

REVIEWED**By Chris at 10:06 am, Sep 16, 2019**

Social Security

Emergency Message

Identification Number: EM-18003 REV 2**Intended Audience:** All OHO/OARO/OAO**Originating Office:** Office of Hearings Operations**Title:** Important Information Regarding Possible Challenges to the Appointment of Administrative Law Judges in SSA's Administrative Process--UPDATE**Type:** EM - Emergency Messages**Program:** Title II (RSI); Title VIII (SVB)**Link To Reference:** See References the end of this EM**Retention Date:** February 6, 2019

Revision: This emergency message replaces EM-18003 REV and instructs administrative law judges (ALJs) and administrative appeals judges (AAJs) on how to address Appointments Clause challenges regarding the appointment of ALJs or AAJs.

A. What is the purpose of this Emergency Message?

This emergency message replaces EM 18003 REV and instructs administrative law judges (ALJs) and administrative appeals judges (AAJs) on how to address Appointments Clause challenges regarding the appointment of ALJs or AAJs.

This message also provides instructions in the Case Processing and Management System (CPMS) and the Appeals Review Processing System (ARPS) for inputting cases in which claimants or representatives raise an Appointments Clause challenge.

B. What is the background of this Emergency Message?

On June 21, 2018, the Supreme Court of the United States held, in *Lucia v. Securities and Exchange Commission (SEC)*, that the SEC's ALJs were inferior officers within the meaning of the Constitution's Appointments Clause.

On July 16, 2018, the Acting Commissioner ratified the appointment of ALJs and AAJs and approved their appointments as her own in order to address any Appointments

Clause questions involving SSA claims.

As necessary, SSA will issue additional guidance regarding these issues. Adjudicators must follow the instructions in section C and D below with respect to processing and documenting these challenges.

C. What will an adjudicator do if a claimant or representative raises an Appointments Clause challenge regarding SSA ALJs or AAJs?

1. Challenge made orally or in writing at the ALJ level before July 16, 2018.

If at the ALJ level a claimant or representative raised an Appointments Clause challenge regarding the ALJ in the case, the challenges were acknowledged in the record and entered into the agency's case processing systems for any necessary action.

2. Challenge made orally or in writing at the ALJ level for the first time on or after July 16, 2018.

If a claimant or representative at a hearing raises an Appointments Clause challenge regarding the ALJ in the case, ALJs will **only** respond orally that "the hearing decision will acknowledge that the argument was raised."

When issuing the hearing decision, ALJs will acknowledge that the issue was raised by adding the following language:

The claimant [representative] raised a challenge under the Appointments Clause of the Constitution, U.S. Const. Art. II, § 2, cl. 2, to the manner in which I was appointed as an administrative law judge. However, this claim lacks merit by virtue of the Acting Commissioner of Social Security's July 16, 2018 ratification of my appointment as an ALJ and her approval of my appointment as her own under the Constitution.

3. Challenge made at the Appeals Council level.

If a claimant or representative files a timely Appointments Clause challenge and timely requests Appeals Council review, the AC will consider the challenge in the context of the facts of the case (including, but not limited to, the date of the ALJ decision and the date the challenge was raised) in determining whether there is a basis to grant review. The AC will determine whether granting review is appropriate under 20 CFR 404.970 or 416.1470, or both, when considering both the decision on the merits and any potentially unresolved Appointments Clause issues.

In those matters where a timely Appointments Clause challenge to an ALJ decision issued prior to July 16, 2018 is raised to the Appeals Council in a proper request for review, the AC will grant review and issue a decision or order remand, as appropriate.

D. How will we document claims in which the Appointments Clause issue is raised?

If a claimant or representative raises an Appointments Clause issue at any time at any level of the administrative review process, Office of Hearings Operations (OHO) and Office of Appellate Operations (OAO) staff will flag the case in CPMS and ARPS by adding the case characteristic "LUCI," which can be found in both systems under the "Other" case characteristic type.

ALJs who receive Appointments Clause objections will notify hearing office management. Hearing office management will either add the LUCI case characteristic in CPMS or delegate to staff to do so.

Once the LUCI case characteristic is added to a CPMS record for an electronic claim(s) file, it will automatically populate if an ARPS record is subsequently created. However, for paper claim(s) files, the LUCI case characteristic must be added manually in both CPMS and ARPS.

All OHO and OAO staff are responsible for ensuring that the LUCI case characteristic is reflected in CPMS and ARPS, respectively, and **must** add it if they determine it is missing. For example, an OHO decision writer will look for the LUCI case characteristic in CPMS and add the necessary language as stated in subsection C.2. above. Similarly, an OAO analyst will add the LUCI case characteristic in ARPS if they determine it is missing.

Aside from following the instructions provided in subsection C above and adding the LUCI case characteristic, all OHO and OAO adjudicators and staff will continue processing

claims using current policies and business processes.

OHO adjudicators and staff, please direct all questions to your hearing office management chain. OAO adjudicators and staff, please direct all questions to the Executive Director's office.

References:

HALLEX [I-1-1-52](#) Hearing on the Charges

HALLEX [I-1-1-55](#) Request for Review Before the Appeals Council

HALLEX [I-1-1-60](#) Reinstatement of a Representative After Suspension or Disqualification

HALLEX [I-2-2-1](#) Issues

HALLEX [I-2-2-10](#) Notice of Issues

HALLEX [I-2-2-20](#) Objection to the Issues

HALLEX [I-2-6-1](#) Hearings – General

HALLEX [I-2-6-76](#) Arguments by the Claimant or Appointed Representative

HALLEX [I-2-8-19](#) Oral Decisions on the Record (Bench Decisions)

HALLEX [I-2-8-20](#) Instructions to Decision Writers

HALLEX [I-2-8-25](#) Writing the Decision

HALLEX [I-2-8-30](#) Issuing a Disability Decision When a Claim Is Appealed on a Non-Disability Issue

HALLEX [I-2-8-45](#) Case Processing and Management System Case Routing

HALLEX [I-3-2-1](#) Overview – Analyst Actions on Requests for Review

HALLEX [I-3-2-24](#) Handling Information Submitted or Associated in a Claim(s) File About a Person Other Than a Party to the Proceeding

HALLEX [I-4-8-25](#) Office of Appellate Operations Actions When Claimant Files Timely Exceptions

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-UPDATE - 08/06/2018

