

Office of Hearings and Appeals Program

Mission Supporting Goals and Objectives

The Office of Hearings and Appeals (OHA) conducts all of the Department of Energy's adjudicative process and provides various administrative remedies. OHA holds evidentiary hearings in cases involving the eligibility of employees to hold security clearances and for "whistleblower" complaints involving any of the Department's 120,000 contractor employees. OHA also considers appeals of adverse determinations on requests for information submitted under the Freedom of Information and Privacy Acts, and issues determinations on requests for exception based upon claims of hardship or inequity resulting from the application of any DOE order, rule, regulation or other requirement. Other responsibilities include considering appeals of determinations by the Office of Civilian Radioactive Waste Management of payments-equal-to-taxes for eligible jurisdictions, and of determinations by the Office of Environmental Management concerning contributions to, and reimbursements from, the Uranium Enrichment Decontamination and Decommissioning Fund. OHA continues to be assigned further responsibilities.

OHA's goal is to promote successful and uninterrupted DOE operations through the deliberate, expeditious and equitable resolution of all filings it receives alleging adverse impact emanating from the operations of the Department. In pursuing this objective, OHA issues timely, high quality decisions that consider and balance the facts, Congressionally mandated objectives underlying each proceeding, the rights and interests of individual litigants, and the interests of customers, stakeholders and concerned parties such as the public, state and federal governments. In cases involving access to classified information and other secure materials, the employment interests of individuals are weighed against the important national security interests in restricting access only to trustworthy employees. Where whistleblower complaints are concerned, the interests of the Department lie in promoting an atmosphere in which employees may raise concerns about fraud, waste, abuse, safety and health without fear of retaliation, while ensuring that DOE's contractors may manage their operations in the most efficient manner. All funding for OHA is earmarked for Program Direction, which provides the federal staffing resources and associated costs required to carry out the OHA mission.

Significant Accomplishments and Program Shifts

- # In concert with recent congressional action creating the National Nuclear Security Agency (NNSA), OHA and NNSA have signed a memorandum of understanding. This agreement gives the OHA authority, subject to final review of the NNSA, to adjudicate whistleblower and Freedom of Information Act (FOIA) Appeal cases affecting NNSA elements. In its role of providing adjudicatory services for the NNSA, OHA will support the NNSA's mandate to provide security for the nation's nuclear weapon stockpile. In 85 percent of the cases received in FY2000, OHA issued decisions within 30 days after closing the record in the case.

- # During FY2000, OHA began to receive an increasing number of personnel security cases (see Appendix). Based upon this factor and increasing investigation activity, OHA projects that its annual security case receipts will increase by approximately 60 percent in FY2002. To date, these increased case receipts primarily reflect increased security activity at the Albuquerque Operations Office.

- # Reflecting historic Departmental policy, OHA continues to provide the adjudications underlying DOE’s Contractor Employee Whistleblower Protection Program. In its role in promoting an environment wherein workers can raise material health and safety concerns, OHA advances worker safety and health throughout the DOE complex. OHA, in its adjudications, seeks to balance the public interest in promoting a workplace where workers are free to express their concerns without fear of retaliation with the need for DOE contractors to be able to manage their resources efficiently. OHA protects workers against reprisals and helps to identify meritorious cases involving workplace safety, fraud, waste, abuse or mismanagement. During FY2000, OHA issued 11 reports of investigation, 17 initial agency decisions on whistleblower complaints, and 12 appeal decisions.

- # OHA continues to maintain its record of resolving Freedom of Information Act appeals on a timely basis, supporting the parallel goals of DOE transparency and energy-stakeholder needs to access information in an era of constrained resources. This is especially important in light of increased focus on energy supply and generation. In FY2000, OHA resolved 84 FOIA and Privacy Act Appeals. These decisions were issued to the appellant within the statutory 20 working days of its receipt of the appeal.

Funding Schedule

(dollars in thousands)

	FY 2000	FY 2001	FY 2002	\$ Change	% Change
Salaries and Benefits	2,380	2,360	2,260	-100	-4%
Travel	70	80	80	+0	0%
Support Services	20	20	20	+ 0	0%
Other Related Expenses	519	533	533	+0	0%
Total, Program Direction	2,989	2,993	2,893	-100	-4%
Full-Time Equivalents	25	23	22	-1	-10%

Detailed Program Justification

(dollars in thousands)

FY 2000	FY 2001	FY 2002
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Salaries and Benefits	2,380	2,360	2,260
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- # To more accurately reflect Congressional mandates, OHA continues to seek a funding change whereby EWD appropriation funding to OHA is increased, with a commensurate reduction of the historical levels from the Interior account. FTE positions will be reduced by one.

- # OHA is receiving a substantial number of additional personnel security cases due to the Agency's current security reinvestigation efforts. Additionally, OHA is fulfilling increased responsibilities pursuant to recent amendments to the DOE's Contractor Employee Protection (Whistleblower) Program whereby OHA performs all investigations.

- # OHA, amongst other departmental elements which have flattened their management structures, has directed its available personnel toward the high priority of resolving outstanding cases.

- # OHA utilizes computer information systems to improve management and promote efficient use of resources, and it promptly (within 24 hours) publishes OHA decisions and findings on its publicly accessible and increasingly visited website. OHA also regularly publishes the Federal Energy Guidelines as a major research tool for both the DOE and the public.

- # OHA uses the following performance metrics to evaluate its ability to provide prompt, fair resolution of issues amongst DOE and public stakeholders: (1) OHA's relative success in having decisions upheld on appeal; OHA carefully reviews feedback received from the courts and OHA customers and stakeholders; (2) the number of decisions issued by OHA; (3) compliance in meeting statutory and regulatory time deadlines; and (4) responsiveness to changing mandates, such as OHA's success in implementing a program, in conjunction with Flexi-Place, which measures FTE staff-hours needed for each case.

Travel	70	80	80
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For transportation to DOE field sites to conduct hearings on cases and whistleblower investigations.

Support Services	20	20	20
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Funding for computer support of the office information system and for assistance in maintaining OHA's Home Page on the Internet for rapid public access.

(dollars in thousands)

FY 2000	FY 2001	FY 2002
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Other Related Expenses **519** **533** **533**

These include funding for employee training, charge by the Working Capital Fund for base services: rent, utilities, telephone, supplies, postage, building operations, photocopies, telecommunications, printing (including publication of federal register notices, and printing of decisions), and Automated Office Support System support and maintenance. OHA also pays for certain services directly, including timesharing (Westlaw) and purchases of computer equipment and software.

Total, Program Direction **2,989** **2,993** **2,893**

Explanation of Funding Changes from FY 2001 to FY 2002

FY 2001 vs. FY 2002 (\$000)

Salaries and Benefits

Reduction in salary and benefit funding due to elimination of 1 FTE -100

Total Funding Change, Program Direction -100

Appendix

OHA Personnel Security Cases

	Hearings	Appeals
FY 1999	67	12
FY 2000	87	18
FY 2001 (est. after February)	90	20
FY 2002 (est.)	94	23