

2023 USDA EXPLANATORY NOTES – OFFICE OF HEARINGS AND APPEALS

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AGENCY-WIDE

PURPOSE STATEMENT

The Office of Hearings and Appeals (OHA) consolidates 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, 2021, there were 70 permanent full-time employees, comprising of 18 in Virginia and 52 in the field.

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	2020		2021		2022	FT	2023	FT
	Actual	FTE	Actual	FTE	Estimated	E	Estimated	E
Salaries and Expenses:.....								
Discretionary Appropriations.....	\$15,222	72	\$15,394	73	\$15,394	.78	\$16,743	81
Transfer to Working Capital Fund.....	-	-	-50	-	-	-	-	-
Lapsing Balances.....	-606	-	-68	-	-	-	-	-
Total, Non-Federal.....	-	-	-	-	-	-	-	-
Total Available, OHA.....	14,616	72	15,276	73	15,394	78	16,743	81

PERMANENT POSITIONS BY GRADE AND FTEs

Table OHA-2. Permanent Positions by Grade and FTEs

Item	2020			2021			2022			2023		
	VA	Field	Actual Total	VA	Field	Actual Total	VA	Field	Estimated Total	VA	Field	Estimated Total
AD.....	1	-	1	1	-	1	1	-	1	1	-	1
AL.....	-	3	3	-	3	3	-	3	3	-	3	3
SL.....	-	1	1	-	1	1	-	1	1	-	1	1
GS-15.....	2	3	5	2	3	5	3	3	6	3	3	6
GS-14.....	6	25	31	7	25	32	7	31	38	8	34	42
GS-13.....	6	2	8	6	6	12	6	6	12	5	1	6
GS-12.....	1	1	2	1	1	2	1	1	2	1	1	2
GS-11.....	1	4	5	-	3	3	-	5	5	-	5	5
GS-9.....	1	5	6	1	5	6	1	3	4	1	3	4
GS-8.....	1	4	5	1	4	5	1	4	5	1	5	6
GS-7.....	-	1	1	-	-	-	-	-	-	-	3	3
GS-6.....	-	1	1	-	-	-	-	1	1	-	2	2
Total Perm. FT EOY	19	50	69	19	51	70	20	58	78	20	61	81
FTE	19	50	72	19	54	73	20	58	78	20	61	81

SHARED FUNDING PROJECTS

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

Item	2020 Actual	2021 Actual	2022 Estimated	2023 Estimated
Working Capital Fund:				
Administrative Services:				
Material Management Service.....	\$7	\$8	\$8	\$8
Mail and Reproduction Services.....	85	86	55	55
Integrated Procurement Systems.....	11	12	8	8
Procurement Operations Services.....	17	18	18	17
Human Resources Enterprise Management Systems.....	2	1	1	1
Subtotal.....	122	125	90	89
Communications:				
Creative Media & Broadcast Center.....	1	-	15	8
Finance and Management:				
National Finance Center.....	260	261	144	148
Financial Management Systems.....	47	46	85	88
Internal Control Support Services.....	-	-	-	-
Financial Management Support Services.....	-	-	-	-
Subtotal.....	307	307	229	236
Information Technology:				
Client Experience Center.....	342	394	389	411
Department Administration Information Technology Office.....	149	190	413	431
Digital Infrastructure Services Center.....	59	27	7	6
Enterprise Network Services.....	34	30	29	29
Subtotal.....	584	641	838	877
Correspondence Management Services.....	-	-	-	-
Office of the Executive Secretariat.....	8	7	9	9
Total, Working Capital Fund.....	1,022	1,080	1,181	1,219
Department-Wide Shared Cost Programs:				
Advisory Committee Liaison Services.....				
Agency Partnership Outreach.....	6	5	6	6
Medical Services.....	-	2	3	3
Office of Customer Experience.....	4	7	7	7
Personnel and Document Security Program.....	4	5	5	5
Physical Security.....	5	3	3	3
Security Detail.....	4	3	3	3
Security Operations Program.....	4	5	5	5
TARGET Center.....	1	1	1	1
TARGET Center NCR Interpreting Services.....	-	-	3	4
USDA Enterprise Data Analytics Services.....	6	4	3	3
Total, Department-Wide Reimbursable Programs.....	34	35	39	40
E-Gov:				
Geospatial Line of Business.....	13	13	13	13
Integrated Acquisition Environment.....	1	-	-	-
Total, E-Gov.....	14	13	13	13
Agency Total.....	1,070	1,128	1,233	1,272

ACCOUNT 1: SALARIES AND EXPENSES

APPROPRIATIONS LANGUAGE

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

For necessary expenses of the Office of Hearings and Appeals, [~~\$16,173,000~~]\$16,743,000.

LEAD-OFF TABULAR STATEMENT

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

Item	Amount
Estimate, 2022	\$15,394,000
Change in Appropriation	+ 1,349,000
Budget Estimate, 2023	<u>16,743,000</u>

PROJECT STATEMENT

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

Item	2020		2021		2022		2023		Inc. or Dec.	FTE Inc. or Dec.	Chg Key
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE			
Discretionary Appropriations:											
Office of Hearings and Appeals.....	\$15,222	72	\$15,394	73	\$15,394	78	\$16,743	81	+\$1,349	+3	(1)
Transfer to Working Capital Fund.....	-	-	-50	-	-	-	-	-	-	-	-
Lapsing Balances.....	-606	-	-68	-	-	-	-	-	-	-	-
Total Obligations.....	<u>14,616</u>	<u>72</u>	<u>15,276</u>	<u>73</u>	<u>15,394</u>	<u>78</u>	<u>16,743</u>	<u>81</u>	<u>+1,349</u>	<u>+3</u>	

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

Item	2020		2021		2022		2023		Inc. or Dec.	FTE Inc. or Dec.
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE		
Discretionary Obligations:										
Office of Hearings and Appeals.....	\$14,616	72	\$15,276	73	\$15,394	78	\$16,743	81	+1,349	+3
Transfer to Working Capital Fund.....	-	-	50	-	-	-	-	-	-	-
Lapsing Balances.....	606	-	68	-	-	-	-	-	-	-
Total Appropriation.....	<u>15,222</u>	<u>72</u>	<u>15,394</u>	<u>73</u>	<u>15,394</u>	<u>78</u>	<u>16,743</u>	<u>81</u>	<u>1,349</u>	<u>3</u>

Office of Hearing 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.

- (1) An increase of \$1,349,000 and 3 additional FTEs for the OHA (\$15,394,000 and 78 FTEs available in 2022).

The funding change is requested for the following items:

- A) An increase of \$308,000 which includes \$151,000 for FY 2022 pay inflation and \$157,000 for FY 2022 FERS.

This increase supports the pay increase which went into effect January 1, 2022, of a 2.7 percent Cost of Living pay increase for civilian employees, and a 1.1 percent increase to cover the expenses for the mandated increase of USDA’s contribution to FERS.

- B) An increase of \$530,000 for FY 2023 Cost of Living Increase. This increase will support the annualization of the FY 2022 2.7 percent Cost of Living pay increase and the FY 2023 4.6 percent Cost of Living pay increase.

This increase supports the proposed January 1, 2023, Cost of Living increase of 4.6 percent. This increase will support the pay increase for civilian employees. This increase will allow the OHA to continue to promote fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings. This critical increase is needed to support and maintain current staffing levels to meet the program demands and statutory requirements imposed on OHA. Elimination of the pay cost increase means the OHA would not be able to fund approximately 2 FTEs and/or would need to significantly cut travel, training, outreach and mission support. Approximately 80 percent of our budget supports personnel compensation and benefits. Failure to receive this increase would prevent us from fully performing our 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.

C) An increase of \$40,000 (\$39,000 for WCF and \$1,000 for Shared Costs).

This increase is needed for the increased cost for Working Capital Fund and other Shared Cost Agreements.

D) An increase of \$471,000 and 3 FTEs and associated staffing costs.

The increase is needed to fill mission critical positions to ensure that OHA can carry out its full range of responsibilities and agency goals. The funds will continue to support the mission of OHA to promote fairness, transparency, and consistency of USDA hearings and appeals services; coordinate administrative and legal activities for the National Appeals Division, the Office of the Administrative Law Judges, and the Office of the Judicial Officer, provide leadership, direction, coordination and assistance in the areas of administrative and legal support for Office-wide mission and operational activities; and coordinate preparation of all administrative support, strategic plans, and reports for Office-wide activities and initiatives. There are strict statutory deadlines for holding hearings and issuing appeal and review determinations. These mission area activities are performed by Administrative Judges and Appeals Officers, who are geographically dispersed throughout the United States and supported by three regional offices and a headquarters office. Similarly, OALJ conducts rulemaking and adjudicatory hearings throughout the country in proceedings that are subject to the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq., under approximately 50 statutes administered by USDA agencies. The Judicial Officer 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. This level of funding ensures the timeliness and quality of services that is expected by the public.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTEs*Table OHA-7. Geographic Breakdown of Obligations and FTEs (thousands of dollars, FTEs)*

State/Territory/Country	2020		2021		2022		2023	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Alabama.....	\$155	1	\$160	1	\$162	1	\$168	1
Arkansas.....	155	1	155	1	157	1	163	1
California.....	350	2	364	2	370	2	385	2
Colorado.....	1,326	9	1,300	8	1,350	9	1,441	9
District of Columbia.....	1,760	10	1,813	11	1,900	12	1,925	12
Florida.....	164	1	300	2	300	2	312	2
Georgia.....	-	-	143	1	145	1	151	1
Idaho.....	173	1	175	1	177	1	184	1
Indiana.....	1,170	8	937	6	1,122	7	1,147	8
Maryland.....	174	1	180	1	182	1	189	1
Minnesota.....	160	1	167	1	167	1	174	1
Mississippi.....	164	1	165	1	167	1	174	1
Missouri.....	166	1	301	2	304	2	316	2
New York.....	166	1	173	1	175	1	182	1
North Carolina.....	331	2	343	2	345	2	359	2
Ohio.....	169	1	171	1	173	1	180	1
Pennsylvania.....	-	-	160	1	162	1	168	1
Tennessee.....	1,091	7	940	7	1,100	8	1,125	9
Texas.....	327	2	340	2	342	2	356	2
Virginia.....	6,279	20	6,819	20	6,594	22	7,476	22
Washington.....	168	1	-	-	-	-	-	-
Wisconsin.....	168	1	170	1	-	-	168	1
Obligations.....	14,616	72	15,276	73	15,394	78	16,743	81
Transfer to WCF.....	-	-	50	-	-	-	-	-
Lapsing Balances.....	606	-	68	-	-	-	-	-
Total, Available.....	15,222	72	15,394	73	15,394	78	16,743	81

CLASSIFICATION BY OBJECTS

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

Item No.	Item	2020 Actual	2021 Actual	2022 Estimated	2023 Estimated
Personnel Compensation:					
	Washington D.C.....	\$2,265	\$2,585	\$2,812	\$3,351
	Personnel Compensation, Field.....	6,101	6,650	6,656	6,832
11	Total personnel compensation.....	8,366	9,235	9,468	10,183
12	Personal benefits.....	2,888	2,958	3,091	3,214
13.0	Benefits for former personnel.....	2	60	60	60
	Total, personnel comp. and benefits.....	11,256	12,253	12,619	13,457
Other Objects:.....					
21.0	Travel and transportation of persons.....	138	54	70	100
22.0	Transportation of things.....	24	25	25	40
23.1	Rental payments to GSA.....	536	458	364	464
23.3	Communications, utilities, and misc. charges.....	382	438	420	420
24.0	Printing and reproduction.....	56	53	30	58
25.1	Advisory and assistance services.....	961	850	850	970
25.2	Other services from non-Federal sources.....	83	150	100	100
25.3	Other goods and services from Federal sources.....	885	732	720	890
25.7	Operation and maintenance of equipment.....	152	141	80	150
26.0	Supplies and materials.....	137	122	116	94
33.0	Investments and loans.....	6	-	-	-
	Total, Other Objects.....	3,360	3,023	2,775	3,286
99.9	Total, new obligations.....	14,616	15,276	15,394	16,743
	DHS Building Security Payments (included in 25.3).....	\$52	\$74	\$74	\$74
	Information Technology Investments:.....	SO-OHA-NadTrack			
	Major Investment 1.....				
11	Internal Labor.....	100	100	100	100
25.2	Outside Services (Consulting).....	423	431	434	437
	Total Major Investment 1.....	523	531	534	537
25.3	Mission Area WCF Transfers.....	683	683	683	713
	Total Non-Major Investment.....	683	683	683	713
	Total IT Investments.....	1,206	1,214	1,217	1,250
	Position Data:				
	Average Salary (dollars), ES Position	\$180,200	\$178,348	\$178,348	\$178,348
	Average Salary (dollars), GS Position	\$113,625	\$114,059	\$117,135	\$117,135
	Average Grade, GS Position	13.3	13.4	13.5	13.5

Advertising Expenditures

There are no contracts for advertising expenses to report.

STATUS OF PROGRAMS

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 FY 2021, NAD:

- Processed 1,032 cases filed with NAD.

- Issued 74 appealability determinations when appellants challenged the agency’s view that a decision was not appealable. Outcome was favorable to appellants in 95 percent of the cases.
- Conducted 527 in-person or telephonic hearings, videoconferences, and reviews of the record.
- Issued 1,011 determinations, of which 779 were issued by Administrative Judges and 232 were issued by the NAD Director. Outcome was favorable to appellants in 37 percent of the cases. In 139 Review Determinations, appellants were granted equitable relief.
- Increased transparency of the USDA appeals process by publishing more than 890 determinations on the NAD website in FY 2021; over 24,000 have been published on the NAD web site (<http://www.nad.usda.gov/publicsearch.html>) since the program began.
- Accepted over 1,400 eFile requests, which have been processed since NAD introduced the option to electronically file requests in February 2013.

In FY 2021, OALJ:

- Opened 69 new cases.
- Closed 118 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](#).
- Published Volume 79, Book 1 of [Agriculture Decisions](#).
- Updated the OALJ website with [decisions and orders](#) issued through November 2021.
- Conducted 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, OJO, and Hearing Clerk’s Office to be fully compliant with ADA Section 508.
- With OHA, assisted in website renovation projects to make OALJ more accessible to the public.
- In response to COVID, adapted technology to ensure due process accessibility for USDA customers. Developed and put in place procedures for use of platforms such as Zoom and Microsoft Teams for virtual hearings. Also developed possible hybrid hearing procedures, such as hybrid telephone/online platform or in-person/online platform settings, to accommodate party requests in safe, COVID conscious ways.
- Conducted market research to update contract provisions under which hearing reporter companies can provide on-line platforms and hosting for virtual hearings as needed and updated existing contract provisions to be conducive to virtual hearings.
- Conducted multiple pre-hearing and orientation conferences to prepare parties and participants for virtual hearings, which assisted the parties in settling cases, and conducted two multiple-week remote hearings via telephone conference and online platform.

In FY 2021, OJO:

- Issued 209 Perishable Agricultural Commodities Act (PACA) Reparation Orders and 3 Orders in reparation proceedings under the Packers and Stockyards Act.
- Decided 9 appeals from OALJ decisions filed with the Judicial Officer. Issued final decisions involving significant USDA enforcement activities arising under a diverse range of USDA legal authorities such as the PACA, the Packers and Stockyards Act, the Dairy Production Stabilization Act, the Animal Welfare Act, and the Animal Health Protection Act.
- Implemented a remand order from the Court of Appeals for the District of Columbia Circuit involving several cases initiated by Animal and Plant Health Inspection Service.
- Collaborated with OHA and OALJ on website remediation project to achieve section 508 compliance.
- Collaborated with OHA and OALJ on design of new website that consolidates the separate OHA, OALJ, and OJO websites under a single OHA website with separate pages.