Officials across the federal government conduct hundreds of thousands of adjudications each year.\textsuperscript{1} These officials, not including agency heads, consist of roughly 2,000 administrative law judges (ALJs),\textsuperscript{2} as well as the thousands of other agency adjudicators, referred to as “administrative judges” (AJs) in this Recommendation.\textsuperscript{3}

Just as members of the public benefit from having ready online access to the key materials associated with adjudications and the procedural rules governing them,\textsuperscript{4} they also benefit from having ready online access to the policies and practices by which agencies appoint and oversee ALJs and AJs. The public availability of these policies and practices promotes public confidence that administrative adjudicators are impartial decision makers\textsuperscript{5} and helps the public understand adjudicators’ constitutional status under the Appointments Clause or other provisions.\textsuperscript{6}

\textsuperscript{3} Titles used by agencies that employ administrative judges include “Hearing Officer,” “Immigration Judge,” “Veterans Law Judge,” “Administrative Patent Judge,” and “Administrative Appeals Judge.” “Administrative Judge” is also an official title held by some adjudicators.
Agencies also benefit from comparing their own practices with the policies made publicly available by other agencies and by learning from their experiences. Proactive disclosures by agencies, including those required under the Freedom of Information Act and the E-Government Act, may also be more cost-effective, because agencies will not need to respond to individual requests for information about their adjudicators.7

Relevant policies and practices include those governing appointment and qualifications of adjudicators, compensation (including salaries, bonuses, and performance incentives), duties and responsibilities, supervision and assignment of work, adjudicators’ position within agencies’ organizational hierarchies, methods of evaluating adjudicator performance, limitations on ex parte communications and other policies ensuring the separation of functions, recusal and disqualification, the process for review of adjudications, and discipline and removal.

Many of the policies and practices applicable to ALJs are already publicly available in the APA, Office of Personnel Management rules, and elsewhere.8 Among other things, these sources regulate how agencies evaluate, discipline, remove, compensate, assign duties to, communicate with, and allocate cases among ALJs. Nevertheless, agencies that employ ALJs can take steps to improve the public’s access to this information. For example, the Administrative Conference recently recommended that agencies “publish minimum qualifications and selection criteria for ALJ hiring.”9

Further, ALJs make up only a portion of federal adjudicators. AJs are regulated by a complex mix of statutory provisions, including civil service laws where applicable; agency rules codified in the Code of Federal Regulations; and other agency documents, including manuals, bench books, and other explanatory materials. Many types of information about AJs are available in these sources, but they may be difficult to find, particularly when located in the Code of

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Federal Regulations or the *Federal Register*. Some relevant sources may not be available to the public, including internal administrative and personnel manuals, position descriptions, and labor agreements. Many agencies seem not to disclose certain kinds of information, especially those relating to compensation and performance incentives.

Agency websites are the most helpful location for agencies to make relevant policies and practices publicly available. Members of the public most naturally seek information about administrative policies and practices on agencies’ websites. Agencies can situate information about their adjudicators in a logical and easily identifiable place on their websites and structure their websites to synthesize policies in plain language and link to information from many different sources.

This Recommendation offers best practices to optimize agencies’ online presentation of the policies by which agencies appoint and oversee administrative adjudicators other than agency heads. Because a significant amount of the information discussed in this Recommendation is already publicly available, agencies will not face a significant burden implementing it, and may only need to reorganize some of the content already located on their websites. This recommendation simply encourages agencies to explain to members of the public, plainly and accessibly, how they appoint and oversee ALJs and AJs. Although the Recommendation identifies which kinds of information agencies should consider providing on their websites and where and how they should do so, agencies clearly vary in terms of how they structure their websites, the specific features of their adjudicative programs, and their institutional needs. The Conference also recognizes that some agency policies and practices may qualify for an exemption under the Freedom of Information Act, Privacy Act, or other laws and executive-branch policies. Agencies will have to tailor this recommendation to their own needs so that they can present information in the clearest and most accessible way possible given their unique circumstances and consistent with law and policy.

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11 *Id.*
RECOMMENDATION

1. Each adjudicative agency should provide a short, straightforward description on its website of all policies and practices governing the appointment and oversight of ALJs and AJs, including, as appropriate, those that address:
   a. The procedures for assessing, selecting, and appointing candidates for adjudicator positions;
   b. The placement of adjudicators within agencies’ organizational hierarchies;
   c. Compensation and performance incentives, such as bonuses, non-monetary awards, and promotions;
   d. The assignment of non-adjudicative duties to adjudicators, especially those that relate to investigation or prosecution;
   e. Limitations on ex parte communications between adjudicators and other agency officials related to the disposition of individual cases, as well as other policies ensuring a separation of adjudication and enforcement functions;
   f. Standards for recusal by and disqualification of adjudicators;
   g. Administrative review of adjudicators’ decisions;
   h. The supervision of adjudicators by higher-level officials, including the assignment of cases;
   i. The evaluation of adjudicators, including quantitative and qualitative methods for appraising adjudicators’ performance; and
   j. The discipline and removal of adjudicators.

2. On the same webpage as the information described in Paragraph 1, each adjudicative agency should provide citations and/or links to key legal documents, such as (a) federal statutes, including the APA and other laws applicable to ALJs and AJs; (b) agency-promulgated rules regarding adjudicators, including Office of Personnel Management rules applicable to ALJs; and (c) publicly available agency-promulgated guidance documents relating to adjudicators, including manuals, bench books, and other explanatory materials. To the extent that some of policies concerning adjudicators may be
a matter of custom, each adjudicative agency should consider documenting policies in order to make them publicly accessible to the extent practicable. Agencies do not need to provide access to policies covered by a Freedom of Information Act exemption that the agency intends to invoke or which are otherwise protected by law.

3. The webpage containing the information described in paragraphs 1 and 2 should present the materials in a clear, logical, and comprehensive fashion. One possible method of presenting this information, with a model disclosure for ALJs, appears in the Appendix.

4. When an agency’s mission consists exclusively or almost exclusively of conducting adjudications, the agency should link to the webpage containing the information described in Paragraphs 1 and 2 on the agency’s homepage. When conducting adjudications is merely one of an agency’s many functions, the agency should link to these materials from a location on the website that is both dedicated to adjudicatory materials and logical in terms of a person’s likelihood of finding the documents in the selected location, such as an enforcement or adjudications page or the homepage for the component in which a particular category of adjudicators works.

Commented [LAS1]: For Committee consideration: The Committee may wish to consider whether a template is useful to include for either or both kinds of positions. The template included in the Appendix is specific to ALJs and may help structure the discussion, but will undoubtedly require revision based on what disclosures the Committee recommends that agencies make. The Committee may also want to consider whether a separate template for AJ positions would be helpful.
APPENDIX

Template Website Text for ALJs

About Our Administrative Law Judges

Administrative Law Judges (ALJs) at [agency name] conduct hearings and decide cases under [insert name of authorizing act]. They are part of the [agency component in which ALJs are located], which is directed by [title of office head] and has offices in [cities]. Visit [link to agency organization chart] to see how [office] relates to other offices at [agency].

ALJs provide a neutral forum to resolve cases involving [kinds of cases ALJs hear] in a fair, transparent, and accessible manner. Our ALJs are highly trained, impartial judges, appointed by [agency official], who [describe qualifications]. ALJs are paid according to the [pay scale for ALJs' locations] scale set by another agency (with cost-of-living adjustments for ALJs' locations), the Office of Personnel Management.

Cases are assigned to ALJs [in each geographic office] in rotation so far as practicable. The ALJ assigned to your case is responsible for [job duties, like taking evidence, hearing objections, issuing decisions]. ALJs are required by statute to perform their functions impartially. 5 U.S.C. § 556(b). To ensure impartiality, he or she does not take part in investigative or enforcement activities, nor does he or she report to officials in the [agency]'s investigative or enforcement components, including [list investigative/enforcement component(s)]. 5 U.S.C. §§ 554(d), 3105.

The ALJ assigned to your case may not communicate privately about the facts of your case with other agency officials, and more details on [agency name]'s rules about communicating with ALJs are available [link].

By law, [agency] does not reward or discipline ALJs for their decisions. [Agency] does not evaluate ALJs’ performance and can only discipline or remove an ALJ from office if another agency, the Merit Systems Protection Board, decides after a hearing that good cause supports doing so. 5 U.S.C. §§ 4301, 7521.

The agency has adopted rules of recusal [link] that allow a participant to request that the ALJ in charge of his or her case be disqualified if the participant believes the ALJ cannot fairly and impartially decide the cases.

If you are dissatisfied with an ALJ’s decision, you can appeal that decision to [agency office/official]. Visit [link] for information on appealing an ALJ decision. [Agency office/official] may also review your case on [its/his or her] own initiative if there is an issue with the ALJ’s decision.

For Further Information:

- Hiring Process: [link]
• Pay rates: [link]
• How cases are assigned to ALJs: [link]
• Communicating with administrative law judges (ex parte communications): [link]
• How to handle a judge with a conflict of interest (recusal and disqualification procedures): [link]
• How to appeal an administrative law judge decision: [link]
• Case processing goals: [link]
• How to report misbehavior by an administrative law judge and how your complaint will be handled: [link]

See also:
• Congress’s rules governing ALJs: 5 U.S.C. §§ 554, 557, 3105, 4301, 5372, 7521
• OPM’s regulations governing ALJs: 5 C.F.R. §§ 930.205, 930.206, 930.207, 930.211.
• EO 13,843 (giving agencies control over the hiring process of ALJs)