

The Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

The Office of Personnel Management (OPM) is submitting the enclosed legislative proposal, entitled “Administrative Law Judge Term Appointment Act of 2016.” We request that it be referred to the appropriate committee for prompt and favorable consideration.

By statute (5 U.S.C. § 1104), OPM has a non-delegable duty to administer the administrative law judge (ALJ) examination, through which agencies make competitive service appointments of ALJs. ALJs conduct formal hearings involving cases where all interested parties are given advance notice of the hearing; an opportunity to submit facts, arguments, offers of settlement or proposals of adjustment; and an opportunity to be accompanied, represented, and advised by counsel or other qualified representatives.

The draft bill allows agencies to appoint ALJs to a term appointment for up to four years, in addition to the current permanent hiring authority. This proposal provides agencies workforce management flexibility in responding to short-term critical ALJ hiring needs where the current alternatives to permanent hiring, such as the ALJ loan program and the senior ALJ program, would not be sufficient to meet such needs. Under the bill, OPM will establish critical hiring criteria through regulation and agencies would seek approval to engage in term-limited hiring.

Term ALJs will not have conversion rights to permanent positions, but will remain on the ALJ register and eligible to be appointed to a permanent position during their term appointment. The bill retains the same protections for term ALJs that apply to permanent ALJs: they must be assigned to cases in rotation so far as practicable, and they may not perform duties inconsistent with their duties and responsibilities as ALJs. In addition, the bill emphasizes that agencies cannot, in deciding to extend or request the extension of a term appointment, conduct a performance appraisal or otherwise violate the laws applicable to ALJs.

We believe that enactment of this proposal will improve agency operations by supporting critical workload surges or meeting other programmatic challenges where an influx of ALJ talent is needed for a specific period of time, while retaining protections for judges that are essential to securing the public’s confidence in the impartiality of proceedings. Also, this proposal is cost-neutral.

The Office of Management and Budget advises that the submission of this proposal is in accord with the program of the President.

A similar letter is being sent to the President of the Senate.

Sincerely,

Beth F. Cobert
Acting Director

The Honorable Joseph R. Biden
President of the Senate
Washington, DC 20510

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