

**2021 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 Administrative Judges are located in 57 field locations throughout the United States and operate out of leased office space or home offices. As of September 30, 2019, there were 73 permanent full-time employees, comprising 17 in Virginia and 56 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 STAFF YEARS

Table OHA-1. Available Funds and Staff Years (thousands of dollars, staff years (SY))

Item	2018		2019		2020		2021	
	Actual	SY	Actual	SY	Estimate	SY	Budget	SY
Salaries and Expenses:								
Discretionary Appropriations	\$15,222	77	\$15,222	73	\$15,222	74	\$15,533	78
Lapsing Balances	-591	-	-267	-	-	-	-	-
Subtotal Obligations, OHA	14,631	77	14,955	73	15,222	74	15,533	78
Ob. Under Other USDA Appr:								
OJO and OALJ Reimbursable	4	-	-	-	-	-	-	-
Total, OHA	14,635	77	14,955	73	15,222	74	15,533	78

PERMANENT POSITIONS BY GRADE AND STAFF YEARS

Table OHA-2. Permanent Positions by Grade and Staff Years

Item	2018 Actual			2019 Actual			2020 Estimate			2021 Budget		
	V.A.	Field	Total	V.A.	Field	Total	V.A.	Field	Total	V.A.	Field	Total
AD	1	-	1	1	-	1	1	-	1	1	-	1
AL	-	3	3	-	2	2	-	2	2	4	1	5
SL	1	-	1	-	2	2	-	2	2	-	2	2
GS-15.....	4	3	7	1	5	6	1	5	6	1	5	6
GS-14.....	7	36	43	6	29	36	6	30	36	6	30	36
GS-13.....	9	4	13	6	2	8	6	2	8	6	2	8
GS-12.....	1	1	2	1	1	2	1	1	2	1	1	2
GS-11.....	-	6	6	1	5	6	1	5	6	1	5	6
GS-9.....	2	4	6	1	4	5	1	4	5	1	4	5
GS-8.....	1	6	7	1	5	6	1	5	6	1	5	6
GS-7.....	-	1	1	-	-	-	-	-	-	-	-	-
GS-6.....	-	-	-	-	1	1	-	1	1	-	1	1
Total Permanent	26	64	90	18	55	73	18	56	74	22	56	78
Unfilled, EOY.....	5	11	16	-	-	-	-	-	-	-	-	-
Total Perm. FT EOY .	21	53	74	18	55	73	18	56	74	22	56	78
Staff Year Est.....	23	54	77	18	55	73	18	56	74	22	56	78

SHARED FUNDING PROJECTS

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

Item	2018 Actual	2019 Actuals	2020 Estimate	2021 Budget
Working Capital Fund:				
Administration:				
Material Management Service.....	\$6	\$4	\$6	\$6
Mail and Reproduction Services.....	22	72	76	78
Integrated Procurement Systems.....	18	11	11	11
Procurement Operations Services.....	17	16	19	15
Human Resources Enterprise Management Systems.....	1	1	1	1
Subtotal	64	104	113	111
Communications:				
Creative Media & Broadcast Center	1	26	1	16
Finance and Management:				
National Finance Center	453	180	260	20
Financial Management Systems.....	54	54	46	59
Financial Management Support Services.....	-	-	-	-
Subtotal	507	234	306	79
Information Technology:				
Client Technology Services.....	347	340	400	400
Department Administration Information Technology Office ...	-	-	148	174
Digital Infrastructure Services Center	14	43	5	5
Enterprise Network Services	16	6	49	53
Subtotal	377	389	602	632
Correspondence Management	2	9	9	10
Total, Working Capital Fund	951	762	1,031	848
Department-Wide Shared Cost Programs:				
Agency Partnership Outreach.....	7	7	6	6
Human Resources Self-Service Dashboard	1	-	-	-
Human Resources Transformation.....	1	-	-	-
Medical Services.....	-	1	-	-
Office of Customer Experience.....	2	2	2	2
People's Garden.....	-	-	-	-
Personnel and Document Security	1	4	4	4
Personnel Security Branch	-	-	4	3
Security Detail	4	4	4	4
Security Operations	10	9	4	5
TARGET Center	1	1	1	1
USDA Enterprise Data Analytics Services.....	-	-	4	4
Virtual University	1	-	-	-
Total, Department-Wide Reimbursable Programs	28	28	29	29
E-Gov:				
Enterprise Human Resources Integration	2	2	-	-
Geospatial Line of Business.....	13	13	13	13
Total, E-Gov	15	15	15	15
.....				
Agency Total.....	994	805	1,075	892

ACCOUNT 1: SALARIES AND EXPENSES

LEAD-OFF TABULAR STATEMENT

Table OHA-4. Lead-Off Tabular Statement

Item	Amount
2020 Annualized Continuing Resolution.....	\$15,222,000
Change in Appropriation.....	+311,000
Budget Estimate, 2021.....	<u>15,533,000</u>

APPROPRIATIONS LANGUAGE

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

Office of Hearings and Appeals

For necessary expenses of the Office of Hearings and Appeals, [\$15,222,000] \$15,533,000.

PROJECT STATEMENT

Table OHA-5. Project Statement (thousands of dollars, staff years (SY))

Item	2018 Actual	SY 77	2019 Actual	SY 73	2020 Estimate	SY 74	Inc. or Dec.	Chg Key	SY 78	2021 Budget	SY 78
Discretionary Appropriations:											
Office of Hearings and Appeals.....	\$15,222	77	\$15,222	73	\$15,222	74	+\$311	(1)	+4	\$15,533	78
Lapsing Balances.....	-591	-	-267	-	-	-	-	-	-	-	-
Total Obligations.....	<u>14,631</u>	<u>77</u>	<u>14,955</u>	<u>73</u>	<u>15,222</u>	<u>74</u>	<u>+311</u>	<u>+4</u>	<u>15,533</u>	<u>78</u>	<u>78</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) Office of Hearings and Appeals: An increase of \$311,000.

The funding change is requested for the following items:

- A) An increase of \$118,000 for pay costs (\$54,030 for annualization of the 2020 pay increase and \$63,963 for the 2021 pay increase).

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 1 FTE and/or would need to significantly cut travel, training, and mission support. Approximately 75 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.

B) An increase of \$85,000 for performance awards.

This increase will support a 1 percentage point increase in awards spending, consistent with objectives outlined in the President’s Management Agenda, to enhance workforce development. Without this additional funding, OHA will be unable to absorb these costs in FY 2021, resulting in reductions to planned hiring levels, eroding USDA’s ability to meet key Administration priorities contained in this Budget.

C) An increase of \$108,000 for the Department’s increased contribution to the Federal Employees Retirement System (FERS).

This increase will cover the expenses for the mandated increase of USDA’s contribution to FERS. These increases were effective January 1, 2020, and impact approximately 400 employees’ retirement packages.

Geographic Breakdown of Obligations and Staff Years

Table OHA-6. Geographic Breakdown of Obligations and Staff Years (thousands of dollars, staff years (SY))

State/Territory/Country	2018		2019		2020		2021	
	Actual	SY	Actual	SY	Estimate	SY	Budget	SY
Alabama.....	\$114	1	\$147	1	\$147	1	\$145	1
Arkansas.....	121	1	139	1	139	1	145	1
California.....	250	2	304	2	304	2	327	2
Colorado.....	1,220	7	1,055	8	1,055	8	1,055	8
District of Columbia.....	555	8	1,343	9	1,343	10	1,343	10
Florida.....	132	1	163	1	163	1	163	1
Georgia.....	286	2	149	1	149	1	149	1
Idaho.....	144	1	172	1	172	1	172	1
Indiana.....	1,265	7	990	8	990	8	990	7
Louisiana.....	145	1	-	-	-	-	-	-
Maryland.....	138	1	173	1	173	1	173	1
Minnesota.....	230	1	144	1	144	1	144	1
Mississippi.....	125	1	148	1	148	1	148	1
Missouri.....	250	2	165	1	165	1	165	1
Nebraska.....	132	1	147	1	147	1	147	1
New York.....	132	1	153	1	153	1	153	1
North Carolina.....	265	2	318	2	318	2	318	2
North Dakota.....	240	1	-	-	-	-	-	-
Ohio.....	129	1	167	1	167	1	167	1
Oregon.....	153	1	-	-	-	-	-	-
Tennessee.....	1,133	7	1,205	9	1,205	9	1,205	8
Texas.....	264	2	320	2	320	2	320	2
Virginia.....	6,930	23	7,251	19	7,518	19	7,802	25
Washington.....	144	1	145	1	145	1	145	1
Wisconsin.....	134	1	157	1	157	1	157	1
Obligations.....	14,631	77	14,955	73	15,222	74	15,533	78
Lapsing Balances.....	591	-	267	-	-	-	-	-
Total, Available.....	13,399	77	15,222	73	15,222	74	15,533	78

CLASSIFICATION BY OBJECTS

Table OHA-7 Classification by Objects (thousands of dollars)

Item No.	Item	2018 Actual	2019 Actual	2020 Estimate	2021 Budget
	Personnel Compensation:				
	Alexandria, VA	\$2,431	\$2,290	\$2336	\$2,411
	Personnel Compensation, Field	6,134	5,888	6,006	6,582
11	Total personnel compensation	8,565	8,178	8,236	8,993
12	Personal benefits	2,539	2,459	2,542	2,649
13.0	Benefits for former personnel	1	-	-	-
	Total, personnel comp. and benefits	11,105	10,637	10,778	11,642
	Other Objects:				
21.0	Travel and transportation of persons.....	197	260	260	260
22.0	Transportation of things	28	24	24	24
23.1	Rental payments to GSA.....	528	530	530	530
23.3	Communications, utilities, and misc. charges	425	395	395	395
24.0	Printing and reproduction.....	96	77	77	77
25.1	Advisory and assistance services	1,405	1,568	1,546	1,099
25.2	Other services from non-Federal sources.....	93	639	639	639
25.3	Other goods and services from Federal sources.....	450	708	750	750
26.0	Supplies and materials.....	199	109	109	109
31.0	Equipment	105	8	8	8
	Total, Other Objects.....	3,526	4,318	4,338	3,891
99.9	Total, new obligations.....	14,631	14,955	15,222	15,533
	DHS Building Security Payments (included in 25.3)	\$39	\$49	\$49	\$50
	Position Data:				
	Average Salary (dollars), AD, AL, SL Position.....	\$178,275	\$178,275	\$178,275	178,275
	Average Salary (dollars), GS Position.....	\$109,900	\$104,272	\$106,668	\$106,668
	Average Grade, GS Position.....	13.5	13.3	13.4	13.4

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 2019, NAD:

- Processed 1,380 cases filed with NAD;
- Issued 52 determinations when appellants challenged the agency view that a decision was not appealable. Outcome was favorable to appellants in 90 percent of the cases;
- Conducted 565 in-person or telephonic hearings, and reviews of the record;
- Issued 1,267 determinations, of which 1,003 were issued by Administrative Judges and 264 were issued by the NAD Director. Outcome was favorable to appellants in 40 percent of the cases. In 121 Review Determinations, appellants were granted equitable relief;
- Increased transparency of the USDA appeals process by publishing more than 930 determinations on the NAD website in FY 2019; over 22,200 have been published on the NAD web site (http://www.nad.usda.gov/public_search.html) since the program began; and
- Accepted a total of 950 eFile requests, which have been processed since NAD introduced the option to electronically file requests in February 2013.

In FY 2019, OALJ:

- Opened 118 new cases;
- Disposed of 158 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 77, Book 1 of *Agriculture Decisions* on the OALJ website (<https://oalj.oha.usda.gov/agriculture-decisions-publication>); on track to publish Book 2 before the end of the calendar year; and
- Updated the OALJ website with OALJ’s decisions through November 2019 (<https://oalj.oha.usda.gov/current>).

In FY Year 2019, OJO:

- Published all OJO decisions issued January 1, 2017 and later the OALJ website (<https://oalj.oha.usda.gov/ojo-decisions>);
- Disposed of 271 Perishable Agricultural Commodities Act (PACA) and the Packers and Stockyards Act cases involving over \$8 million in awarded claims;
- Updated OJO’s website to include FY ‘19 published decisions. <https://oalj.oha.usda.gov/ojo-decisions>;
- Decided and disposed of 24 OALJ cases that were appealed to the Judicial Officer including a number of cases pending on appeal before the JO which were previously remanded to OALJ to address constitutional *Lucia* related issues but were now back before the JO for appellate review. (In *Lucia v. S.E.C.*, 138 S. Ct. 2044, 2055 (June 21, 2018) (“*Lucia*”), the Supreme Court held that the appropriate remedy “for an adjudication tainted with an appointments violation is a new ‘hearing before a properly appointed’ official. . To cure the constitutional error, another ALJ (or the Commission itself) must hold the new hearing” to which *Lucia* is entitled); and
- Issued precedent setting decisions involving significant regulatory enforcement policies and precedents in key program areas such as “Responsibly Connected” proceedings under PACA (15-J-0169 Nicholas Allen); the impact of pending bankruptcy proceedings on active USDA regulatory enforcement actions, due process and service issues under PACA, (18-J-0053 Huxtable’s Kitchen, Inc.); and adjudication of “Willfulness” and determinations regarding the appropriateness of sanctions in a high visibility Animal Welfare Act proceeding (15-J-0166 consolidated with 15-J-0167, 16-J-0181, 16-J-0182, Douglas Keith Terranova, Terranova Enterprises, Inc.). See also: <https://oalj.oha.usda.gov/ojo-decisions>