

for the cost of developing and administering the administrative law judge examination. Each agency is charged a pro rata share of the examination cost, based on the actual number of administrative law judges the agency employs. OPM computes the cost of the examination program on an annual basis and notifies the employing agencies of their respective shares after the calculations are made.

§ 930.204 Appointments and conditions of employment.

(a) *Appointment.* An agency may appoint an individual to an administrative law judge position only with prior approval of OPM, except when it makes its selection from the list of eligibles provided by OPM. An administrative law judge receives a career appointment and is exempt from the probationary period requirements under part 315 of this chapter. An administrative law judge appointment is subject to investigation, and an administrative law judge is subject to the suitability requirements in part 731 of this chapter.

(b) *Licensure.* (1) At the time of application and any new appointment and while serving as an administrative law judge, the individual must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of “active” status in States that prohibit sitting judges from maintaining “active” status to practice law. Being in “good standing” is also acceptable in lieu of “active” status in States where the licensing authority considers “good standing” as having a current license to practice law.

(2) The requirements contained in paragraph (b)(1) are suspended until further notice with respect to incumbents serving as administrative law judges.

(c) *Appointment of incumbents of newly classified administrative law judge positions.* An agency may give an incumbent employee an administrative law judge career appointment if that employee is serving in the position when it is classified as an administrative law

judge position on the basis of legislation, Executive order, or a decision of a court and if:

(1) The employee has competitive status or is serving in an excepted position under a permanent appointment;

(2) The employee is serving in an administrative law judge position on the day the legislation, Executive order, or decision of the court on which the classification of the position is based becomes effective;

(3) OPM receives a recommendation for the employee’s appointment from the agency concerned; and

(4) OPM determines the employee meets the qualification requirements and has passed the current examination for an administrative law judge position.

(d) *Appointment of an employee from a non-administrative law judge position.* Except as provided in paragraphs (a) and (c) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position.

(e) *Promotion.* (1) Except as otherwise stated in this paragraph, 5 CFR part 335 applies in the promotion of administrative law judges.

(2) To reclassify an administrative law judge position at a higher level, the agency must submit a request to OPM. When OPM approves the higher level classification, OPM will direct the promotion of the administrative law judge occupying the position prior to the reclassification.

(f) *Reassignment.* Prior to OPM’s approval, the agency must provide a bona fide management reason for the reassignment.

(g) *Reinstatement.* An agency may reinstate a former administrative law judge who served under 5 U.S.C. 3105, passed an OPM administrative law judge competitive examination, and meets the professional license requirement in paragraph (b) of this section.

(h) *Transfer.* An agency may not transfer an individual from one administrative law judge position to another administrative law judge position within 1 year after the individual’s last appointment, unless the gaining and losing agencies agree to the transfer.

Office of Personnel Management

§ 930.205

(i) *Conformity.* Actions under this section must be consistent with § 930.201(f).

[72 FR 12954, Mar. 20, 2007, as amended at 73 FR 41235, July 18, 2008]

§ 930.205 Administrative law judge pay system.

(a) OPM assigns each administrative law judge position to one of the three levels of basic pay, AL-3, AL-2 or AL-1 of the administrative law judge pay system established under 5 U.S.C. 5372 in accordance with this section. Pay level AL-3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President determines the appropriate adjustment for each level in the administrative law judge pay system, subject to paragraph (a)(1) of this section. Such adjustments take effect on the 1st day of the first pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

(3) An agency must use the following procedures to convert an administrative law judge's annual rate of basic pay to an hourly, daily, weekly, or bi-weekly rate:

(i) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(ii) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative law judge's basic daily tour of duty.

(iii) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, respectively.

(b) Pay level AL-3 is the basic pay level for administrative law judge positions filled through a competitive examination.

(c) Subject to OPM approval, agencies may establish administrative law judge positions in pay levels AL-2 and AL-1. Administrative law judge posi-

tions are placed at these levels when they involve significant administrative and managerial responsibilities.

(d) Administrative law judges must serve at least 1 year in each AL pay level, or in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(e) Except as provided in paragraph (f) of this section, upon appointment to an administrative law judge position and placement in level AL-3, an administrative law judge is paid at the minimum rate A of AL-3. He or she is automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a non-pay status is generally creditable service when computing the 52- or 104-week period as long as it does not exceed 2 weeks per year for each 52 weeks of service. However, absence due to unformed service or compensable injury is fully creditable upon reemployment as provided in part 353 of this chapter.

(f) Upon appointment to a position at AL-3, an administrative law judge may be paid at the minimum rate A, unless the administrative law judge is eligible for the higher rate B, C, D, E, or F because of prior service or superior qualifications, as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate up to the lowest rate of basic pay that equals or exceeds the applicant's highest previous Federal rate of basic pay, not to exceed the maximum rate F.

(2) With prior OPM approval, an agency may pay the rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. The agency may offer a higher than minimum rate to:

(i) An administrative law judge applicant with superior qualifications (as defined in § 930.202) who is within reach for appointment from an administrative law judge certificate of eligibles; or