

2024 USDA EXPLANATORY NOTES – OFFICE OF HEARINGS AND APPEALS

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PREFACE

This publication summarizes the fiscal year (FY) 2024 Budget for the U.S. Department of Agriculture (USDA). Throughout this publication any reference to the “Budget” is in regard to the 2024 Budget, unless otherwise noted. All references to years refer to fiscal year, except where specifically noted. The budgetary tables throughout this document show actual amounts for 2021 and 2022, enacted levels for 2023, and the President’s Budget request for 2024. Amounts for 2023 estimated levels include: non-enacted amounts such as Full-Time Equivalent levels, fleet levels, information technology investment levels, recovery levels, transfers in and out, balances available end of year, and obligation levels.

Throughout this publication, the “2018 Farm Bill” is used to refer to the Agriculture Improvement Act of 2018. Most programs funded by the 2018 Farm Bill are funded through 2023. Amounts shown in 2024 for most Farm Bill programs reflect those confirmed in the baseline.

Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, sequestration is included in the numbers for mandatory programs in 2021, 2022, 2023 and 2024.

AGENCY-WIDE**PURPOSE STATEMENT**

The Office of Hearings and Appeals (OHA) consolidated the three previously separate entities of the National Appeals Division (NAD), the Office of the Administrative Law Judges (OALJ), and the Office of the Judicial Officer (OJO). Previously, OALJ and OJO were offices under Departmental Administration, and NAD was an independent agency that reports to the USDA Secretary.

The mission of OHA is to plan, coordinate, and provide administrative support for NAD, OALJ, and OJO. OHA promotes fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings through the planning, coordination, and administration of office-wide activities and initiatives. OHA adjudicates first-and second-level hearings and appeals at USDA.

OHA Headquarters is located in Alexandria, Virginia. NAD, a division within OHA administers its appeals system through three regional offices located in Memphis, Tennessee; Indianapolis, Indiana; and Lakewood, Colorado. The NAD Administrative Judges are located in field locations throughout the United States and operate out of leased office space or home offices. OALJ and OJO are located in USDA’s South Building in Washington, DC.

As of September 30, 2022, there were 73 permanent full-time employees, comprising of 19 in Virginia and 54 in the field.

OIG AND GAO REPORTS

OHA did not have any Office of Inspector General or Government Accountability Office evaluation reports during the past year.

AVAILABLE FUNDS AND FTEs**Table OHA-1. Available Funds and FTEs (thousands of dollars, FTEs)**

Item	2021		2022		2023		2024	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Salaries and Expenses:								
Total Discretionary Appropriations	\$15,394	73	\$16,173	74	\$16,703	81	\$17,494	82
Total Adjusted Appropriation.....	15,394	73	16,173	74	16,703	81	17,494	82
Transfer to WCF.....	-50	-	-150	-	-	-	-	-
Total Available	15,344	73	16,023	74	16,703	81	17,494	82
Lapsing Balances.....	-68	-	-358	-	-	-	-	-
Total Obligations, OHA.....	15,276	73	15,665	74	16,703	81	17,494	82
Total Available, OHA.....	15,344	73	16,023	74	16,703	81	17,494	82

PERMANENT POSITIONS BY GRADE AND FTEs

Table OHA-2. Permanent Positions by Grade and FTEs

Item	2021 Actual			2022 Actual			2023 Estimated			2024 Estimated		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
AD.....	1	-	1	1	1	2	1	1	2	1	1	2
AL.....	-	3	3	-	3	3	-	3	3	-	3	3
SL.....	-	1	1	-	-	-	-	-	-	-	-	-
GS-15.....	2	3	5	3	3	6	3	3	6	3	3	6
GS-14.....	7	25	32	8	28	36	8	35	43	8	36	44
GS-13.....	6	6	12	5	3	8	5	-	5	5	-	5
GS-12.....	1	1	2	1	1	2	1	1	2	1	1	2
GS-11.....	-	3	3	-	5	5	-	5	5	-	5	5
GS-9.....	1	5	6	1	3	4	1	3	4	1	3	4
GS-8.....	1	4	5	1	4	5	1	6	7	1	6	7
GS-7.....	-	-	-	-	1	1	-	3	3	-	3	3
GS-6.....	-	-	-	-	1	1	-	1	1	-	1	1
Total Permanent.....	19	51	70	20	53	73	20	61	81	20	62	82
Unfilled, EOY.....	-	-	-	-	-	-	-	-	-	-	-	-
Total Perm. FT EOY...	19	51	70	20	53	73	20	61	81	20	62	82

SHARED FUNDING PROJECTS

Table OHA-3. Shared Funding Projects (thousands of dollars)

Item	2021 Actual	2022 Actual	2023 Estimated	2024 Estimated
Working Capital Fund:				
Administrative Services:				
AskUSDA Contact Center.....	-	-	\$2	-
Material Management Service.....	\$6	\$8	6	\$6
Mail and Reproduction Systems.....	79	55	55	57
Integrated Procurement Systems.....	12	8	6	6
Procurement Operations Services.....	20	16	17	17
Human Resources Enterprise Management Systems.....	1	1	1	1
Subtotal.....	118	88	87	87
Communications:				
Creative Media & Broadcast Center.....	15	-	9	15
Finance and Management:				
National Finance Center.....	345	257	190	200
Financial Management Systems.....	54	78	61	64
Personnel Document Security.....	-	-	3	4
Enterprise Data and Analytics Services.....	-	-	1	1
Internal Control Support Services.....	-	-	7	8
Enterprise Cybersecurity Services.....	-	-	21	22
Subtotal.....	399	335	283	299
Information Technology:				
Client Experience Center.....	366	385	331	347
Department Administration Information Technology Office.....	153	195	162	172
Digital Infrastructure Services Center.....	22	5	5	5
Enterprise Network Services.....	27	31	156	163
Subtotal.....	568	616	654	687
AskUSDA Contact Center.....	-	-	2	3
Office of the Executive Secretariat.....	7	9	12	13
Total, Working Capital Fund.....	1,107	1,048	1,047	1,104
Department-Wide Shared Cost Programs:				
Agency Partnership Outreach.....	5	5	6	6
Diversity, Equity, Inclusion and Accessibility.....	-	-	2	2
Human Resources Priority Goals Program.....	-	-	3	3
Talent Group.....	-	-	3	3
Medical Services.....	2	3	3	3
Office of Customer Experience.....	7	7	3	3

Item	2021 Actual	2022 Actual	2023 Estimated	2024 Estimated
Personnel and Document Security Program	5	5	-	-
Physical Security	3	3	3	3
Security Detail	3	3	4	4
Security Operations Program	5	5	5	5
TARGET Center	1	1	1	1
TARGET Center NCR Interpreting Services	-	1	5	5
USDA Enterprise Data Analytics Services	4	3	-	-
Total, Department-Wide Reimbursable Programs	35	36	38	38
E-Gov:				
Geospatial Line of Business	13	13	13	13
Total, E-Gov	13	13	13	13
Agency Total	1,155	1,097	1,098	1,155

ACCOUNT 1: SALARIES AND EXPENSES

APPROPRIATIONS LANGUAGE

The appropriations language follows (new language underscored; deleted matter enclosed in brackets):

Salaries and Expenses

For necessary expenses of the Office of Hearings and Appeals, [~~\$16,703,000~~]\$17,494,000.

LEAD-OFF TABULAR STATEMENT

Table OHA-4. Lead-Off Tabular Statement (In dollars)

Item	Amount
Estimate, 2023	\$16,703,000
Change in Appropriation	+791,000
Net 2024 Request	<u>17,494,000</u>

PROJECT STATEMENTS

Table OHA-5. Project Statement on Basis of Appropriations (thousands of dollars, FTEs)

Item	2021		2022		2023		2024		FTE		
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE	Inc. or Dec.	Inc. or Dec.	Chg Key
Discretionary Appropriations:											
Office of Hearing & Appeals ..	\$15,394	73	\$16,023	74	\$16,703	81	\$17,494	82	+\$791	+1	(1)
Subtotal	15,394	73	16,023	74	16,703	81	17,494	82	+791	+1	
Total Adjusted Approp	15,394	73	16,023	74	16,703	81	17,494	82	+791	+1	
Add back:											
Rescission, Transfers In and Out	-	-	150	-	-	-	-	-	-	-	-
Total Appropriations	15,394	73	16,173	74	16,703	81	17,494	82	+791	+1	
Transfers Out:											
Transfer to WCF	-50	-	-150	-	-	-	-	-	-	-	-
Total Transfers Out	-50	-	-150	-	-	-	-	-	-	-	-
Bal. Available, SOY	-	-	-	-	-	-	-	-	-	-	-
Total Available	15,344	73	16,023	74	16,703	81	17,494	82	+791	+1	
Lapsing Balances	-68	-	-358	-	-	-	-	-	-	-	-
Bal. Available, EOY	-	-	-	-	-	-	-	-	-	-	-
Total Obligations	15,276	73	15,665	74	16,703	81	17,494	82	+791	+1	

Table OHA-6. Project Statement on Basis of Obligations (thousands of dollars, FTEs)

Item	2021		2022		2023		2024		Inc. or Dec.	FTE Inc. or Dec.
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE		
Discretionary Obligations:										
Office of Hearing & Appeals.....	\$15,276	73	\$15,665	74	\$16,703	81	\$17,494	82	+\$791	+1
Total Obligations.....	15,276	73	15,665	74	16,703	81	17,494	82	+791	+1
Lapsing Balances.....	68	-	358	-	-	-	-	-	-	-
Transfer to WCF.....	50	-	150	-	-	-	-	-	-	-
Total Appropriations.....	15,394	73	16,173	74	16,703	81	17,494	82	+791	+1

Office of Hearings and Appeals

The base funds will continue to support the mission of OHA to promote fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings through the planning, coordination, and administration of office-wide activities and initiatives.

The numbers and letters of the following listing relates to values in the Change (Chg) Key column of the Project Statement:

- (1) An increase of \$791,000 and 1 FTE (\$16,703,000 and 81 FTEs available in 2023).

The funding change is requested for the following items:

- A) An increase of \$629,000 for 2024 Pay.

This increase will support the annualization of the 2023 4.6 percent Cost of Living pay increase and the 2024 5.2 percent Cost of Living pay increase. This increase will support the pay increase for civilian employees. Failure to receive this increase would prevent OHA from fully performing its mission, which is necessary to ensure continued support for the Department as well as meeting the needs of the Executive Office of the President and members of Congress. Over eighty percent of OHA’s appropriation comprises of salaries and benefits and although OHA will streamline and economize all activity areas, by statute OHA may not receive personnel, informational technology, and other support services except on a reimbursable basis.

- B) An increase of \$162,000 and 1 FTE to address increasingly complex caseload.

Without an increase in funding, USDA will be unable to meet statutory deadlines and will be exposed to increased litigation risk and expenses while adjudicating first-and second-level hearings and appeals at USDA. The funding will assist with program costs needed to meet the increasing demands for deciding complex cases, minimize delays in providing assistance to farmers, and reduce wait times for case resolution. In addition, high-quality decisions and quick resolution of cases provides key data for use in risk management and future program decisions.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTES

Table OHA-7. Geographic Breakdown of Obligations and FTEs (thousands of dollars, FTEs)

State/Territory/Country	2021		2022		2023		2024	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Alabama.....	\$160	1	\$171	1	\$356	2	\$374	2
Arkansas.....	155	1	171	1	178	1	184	1
California.....	364	2	390	2	410	2	431	2
Colorado.....	1,300	8	1,576	8	1,700	9	1,800	10
District of Columbia.....	1,813	11	1,982	10	1,920	10	2,000	10
Florida.....	300	2	311	2	377	2	176	1
Georgia.....	143	1	164	1	164	1	178	1
Idaho.....	175	1	186	1	194	1	203	1
Illinois.....	-	-	-	-	204	1	210	1
Indiana.....	937	6	1,093	7	1,256	8	1,300	9

State/Territory/Country	2021		2022		2023		2024	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Maryland.....	180	1	193	1	208	1	219	1
Minnesota	167	1	179	1	188	1	197	1
Mississippi.....	165	1	181	1	393	2	413	2
Missouri.....	301	2	325	2	358	2	376	2
Nebraska.....	-	-	-	-	188	1	193	1
New York	173	1	185	1	193	1	203	1
North Carolina	343	2	366	2	383	2	403	2
Ohio	171	1	188	1	196	1	206	1
Pennsylvania.....	160	1	181	1	189	1	199	1
Tennessee	940	7	1,384	9	1,200	9	1,250	9
Texas	340	2	369	2	386	2	406	2
Virginia.....	6,819	20	6,070	20	6,062	21	6,573	21
Wisconsin	170	1	-	-	-	-	-	-
Obligations	15,276	73	15,665	74	16,703	81	17,494	82
Lapsing Balances.....	68	-	358	-	-	-	-	-
Transfer to WCF.....	50	-	150	-	-	-	-	-
Total, Available	15,394	73	16,173	74	16,703	81	17,494	82

CLASSIFICATION BY OBJECTS

Table OHA-8 Classification by Objects (thousands of dollars)

Item No.	Item	2021 Actual	2022 Actual	2023 Estimated	2024 Estimated
Personnel Compensation:					
	Washington D.C.	\$2,585	\$2,646	\$3,351	\$3,721
	Personnel Compensation, Field	6,650	6,854	6,832	7,195
11	Total personnel compensation	9,235	9,500	10,183	10,916
12	Personal benefits.....	2,958	3,326	3,214	3,821
13.0	Benefits for former personnel	60	28	60	60
	Total, personnel comp. and benefits	12,253	12,854	13,457	14,797
Other Objects:					
21.0	Travel and transportation of persons.....	54	108	130	141
22.0	Transportation of things.....	25	15	40	20
23.1	Rental payments to GSA	458	364	366	366
23.3	Communications, utilities, and misc. charges.....	438	377	420	420
24.0	Printing and reproduction	53	54	58	25
25.1	Advisory and assistance services	850	409	530	430
25.2	Other services from non-Federal sources.....	150	484	515	400
25.3	Other goods and services from Federal sources.....	732	882	956	750
25.7	Operation and maintenance of equipment.....	141	3	62	50
26.0	Supplies and materials	122	47	94	45
31.0	Equipment.....	-	68	75	50
	Total, Other Objects.....	3,023	2,811	3,246	2,697
99.9	Total, new obligations	15,276	15,665	16,703	17,494
	DHS Building Security Payments (included in 25.3)	\$74	\$17	\$20	\$20
	Information Technology Investments:	DASO-SO Enterprise Legal Case Management			
	Major Investment 1				
	Related Mission Area PPA #1				
11	Internal Labor	100	100	100	100

2024 USDA EXPLANATORY NOTES – OFFICE OF HEARINGS AND APPEALS

Item No.	Item	2021 Actual	2022 Actual	2023 Estimated	2024 Estimated
25.2	Outside Services (Consulting)	431	411	415	500
	Total Major Investment 1	531	511	515	600
25.3	Mission Area WCF Transfers	683	876	922	949
	Total Non-Major Investment	683	876	922	949
	Total IT Investments	1,214	1,387	1,437	1,549
	Position Data:				
	Average Salary (dollars), ES Position.....	\$1,802,000	\$178,348	\$182,807	\$188,291
	Average Salary (dollars), GS Position	\$113,625	\$114,059	\$116,910	\$120,418
	Average Grade, GS Position.....	13.3	13.4	13.4	13.4

STATUS OF PROGRAM

The Office of Hearings and Appeals (OHA) was established in 2017 to consolidate three previously separate entities: The National Appeals Division (NAD), the Office of the Administrative Law Judges (OALJ), and the Office of the Judicial Officer (OJO).

Previously, OALJ and OJO were offices under Departmental Administration, and NAD was an independent office that reported to the Secretary of Agriculture. The reorganization consolidated administrative support for the three USDA entities that adjudicate first and second-level hearings and appeals at USDA. After consolidation, NAD, OALJ, and OJO continues to conduct proceedings under their respective legal authorities.

The mission of OHA is to plan, coordinate, and provide administrative support for NAD, OALJ, and OJO. OHA promotes fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings through the planning, coordination, and administration of office-wide activities and initiatives.

Current Activities

NAD conducts fair and impartial administrative appeal hearings and reviews of adverse decisions by certain agencies within USDA, and issues determinations in an expeditious manner that reflect a thorough consideration of factual information that reach a proper conclusion. Adjudicative activities include:

- **Appealability Determinations:** The Director reviews hundreds of agency decisions when an agency notifies a participant that it does not believe an administrative decision is appealable.
- **Pre-Hearing Conferences:** NAD conducts pre-hearing conferences to identify and/or narrow the issues in the appeal and help parties understand the evidence they need to present at the hearing.
- **Hearings:** In the first-level appeals process, NAD Administrative Judges conduct impartial administrative hearings and issue determinations, which include decisions about attorney fees under the Equal Access to Justice Act that reflect a thorough consideration of factual and legal information.
- **Reviews:** On petition, in a second-level appeal, the NAD Director reviews Administrative Judge Appeal Determinations, renders second-level decisions about attorney fees under the Equal Access to Justice Act, and may grant equitable relief to the same extent, as such authority is provided to the Secretary.

OALJ conducts rulemaking and adjudicatory hearings nationwide under approximately 50 statutes that are subject to the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*). Adjudicative activities include:

- **Initial Decisions:** Judges issue initial decisions and orders in disciplinary and enforcement proceedings, which become final decisions of the Secretary unless appealed to the Judicial Officer.
- **Consent Decisions:** Judges approve consent decisions entered by the parties, which resolve disputes by settlement.
- **Publication of Agricultural Decisions:** OALJ publishes Agriculture Decisions, the official compilation of decisions and orders issued in adjudicatory proceedings conducted for the Department.

OJO is delegated authority to act as the final deciding officer for the United States Department of Agriculture in adjudicatory proceedings listed in 7 C.F.R. § 2.35. Adjudicatory activities include:

- **Review of ALJ Decisions:** On petition for review, the Judicial Officer reviews initial adjudicatory decisions issued by USDA's Administrative Law Judges. This second level review may include Administrative Law Judge decisions about attorney fees under the Equal Access to Justice Act.
- **Reparation Decisions:** The Judicial Officer issues reparation decisions under the Packers and Stockyards Act (P&S Act) and the Perishable Agricultural Commodities Act (PACA). Review of Decisions Subject to the APA: The Judicial Officer reviews decisions in adjudicatory proceedings that are subject to the Administrative Procedure Act, 5 U.S.C. §§ 556, 557.

Selected Examples of Recent Progress

In 2022, NAD:

- Processed 747 cases filed with NAD.
- Issued 65 appealability determinations when appellants challenged the agency's view that a decision was not appealable. Outcome was favorable to appellants in 85 percent of the cases.
- Conducted 440 in-person or telephonic hearings, videoconferences, and reviews of the record.

- Issued 885 determinations, of which 646 were issued by Administrative Judges and 239 were issued by the NAD Director. Outcome was favorable to appellants in 37 percent of the cases. In 147 Review Determinations, appellants were granted equitable relief.
- Increased transparency of the USDA appeals process by publishing more than 760 determinations on the NAD website in 2022; over 24,750 have been published on the NAD web site www.usda.gov/oha/nad/appeals since the program began.
- Accepted over 1,700 eFile requests, which have been processed since NAD introduced the option to electronically file requests in February 2013.

In 2022, OALJ:

- Opened 64 new cases.
- Closed 37 cases related to USDA programs involving the Animal and Plant Health Inspection Service; Grain Inspection, Packers and Stockyards Administration; Food Crop Insurance Corporation; Food Safety and Inspection Service; Food and Nutrition Service; and Agricultural Marketing Service.
- In post-pandemic era, continued to adapt technology resources to ensure due process accessibility for USDA customers. Continued improvement of procedures for use of platforms such as Zoom and Microsoft Teams, or hybrid in-person, telephone, and virtual settings, for hearings to accommodate party requests in safe, COVID conscious ways.
- Conducted multiple pre-hearing and orientation conferences to prepare parties and participants for virtual hearings, which assisted the parties in settling cases, and conducted three multiple-week remote hearings via telephone conference and online platform.
- Conducted and concluded virtual formal rule-making hearing for Marketing Order for Walnuts Grown and Handled in California (Docket No. 22-J-0011), initiated by the Agricultural Marketing Service and the California Walnut Board.
- With OHA and OCIO, developed and launched new, modernized website ensuring OALJ accessibility to the public.
- Launched new OALJ search page for public access to decisions and orders from January 2022 to present. Also updated all decisions and orders pre- January 2022 to OALJ website.
- Completed analysis of OALJ documents most vital for publication on the website and, with OHA, worked with contractor to collect and convert published orders and website materials for OALJ and OJO to be fully compliant with ADA Section 508.

In 2022, OJO:

- Issued 215 orders that arose from administrative appeals of decisions of administrative law judge's and reparation complaints for damages brought by private parties using USDA's dispute resolution mechanism. Matters decided were initiated under a variety of statutes administered by USDA including the Perishable Agricultural Commodities Act, the Packers and Stockyards Act, the Plant Protection Act, the Animal and Health Protection Act, the Horse Protection Act, and the Animal Welfare Act.
- Decided precedent setting cases, including the interpretation and application of important USDA statutory enforcement authorities in novel factual context and procedural rights of third parties under controlling legal authority.
- Resolved nearly \$9 million in reparation claims.
- Redesigned OJO's public facing website in collaboration with OHA to achieve 508 compliance and to improve accessibility to issued decisions and understanding of adjudicatory practices and procedures.
- Collaborated with the Administrative Conference of the United States (ACUS) on its initiative to study and issue a report with recommendations for best practices on the use of precedent in administrative adjudication in federal government agencies. ACUS selected the Office of Judicial Officer as an appellate system case study.