

Democrats, Advocacy Groups Pan Order Moving Administrative Judges Out of Competitive Service

President Trump's executive order giving broader latitude to agency heads in hiring administrative law judges drew swift opposition from advocacy groups and Democrats in Congress Wednesday.

The [order](#), signed Tuesday, pulls ALJs out of the competitive service, where candidates are vetted by the Office of Personnel Management, and moves them into the excepted service, where agency heads are able to set their own criteria for hiring. The White House said the edict is needed to avoid litigation in the aftermath of the *Lucia v. Securities and Exchange Commission* Supreme Court decision and that it would not affect existing removal procedures or protections that allow ALJs to remain independent.

In implementation guidance released by OPM on Tuesday, Director Jeff Pon reiterated that claim, saying that existing statutory procedures around adverse personnel actions “will apply to an agency action to remove, suspend, reduce in level, reduce pay or furlough for 30 days or less an ALJ in the competitive or excepted service.”

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But the text of the executive order appears to contradict the administration's claims and OPM's guidance.

“Except as required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in [the excepted service], or from positions excepted from the competitive service by statute,” the order states.

Nancy Altman, president of advocacy group Social Security Works, said in a statement that the order will increase the political pressure judges feel to deny disability claims. The vast majority of the nearly 1,900 administrative law judges work at the Social Security Administration.

“Stripping ALJs of their independence by giving political appointees the power to hire and fire them arbitrarily denies all of us our due process,” she said. “Workers earn their disability benefits with every paycheck. Republicans are taking yet another step to deny some of the most vulnerable people in the country the benefits they've earned.”

Democratic lawmakers already have taken action to impede the enactment of the order.

Rep. Bobby Scott, D-Va., along with Reps. Elijah Cummings, D-Md., and David Cicilline, D-R.I., have filed an [amendment](#) to the fiscal 2019 Interior, Environment and related agencies appropriations bill ([H.R. 6147](#)) to bar OPM from using its funding to develop or implement regulations to “remove administrative law judges from the competitive service or place administrative law judges in the excepted service.”

In a statement, the three lawmakers accused the Trump administration of trying to politicize a group of federal employees who were, until now, chosen based on nonpartisan merit standards.

"The White House now can appoint judges who are hostile to the claims of discrimination cases, or install judges critical to Social Security Disability or Medicare to decide eligibility for claims," they said. "Every day this executive order is allowed to stand is another opportunity for the White House to appoint partisan ALJs who will be empowered for decades to make decisions that have a significant impact on people's lives."

That appropriations bill is slated for consideration by the House Rules Committee next week.