

## **A BILL**

To expand flexibility in appointing administrative law judges, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE**

This Act may be cited as the “Administrative Law Judge Term Appointment Act of 2016.”

### **SECTION 2. ALLOWING TERM APPOINTMENTS OF ADMINISTRATIVE LAW JUDGES**

(a) EXPANDED FLEXIBILITY. – Section 3105 of title 5, United States Code, is amended to read as follows:

“§3105. Appointment of administrative law judges

“(a) Definitions – As used in this section:

- (i) The term “Office” means the U.S. Office of Personnel Management; and
- (ii) The term “Director” means the Director of the U.S. Office of Personnel Management.

(b) An agency shall appoint, in accordance with the provisions of subchapter I of chapter 33 of this title governing appointments in the competitive service, as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Such appointment may be made on a permanent basis, or may be made on a term-limited basis in accordance with subsection (c) of this section. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

“(c) Under regulations of the Office prescribed under section 1305 of this title, the Director may approve an agency’s request to appoint an administrative law judge on a term-limited basis for a period of more than 1 year and not more than 4 years, with the ability for the agency to extend an initial appointment of less than 4 years up to the 4 year limit. At an agency’s request, the Director may approve an initial term beyond the 4-year limit and may approve extension of a term beyond 4 years.

“(1) To obtain approval for term-limited appointments, the agency must demonstrate that such appointments are justified by a short-term critical hiring need and that details under section 3344 or reappointments of annuitants under section 3323(b)(2) of this title would be insufficient to meet the agency’s workload needs.

“(2) An agency may select for a term-limited appointment either from a certificate issued by the Office under section 3317 of this title, or from former administrative law judges eligible for reinstatement. Only an applicant who has affirmatively expressed willingness to serve a term-limited appointment may be referred on such a certificate. Any applicants appointed to a term-limited appointment shall not thereby have their name removed from the register of eligibles for purposes of referral and consideration for future permanent appointment.

“(3) The expiration of an administrative law judge’s term-limited appointment shall not constitute an action under section 7521 of this title.

“(4) In determining whether to extend a term-limited appointment, or in determining whether to request OPM to extend a term appointment beyond 4 years, an agency shall not appraise the administrative law judge’s performance in violation of chapter 43 of this

title or the regulations of the Office, or otherwise violate any laws applicable to administrative law judges.

### **SECTION 3. EFFECTIVE DATE**

(a) EFFECTIVE DATE. The amendments made to this section shall take effect upon the publication of final regulations by the Office of Personnel Management.

## **SECTION-BY-SECTION ANALYSIS**

To accompany a draft bill

“To expand flexibility in appointing administrative law judges, and for other purposes.”

### **SECTION 1. SHORT TITLE**

The first section would provide that the bill may be cited as the “Administrative Law Judge Term Appointment Act of 2016.”

### **SECTION 2. ALLOWING TERM APPOINTMENTS OF ADMINISTRATIVE LAW JUDGES**

Section 2 would amend section 3105 of title 5, United States Code, to allow agencies to appoint Administrative Law Judges (ALJs) to a term appointment for up to four years, in addition to the current permanent hiring authority. The Office of Personnel Management (OPM) is empowered to promulgate regulations detailing how agencies can utilize this new policy. Agencies must obtain OPM approval to appoint term ALJs. This can be achieved by demonstrating a short-term critical hiring need. Once approved to appoint term ALJs, agencies must appoint individuals from the current ALJ register who proactively expressed willingness to be selected for a term appointment, or former ALJs eligible for reinstatement. Individuals selected for a term ALJ appointment are still eligible to be selected for a permanent ALJ position since they are not removed from the ALJ register during their term appointment. Those serving on a term ALJ appointment are not subject to performance evaluations, or any other laws that do not apply to permanent ALJs.

### **SECTION 3. EFFECTIVE DATE**

Section 3 would make the amendments made by the Act effective upon the publication of final regulations by OPM.