards productivity [in recent years] at the sake of quality."

"Spending a little more time [on casefile reviews] would ensure that claimants are given fair decisions while also being good stewards of taxpayer funding."

Source: GAO discussion group with administrative law judges. | GAO-21-341

- **Emphasis on productivity.** Many judges told us that the pressures to meet the productivity expectations can affect the amount of time they spend on, and the quality of, their decisions. Among the judges surveyed, 87 percent (47 of 54) said SSA placed too much emphasis on productivity. In contrast, 63 percent (34 of 54) reported that the emphasis on quality was about right, and 31 percent (17 of 54) reported there was not enough emphasis on quality. Although SSA's guidance notes that in meeting the productivity expectations, ALJs must also ensure quality decisions, judges in eight of our discussion groups said SSA's emphasis on productivity and the pressure to make decisions too quickly could negatively affect the quality of the decisions. One judge said she feels like she is being forced to "cut corners" in order to meet the expectation. During five of the discussion groups, judges said that conducting too many hearings forces them to reduce the amount of time for each hearing, which affects the quality of the decision, or forces them to delay working on other hearing-related tasks, such as editing decisions. Judges in one of our

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<sup>78</sup>According to SSA, the link between telework restriction and scheduling and moving cases comes from the agency's collective bargaining agreement with the Association of Administrative Law Judges. See *National Agreement Between The Association of Administrative Law Judges (AALJ), International Federation of Professional and Technical Engineers (IFPTE), ALF-CIO and Social Security Administration Office of Disability Adjudication and Review*, Sept. 30, 2013.

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discussion groups said they held hearing-only days and scheduled as many as seven hearings for the day. Judges from this discussion group noted that scheduling so many hearings can be draining since they have to listen carefully, ask questions, and take notes, and because they are not as fresh, may miss key pieces of information when hearing cases later in the day.<sup>79</sup>

- **Reasonableness of expectations.** Similarly, 87 percent of the judges we surveyed (47 of 54) responded that the annual expectation was too high. During three of the discussion groups, we heard that judges were motivated to meet the expectation, but in most discussion groups we heard judges say they had to work extra hours to do so. Judges from eight of our discussion groups said the only way they are able to meet the annual expectation is by working extra time including nights and weekends. Judges from six of our discussion groups and half of the HOCALJs we interviewed agreed that being a judge requires them to work more than 40 hours per week, although judges are supposed to work only 40 hours or claim credit hours, according to SSA's collective bargaining agreement with the ALJs' union.
- **Work-life balance.** During many of the discussion groups, judges said that the heavy workload makes it difficult for them to balance work and home life. According to SSA management officials, public service expectations do not distinguish between work days and non-work days (e.g., weekends, holidays, or leave days). Accordingly, SSA counts non-work days the same as work days with respect to its productivity expectations for ALJs. However, SSA officials told us that non-work days and normal leave usage were already taken into account when these expectations were established and that the agency only adjusts them for ALJs with unusually high usage of leave, such as an extended illness. Judges from seven of our discussion groups said that when they use their leave to spend time with their families, for an illness, or for bereavement, they have to make up any hearings and need to work extra time to do so. Judges from two of our discussion groups also said they had to make up hearings for time off due to a federal holiday. In addition, judges from six discussion

**Examples of Administrative Law Judges' Comments on How They Meet the Annual Productivity Expectation**

"If we take time off and as a result don't schedule 50 hearings that month, we have to make it up later in order to meet the expectation."

"We forego taking leave in order to meet the [productivity] expectation. This job is essentially denial of leave since any time taken off has to be made up."

Source: GAO discussion group with administrative law judges. | GAO-21-341.

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<sup>79</sup>In prior work, we examined factors associated with the extent to which judges allowed or denied claims, as well as how SSA monitors the accuracy and consistency of decisions. We recommended that SSA systematically evaluate its quality assurance reviews and take steps to reduce or better manage any unnecessary overlap among them. SSA concurred with our recommendation, indicating that it planned to address it through a comprehensive assessment of its oversight and refinement of its oversight roles and processes. As of April 2021, the recommendation was still open. See GAO, *Social Security Disability: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions*, [GAO-18-37](#) (Washington, D.C.: Dec. 7, 2017).

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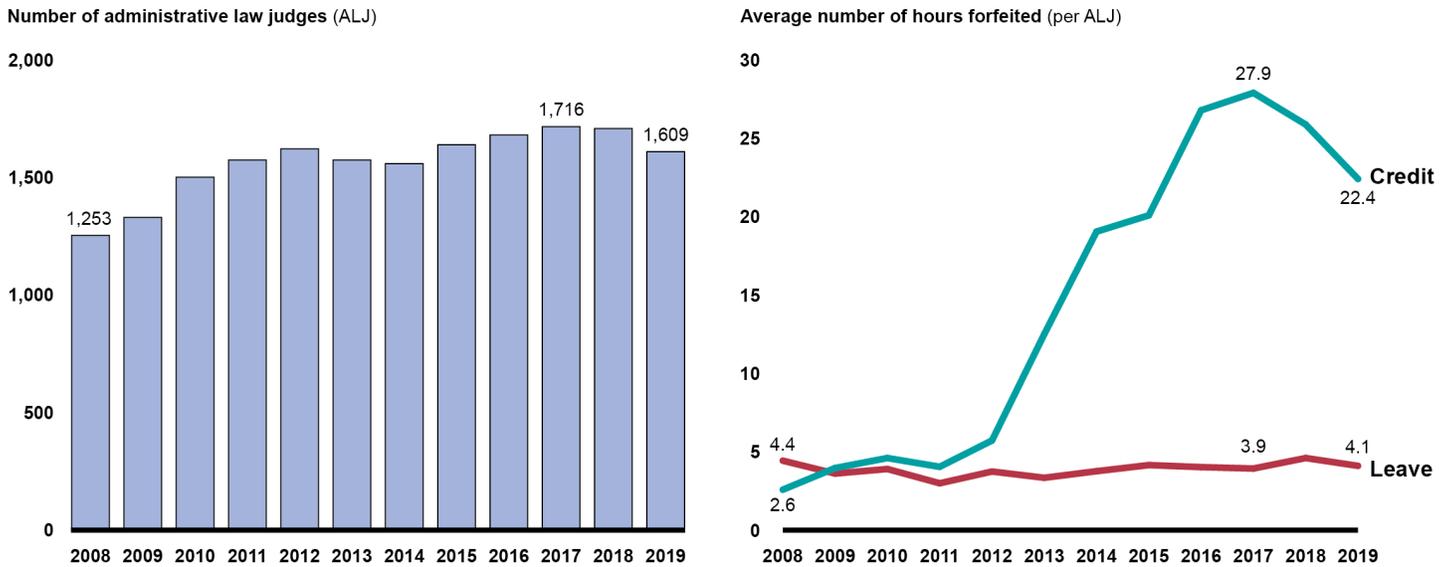
groups said that taking leave often led to cases lingering in a case processing phase and then exceeding the target service delivery dates. When this happens, judges may receive inquiries from their HOCALJ about why they missed the dates.

Additionally, judges from seven of our discussion groups said they had forfeited leave or credit hours, or worked weekends and evenings without being paid for the time. Similarly, 70 percent of judges we surveyed (38 of 54) reported that they worked non-compensated time or forfeited annual leave hours in the 12 months prior to our survey. Based on SSA data, the number of annual leave hours forfeited by ALJs each year generally stayed consistent from 2008 through 2019, averaging overall about 6,000 hours, or less than 1 work day per judge. During the same time period, the number of credit hours forfeited by ALJs increased overall from 3,234 hours to 36,044 hours, or about 3 work days per judge in 2019. (See fig. 7). According to an SSA official, the increase in credit hours forfeited over time is due in part to a provision in the 2013 collective bargaining agreement that allowed ALJs to accumulate more credit hours per pay period but carry over the same amount.<sup>80</sup>

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<sup>80</sup>The amount of credit hours ALJs could accumulate per pay period increased from 28 in the previous collective bargaining agreement to 33 in the 2013 collective bargaining agreement, but the amount ALJs could carry over from pay period to pay period remained the same (24 hours).

**Figure 7: Average Credit and Leave Hours Forfeited, by SSA's Administrative Law Judges, 2008 through 2019**



Source: GAO analysis of Social Security Administration (SSA) data. | GAO-21-341

Notes: Credit hours are hours that an employee can earn beyond their regular work schedule, which can be credited towards planned or unplanned leave. The amount of credit hours ALJs could accumulate per pay period increased from 28 to 33 in the 2013 collective bargaining agreement, but the amount ALJs could carry over from pay period to pay period remained the same (24 hours).

SSA officials said they informally collect some information from ALJs regarding their views of the productivity expectations, but do not formally seek feedback on the expectations. The Chief ALJ said that he visits over a dozen hearing offices each year and meets with ALJs in those offices to assess their concerns, but the ALJs rarely express concerns about the productivity expectations. However, judges from 11 discussion groups and almost all of the HOCALJs we interviewed told us that they do not remember SSA having ever sought their feedback on the annual expectation or other productivity expectations. In addition, two HOCALJs we interviewed said they have not provided feedback to SSA on the expectations because it has not been requested and they believe such feedback would be disregarded. Similarly, union officials who represent non-management judges told us that SSA management did not involve the union when setting the productivity expectations and SSA officials said they have not consulted with them about the expectations since. The active involvement of employees and stakeholders, such as unions or other employee associations, is a key practice that federal agencies should consider in creating a results-oriented culture, as identified in our prior work. Such involvement helps improve employees' confidence and

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belief in the fairness of the system, and increase employees' understanding and ownership of organizational expectations and objectives, which can lead to higher performing organizations.<sup>81</sup> Additionally, federal standards for internal control state that management is responsible for evaluating pressure on personnel to help them fulfill their assigned responsibilities and can adjust the pressure by rebalancing workloads.<sup>82</sup> Pressure can appear in an entity because of expectations established by management to meet objectives or cyclical demands of various processes and can result in personnel "cutting corners" to meet the established expectations.

Management support for work-life balance is a best practice for federal agencies that want to improve employee engagement and subsequently, organizational performance.<sup>83</sup> Although SSA reported taking some steps to solicit informal feedback on productivity expectations, it has not collected formal feedback or made other efforts to gauge the extent to which ALJs feel excessive pressure or have an appropriate workload under the current expectations. SSA officials said the agency has not done this because it has no plans to adjust its productivity expectations for ALJs. Moreover, SSA officials said that the ALJ position requires ALJs to work in a high volume environment, which is communicated to ALJs when they apply and are interviewed for the position. Yet, without some regular means of soliciting feedback from judges and other key stakeholders, and using this input as a key consideration in reassessing the expectations, SSA lacks important information about whether any adjustments are needed to ensure that judges are not experiencing excessive pressure that can affect their work-life balance, morale, engagement, job satisfaction, and ultimately, the quality of each appealed decision.

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<sup>81</sup>GAO, *Results-Oriented Cultures: Creating a Clear Linkage between Individual Performance and Organizational Success*, [GAO-03-488](#) (Washington, D.C.: Mar. 14, 2003).

<sup>82</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

<sup>83</sup>GAO, *Federal Workforce: Additional Analysis and Sharing of Promising Practices Could Improve Employee Engagement and Performance*, [GAO-15-585](#) (Washington, D.C.: July 14, 2015).

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## Conclusions

For years, SSA has struggled with a backlog of appeals as thousands of Americans wait months or years for a hearing and decision on their application for disability benefits. SSA established the annual expectation for judges in 2007 as one component of a plan to address the backlog. However, that expectation was not based on a formal study and the expectation has never been reassessed to determine if it should remain or be adjusted, despite various reported influencing factors outside of judges' control including some that have changed substantially over time. Periodic reviews of the productivity expectations that include reassessment of critical inputs of information could help ensure that SSA addresses the backlog of cases while providing judges with time necessary to make quality decisions on every case. Additionally, explicit and transparent communication from SSA about the basis of the expectations would also help build ALJs' support for them.

Even when the productivity expectations are largely being met, this does not necessarily mean that judges feel they are reasonable. In our discussion groups and through our survey, judges expressed concerns about excessive pressure, maintaining a healthy work-life balance, and whether each decision made is carefully reached. SSA could help to alleviate some of this pressure and ensure that ALJs have belief and confidence in SSA's performance expectations of them by seeking their feedback. Further, while SSA is appropriately concerned about serving the public through timely processing of its hearing requests, seeking such feedback can help ensure that the agency is not inadvertently diserving the public by sacrificing quality for productivity.

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## Recommendations for Executive Action

We are making the following two recommendations to SSA:

The Commissioner of SSA should develop and implement a process for periodically reviewing the annual productivity expectation, and the supporting expectations as needed, and document those processes so that the bases of the expectations are clear and can be communicated to judges. This process should be informed by reviewing ALJ productivity data, considering any recent changes in policies and procedures, seeking input from ALJs and relevant stakeholders, and assessing the impact of any changes on the backlog of requests for hearings. (Recommendation 1)

The Commissioner of SSA should take steps to determine whether the current productivity expectations for ALJs are reasonable, such as by seeking formal feedback from ALJs, and examining any other factors

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affecting the ability of ALJs to maintain a work-life balance and ensure quality decisions on requests for hearings. (Recommendation 2)

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## Agency Comments and Our Evaluation

We provided a draft of this report to SSA for review and comment. In its comments, which are reproduced in appendix II, the agency generally agreed with our recommendations. SSA also provided technical comments, which we incorporated into the report as appropriate.

In its response, SSA stated that it agreed conceptually with our first recommendation that it develop and implement a process for periodically reviewing annual productivity and related expectations for ALJs. The agency acknowledged the importance of periodically reviewing expectations and stated it will engage with stakeholders, including employee labor unions, on any changes to expectations or new measures or metrics for its employees. However, in its response, SSA did not explicitly address parts of this recommendation that we believe are important—specifically, developing and implementing a process for periodically reviewing expectations and documenting the process so the bases of the expectations are clear and can be communicated to ALJs. We continue to believe that SSA should be explicit and transparent in its communication with ALJs about the bases for any new productivity expectations it establishes.

SSA agreed with our second recommendation that it take steps to determine whether the current productivity expectations for ALJs are reasonable. In its response, the agency listed various flexibilities that currently exist for employees to help with work-life balance and stated that it will engage in listening sessions with employees, as well as its labor partners, to continue to better understand and consider the impact of current expectations on their employees. Additionally, SSA stated that it will consider this impact as a potential factor when determining whether or how to modify expectations.

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We are sending copies of this report to the appropriate congressional committees, the Commissioner of Social Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [curdae@gao.gov](mailto:curdae@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink, reading "Elizabeth H. Curda". The signature is written in a cursive style with a large, stylized initial "E".

Elizabeth H. Curda  
Director, Education, Workforce, and Income Security Issues

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# Appendix I: Additional Methodological Details

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This appendix provides additional information on our methodologies for our survey and discussion groups with administrative law judges and on our analysis of the Social Security Administration's (SSA) case processing data.

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## Survey and Discussion Groups with Administrative Law Judges in Selected Offices

We conducted a survey of judges and held virtual discussion groups with judges in six selected offices. We originally planned to visit these offices in person, but, due to the COVID-19 pandemic, we conducted the discussion groups virtually. We surveyed all 58 non-management judges in these six offices from June to August 2020 and received 54 completed survey questionnaires for a 93 percent response rate. The survey questionnaire included questions about the extent to which various factors affected their ability to meet the annual productivity expectation in the 12 months prior to the COVID-19 pandemic. It also included closed-ended and open-ended questions about their opinions of the expectation and SSA's efforts to emphasize productivity and quality. While most of the questions inquired about normal operations, the survey also inquired about how operations under the COVID-19 pandemic was affecting their productivity. We conducted pretests of the draft questionnaire with four ALJs and made revisions to reduce the possibility of measurement error from differences in how questions were interpreted and the sources of information available to respondents. We reviewed survey responses and conducted follow-up, as necessary, to ensure that responses were complete and sufficiently reliable for the purposes of this report.

We used the results of the survey to help develop our questions for the discussion groups and invited the same judges who we surveyed to participate. We held 13 discussion groups with a total of 43 judges in July and August 2020. These discussion groups took place via video or phone conference calls with one to three groups per office. The results of the survey and discussion groups we conducted are not generalizable.

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## Analysis of Case Processing Data

We analyzed case processing data from SSA for fiscal years 2005 through 2020 on the number of dispositions each judge made each year. We also analyzed data from fiscal years 2014 through 2020 on the judge's availability for hearings, the average number of hearings each judge scheduled, and the percentage of cases that exceeded SSA's case processing expectations for judges. We reviewed data for these time frames based on data availability and when various ALJ productivity expectations were established.

For our analysis of ALJs who met the annual productivity expectation, we obtained data on annual dispositions and monthly availability for all ALJs.

We focused primarily on fiscal years 2008 through 2020 since the expectation was established in 2007. We analyzed annual dispositions for all years for all ALJs. We also analyzed the percentage of ALJs in subgroups who met the annual productivity expectation for fiscal years 2014 through 2020, the years that SSA had data on availability by ALJ. In our analysis taking into account judge availability, we included fully available ALJs who were available for 100 percent of the time for all 12 months of the year for a given year. Separately, we examined the extent that partially available judges met their reduced expectations, focusing on the largest groups of partially available ALJs: Hearing Office Chief ALJs in larger offices, Hearing Office Chief ALJs in smaller hearing offices, and National Hearing Center ALJs.<sup>1</sup> For our analysis on partially available judges, we only included ALJs who were partially available for all 12 months of the year. (See table 6 for the range in numbers of ALJs available for all 12 months each fiscal year, 2014 through 2020.)

**Table 6: Administrative Law Judges Available for Hearings in All 12 months, Fiscal Years 2014 through 2020**

Type of administrative law Judge (ALJ)	Percentage of availability	Range in number of ALJs available for all 12 months each fiscal year
Fully available	100%	909-1,160
National Hearing Center	90%	37-57
Hearing Office Chief ALJ in an office with fewer than 10 judges	75%	48-67
Hearing Office Chief ALJ in an office with 10 or more judges	50%	31-53

Source: GAO analysis of Social Security Administration data. | GAO-21-341

For our analysis of ALJs who met the monthly scheduled hearings expectation, we obtained data from SSA on the average number of hearings each ALJ scheduled in each fiscal year from fiscal years 2014 through 2020. Using the list of ALJs who were fully available for all 12 months of the year, we then calculated the percentage of these ALJs who met the monthly scheduled hearings expectation.

For our analysis of case statuses, we obtained data from SSA on the number of cases for each ALJ that exceeded SSA's thresholds for service delivery targets and for seriously delinquent cases for fiscal years 2014 through 2020. We also obtained data from SSA on the average number of

<sup>1</sup>Smaller groups of partially available ALJs are those who were newly hired and union officers.

days each ALJ's cases stayed in an ALJ-controlled status. We focused on the four main statuses for ALJs: pre-hearing review, post-hearing review, editing the decision, and signing the decision. For each status in each fiscal year, we calculated the percentage of cases that went past the threshold levels and the average number of days cases stayed in the status across all ALJs.

We assessed the reliability of these data through electronic testing to identify missing data, extreme values, and logical inconsistencies. We also reviewed our prior work assessing the reliability of the databases SSA used to generate the data and interviewed SSA officials knowledgeable about the data to discuss the data's accuracy and the steps SSA takes to ensure reliability. On the basis of this assessment, we believe the data SSA provided to us are sufficiently reliability for the purposes of our reporting objectives.

# Appendix II: Comments from the Social Security Administration



**SOCIAL SECURITY**  
Office of the Commissioner

May 26, 2021

Elizabeth H. Curda  
Director, Education Workforce and  
Income Security  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Director Curda:

Thank you for the opportunity to review the draft report, "SOCIAL SECURITY DISABILITY: Process Needed to Review Individual Productivity Expectations for Administrative Law Judges" (GAO-21-341).

We agree conceptually with your first recommendation, and the importance of periodically reviewing public service expectations for administrative law judges (ALJ), as well as other employees responsible for meeting our public service mission. We inform prospective ALJ candidates about the unique aspects and expectations of the Social Security Administration (SSA) ALJ position, including the high volume and non-adversarial nature of our hearings process. We reinforce these public service expectations during an ALJ's onboarding, training, and daily work.

We are exploring additional and more holistic factors, which incorporate not only the traditional public service measures of quality, quantity, and timeliness, but also further consider compliance with our policies and procedures, including how ALJs conduct hearings. As with any changes to expectations or new measures or metrics for our employees, we will engage with internal and external stakeholders, including employee labor unions, and ensure any changes continue to support our public service mission.

We agree with your second recommendation. As an Agency, we believe that work-life balance is important. We strive to balance the needs of all of our employees with our public service duties. We have already established for all employees various flexibilities to assist with work-life balance. Some of those initiatives, many of which are available government-wide, include flextime, alternate work schedules, the ability to earn and use credit or religious compensatory time, the ability to request unanticipated leave when appropriate, and many work-life balance workshops and offerings available through our Human Resources Center for Employee Benefits and Services. To address this recommendation, we will engage in listening sessions with employees, such as ALJs and other staff, as well as our labor partners to continue to better understand and consider the impact of current expectations on our employees, as a potential factor to consider when determining whether or how to modify public service expectations.

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

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**Appendix II: Comments from the Social  
Security Administration**

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Page 2 – Elizabeth H. Curda

If you have any questions, please contact me at (410) 965-2611. Your staff may contact Trae Sommer, Director of the Audit Liaison Staff, at (410) 965-9102.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Frey".

Scott Frey  
Chief of Staff

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Elizabeth H. Curda at (202) 512-7215 or [curdae@gao.gov](mailto:curdae@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Theresa Lo, Assistant Director; Paul Schearf, Analyst-in-Charge; and David Forgosh made significant contributions to the report. In addition, James Bennett, Swati Deo, Alex Galuten, Rhiannon Patterson, Sara Pelton, Monica Savoy, Almeta Spencer, Rachel Stoiko, Kate Van Gelder, and Srinidhi Vijaykumar made valuable contributions.

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# Related GAO Products

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*Social Security Disability: Information on Wait Times, Bankruptcies, and Deaths among Applicants Who Appealed Benefit Denials.* [GAO-20-641R](#). Washington, D.C.: Aug. 13, 2020.

*Social Security Disability: Better Timeliness Metrics Needed to Assess Transfers of Appeals Work.* [GAO-18-501](#). Washington, D.C.: July 19, 2018.

*Social Security Disability: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions.* [GAO-18-37](#). Washington, D.C.: Dec. 7, 2017.

*Social Security Disability: Additional Performance Measures and Better Cost Estimates Could Help Improve SSA's Efforts to Eliminate Its Hearings Backlog.* [GAO-09-398](#). Washington, D.C.: Sept. 9, 2009.

*Social Security Disability: Better Planning Management, and Evaluation Could Help Address Backlogs.* [GAO-08-40](#). Washington, D.C.: Dec. 7, 2007.

*Social Security Disability: Backlog Reduction Efforts Under Way; Significant Challenges Remain.* [GAO/HEHS-96-87](#). Washington, D.C.: July 11, 1996.

*Social Security: Many Administrative Law Judges Oppose Productivity Initiatives.* [GAO/HRD-90-15](#). Washington, D.C.: Dec. 7, 1989.

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