

**2022 USDA Explanatory Notes – EXECUTIVE OPERATIONS
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 25 field locations throughout the United States and operate out of leased office space or home offices.

As of September 30, 2020, there were 69 permanent full-time employees, of which 19 were located in the headquarters office and 50 in field offices.

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	2019		2020		2021		2022	
	Actual	FTE	Actual	FTE	Enacted	FTE	Budget	FTE
Salaries and Expenses:								
Office of Hearings and Appeals.....	\$15,222	73	\$15,222	72	\$15,394	78	\$16,173	81
Lapsing Balances.....	-267	-	-606	-	-	-	-	-
Total Available, OHA.....	14,955	73	14,616	72	15,394	78	16,173	81

PERMANENT POSITIONS BY GRADE AND FTEs**Table OHA-2. Permanent Positions by Grade and FTEs**

Item	2019			2020			2021			2022		
	VA	Field	Actual Total	VA	Field	Actual Total	VA	Field	Enacted Total	VA	Field	Budget 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.....	1	5	6	2	3	5	2	3	5	2	3	5
GS-14.....	6	28	34	6	25	31	8	29	37	9	33	42
GS-13.....	6	2	8	6	2	8	5	5	10	5	1	6
GS-12.....	1	1	2	1	1	2	2	1	3	2	1	3
GS-11.....	1	5	6	1	4	5	-	4	4	-	4	4
GS-9.....	1	4	5	1	5	6	1	5	6	1	5	6
GS-8.....	1	5	6	1	4	5	1	5	6	1	7	8
GS-7.....	-	-	-	-	1	1	-	-	-	-	-	-
GS-6.....	-	1	1	-	1	1	-	2	2	-	2	2
Total Permanent.....	18	55	73	19	50	69	20	58	78	21	60	81
Total Perm. FT EOY.....	18	55	73	19	50	69	20	58	78	21	60	81
FTE.....	18	55	73	19	54	72	20	58	78	21	60	81

SHARED FUNDING PROJECTS**Table OHA-3. Shared Funding Projects (dollars in thousands)**

Item	2019 Actual	2020 Actual	2021 Enacted	2022 Budget
Working Capital Fund:				
Administrative Services:				
Material Management Service.....	\$4	\$7	\$6	\$1
Mail and Reproduction Services.....	72	85	79	38
Integrated Procurement Systems.....	11	11	12	13
Procurement Operations Services.....	16	17	20	18
Human Resources Enterprise Management Systems.....	1	2	1	1
Subtotal.....	104	122	118	71
Communications:				
Creative Media & Broadcast Center.....	26	1	15	15
Finance and Management:				
National Finance Center.....	180	260	345	331
Financial Management Systems.....	54	47	54	53
Subtotal.....	234	307	399	384
Information Technology:				
Client Experience Center.....	340	342	366	398
Department Administration Information Technology Office...	-	149	153	322
Digital Infrastructure Services Center.....	43	59	22	24
Enterprise Network Services.....	6	34	27	27
Subtotal.....	389	584	568	771
Correspondence Management Services.....				
Office of the Executive Secretariat.....	9	8	7	7
Total, Working Capital Fund.....	762	1,022	1,107	1,248
Department-Wide Shared Cost Programs:				
Agency Partnership Outreach.....	7	6	5	-
Human Resources Self-Service Dashboard.....	-	-	-	-
Medical Services.....	1	-	2	2
Office of Customer Experience.....	2	4	7	7
Personnel and Document Security Program.....	4	4	5	-
Physical Security.....	-	4	3	-
Security Detail.....	4	4	3	3
Security Operations Program.....	9	4	5	-
TARGET Center.....	1	1	1	-
USDA Enterprise Data Analytics Services.....	-	6	4	-
Total, Department-Wide Reimbursable Programs.....	28	33	35	12
E-Gov:				
Enterprise Human Resources Integration.....	2	-	-	-
Geospatial Line of Business.....	13	13	13	13
Integrated Acquisition Environment.....	-	1	-	-
Total, E-Gov.....	15	14	13	13
Agency Total.....	805	1,069	1,155	1,273

OFFICE OF HEARINGS AND APPEALS: 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, [~~\$15,394,000~~] \$16,173,000.

LEAD-OFF TABULAR STATEMENT

Table OHA-4. Lead-Off Tabular Statement

Item	Amount
2021 Enacted.....	\$15,394,000
Change in Appropriation.....	+ 779,000
Budget Estimate, 2022.....	<u>16,173,000</u>

PROJECT STATEMENT

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

Item	2019		2020		2021		Inc. or		Chg		2022	
	Actual	FTE	Actual	FTE	Enacted	FTE	Dec.	FTE	Key	Budget	FTE	
Discretionary Appropriations:												
Office of Hearings and Appeals.....	\$15,222	73	\$15,222	72	\$15,394	78	+\$779	+3	(1)	\$16,173	81	
Lapsing Balances.....	-267	-	-606	-	-	-	-	-	-	-	-	
Total Obligations.....	<u>14,955</u>	<u>73</u>	<u>14,616</u>	<u>72</u>	<u>15,394</u>	<u>78</u>	<u>+779</u>	<u>+3</u>	<u>-</u>	<u>16,173</u>	<u>81</u>	

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

Item	2019		2020		2021		Inc. or		2022	
	Actual	FTE	Actual	FTE	Enacted	FTE	Dec.	FTE	Budget	FTE
Discretionary Obligations:										
Office of Hearings and Appeals	\$14,955	73	\$14,616	72	\$15,394	78	+\$779	+3	\$16,173	81
Lapsing Balances.....	267	-	606	-	-	-	-	-	-	-
Total Appropriation.....	<u>15,222</u>	<u>73</u>	<u>15,222</u>	<u>72</u>	<u>15,394</u>	<u>78</u>	<u>779</u>	<u>3</u>	<u>16,173</u>	<u>81</u>

JUSTIFICATION OF INCREASES AND DECREASES

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) A net increase of \$779,000 and 3 additional FTEs for the OHA (\$15,394,000 and 78 FTEs available in 2021).

The funding change is requested for the following items:

- a. An increase of \$308,000, which includes \$210,000 for pay inflation and \$98,000 for FERS.

This increase will support a 2.7 percent Cost of Living pay increases 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 \$471,000 and 3 FTEs.

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	2019		2020		2021		2022	
	Actual	FTE	Actual	FTE	Enacted	FTE	Budget	FTE
Alabama.....	\$147	1	\$155	1	\$156	1	\$157	1
Arkansas.....	139	1	155	1	156	1	157	1
California.....	304	2	350	2	353	2	357	2
Colorado.....	1,055	8	1,326	9	1,509	10	1,650	10
District of Columbia.....	1,343	9	1,760	10	1,860	12	1,878	12
Florida.....	163	1	164	1	165	1	167	1
Georgia.....	149	1	-	-	143	1	145	1
Idaho.....	172	1	173	1	175	1	177	1
Indiana.....	990	8	1,170	8	1,163	8	1,250	8
Maryland.....	173	1	174	1	175	1	177	1
Minnesota.....	144	1	160	1	162	1	164	1
Mississippi.....	148	1	164	1	165	1	167	1
Missouri.....	165	1	166	1	301	2	304	2
Nebraska.....	147	1	-	-	-	-	-	-
New York.....	153	1	166	1	168	1	170	1
North Carolina.....	318	2	331	2	335	2	337	2
Ohio.....	167	1	169	1	171	1	173	1
Pennsylvania.....	-	-	-	-	160	1	162	1
Tennessee.....	1,205	9	1,091	7	1,177	7	1,478	9
Texas.....	320	2	327	2	336	2	339	2
Virginia.....	7,251	19	6,279	20	6,394	21	6,592	22
Washington.....	145	1	168	1	-	-	-	-
Wisconsin.....	157	1	168	1	170	1	172	1
Obligations.....	14,955	73	14,616	72	15,394	78	16,173	81
Lapsing Balances.....	267	-	606	-	-	-	-	-
Total, Available.....	15,222	73	15,222	72	15,394	78	16,173	81

CLASSIFICATION BY OBJECTS**Table OHA-8 Classification by Objects (thousands of dollars)**

Item No.	Item	2019 Actual	2020 Actual	2021 Enacted	2022 Budget
Personnel Compensation:					
	Washington D.C.....	\$2,290	\$2,265	\$2,585	\$3,050
	Personnel Compensation, Field.....	5,888	6,101	6,633	6,756
11	Total personnel compensation.....	8,178	8,366	9,218	9,806
12	Personal benefits.....	2,459	2,888	2,958	3,091
13.0	Benefits for former personnel.....		2	60	60
	Total, personnel comp. and benefits.....	10,637	11,256	12,236	12,957
Other Objects:					
21.0	Travel and transportation of persons.....	260	138	118	120
22.0	Transportation of things.....	24	24	25	40
23.1	Rental payments to GSA.....	530	536	536	536
23.3	Communications, utilities, and misc. charges.....	395	382	419	420
24.0	Printing and reproduction.....	77	56	58	58
25.1	Advisory and assistance services.....	1,568	961	885	904
25.2	Other services from non-Federal sources.....	639	83	150	100
25.3	Other goods and services from Federal sources.....	708	885	732	804
25.7	Operation and maintenance of equipment.....	109	152	141	140
33.0	Investments and loans.....	-	6	-	-
	Total, Other Objects.....	4,318	3,360	3,158	3,216
99.9	Total, new obligations.....	14,955	14,616	15,394	16,173
	DHS Building Security Payments (included in 25.3).....	\$49	\$52	\$74	\$74
Information Technology Investments:.....					
	Name of Major Investment.....	SO-OHA-NADTrack			
11	Internal Labor.....		\$100	\$100	\$100
25.2	Outside Services (Consulting).....		423	431	434
	Mission Area Non-Major Investment Totals.....		523	531	534
25.3	Mission Area WCF Transfers.....		683	683	683
Position Data:					
	Average Salary (dollars), ES Position.....	\$178,275	\$180,200	\$178,348	\$178,348
	Average Salary (dollars), GS Position.....	\$104,272	\$113,625	\$114,059	\$117,135
	Average Grade, GS Position.....	13.3	13.4	13.4	13.5

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 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. Adjudicative activities include:

- **Initial Decisions:**
Judges issue initial decisions and orders in adjudicatory proceedings, which become final decisions of the Secretary unless appealed to the Secretary's Judicial Officer by a party.
- **Consent Decisions:**
Judges approve consent decisions that the parties enter into, which resolve disputes by settlement.
- **Debarments and Suspensions:**
Judges decide appeals of debarments and suspensions as required by regulations implementing a government-wide system for non-procurement debarments and suspensions (7 C.F.R. § 3017.100-.515 (1993)).
- **Publication of Agricultural Decisions:**
OALJ publishes *Agriculture Decisions*, the official compilation of quasi-judicial and judicial decisions issued concerning regulatory laws administered by 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:

- **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 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.
- **Review of Commissioner Decisions:** On petition for review, the Judicial Officer, with advice from the Plant Variety Protection Board, reviews decisions issued by the Commissioner of the Plant Variety Protection Office.

Selected Examples of Recent Progress

In FY 2020, NAD:

- Processed 1,284 cases filed with NAD;
 - Issued 91 determinations when appellants challenged the agency view that a decision was not appealable. Outcome was favorable to appellants in 87 percent of the cases;
 - Conducted 593 in-person or telephonic hearings, and reviews of the record;
 - Issued 1,192 determinations, of which 924 were issued by Administrative Judges and 268 were issued by the NAD Director. Outcome was favorable to appellants in 38 percent of the cases.
- In 129 Review Determinations, appellants were granted equitable relief;

- Increased transparency of the USDA appeals process by publishing more than 952 determinations on the NAD website in FY 2020; over 23,200 have been published on the NAD web site (http://www.nad.usda.gov/public_search.html) since the program began; and
- Accepted over 1,200 eFile requests, which have been processed since NAD introduced the option to electronically file requests in February 2013.

In FY 2020, OALJ:

- Opened 108 new cases;
- Disposed of 134 cases arising under USDA programs in the Animal and Plant Health Inspection Service, Grain Inspection, Packers and Stockyards Administration, the Food Crop Insurance Corporation, the Food Safety and Inspection Service, the Food and Nutrition Service, and the Agricultural Marketing Service;
- Published Volume 78, Book 1 and 2 of *Agriculture Decisions* on the OALJ website (<https://oalj.oha.usda.gov/agriculture-decisions-publication>); and
- Updated the OALJ website with OALJ's decisions through October 2020 (<https://oalj.oha.usda.gov/current>).
- With OHA, developed methodology and funding for converting published orders and website materials for OALJ, OJO, and HCO to compliance with ADA Section 508.
- Researched and developed approaches to providing for wholly virtual hearings to be conducted through Microsoft Teams or similar software. Worked with USDA Contracting Officer to establish contract provisions under which hearing reporter companies might provide virtual hearing on-line platforms and hosting.
- Conducted a virtual rulemaking hearing via Zoom on behalf of the Agricultural Marketing Service involving the marketing of California walnuts.

In FY Year 2020, OJO:

- Issued 333 Perishable Agricultural Commodities Act (PACA) Reparation Orders, at an average of over 27 orders per month, with a total value of over \$12.1 million.
- Updated OJO's website to include FY 18-20 published decisions. <https://oalj.oha.usda.gov/ojo-decisions>
<https://www.dm.usda.gov/ojo/index.htm>
- Created a detailed case summary report of all current cases before the Judicial Officer (JO), pending cases, and recently concluded cases with live appeal deadlines. This case report also tracks appeals of JO decisions to federal court.
- Has five cases, including 2 from previous years, currently before various Circuits of the United States Courts of Appeal, or have been decided by the Courts.
- Decided 6 OALJ cases that were appealed to the Judicial Officer. Issued precedent setting decisions involving significant regulatory enforcement policies and precedents in a number of key program areas such as "Responsibly Connected" proceedings under PACA; due process and service issues under PACA and the Packers and Stockyards Act; the issue of *de minimis* obligations under PACA; default determinations; adjudication of "Willfulness" and determinations regarding the appropriateness of sanctions in a high visibility Animal Welfare Act proceeding.