

Office of Medicare Hearings and Appeals

I am pleased to present the Office of Medicare Hearings and Appeals (OMHA's) Fiscal Year (FY) 2019 Congressional Justification. This budget request reflects OMHA's strong commitment to providing an independent forum for the fair and efficient adjudication of Medicare appeals for beneficiaries and other parties.

Since beginning operations in July 2005, OMHA has been committed to continuous improvement in the Medicare appeals process through responsible stewardship despite significant increases in workload. This commitment continues to inspire OMHA's mission. However, between FY 2010 and FY 2014, OMHA experienced an unprecedented 1,222 percent surge in appeals, while funding for adjudication increased by only 16%. Although the exponential growth in appeals has slowed since FY 2014, OMHA continues to receive significantly more appeals than it is able to adjudicate on a yearly basis at historical funding levels. The unfortunate result has been a backlog of appeals that cannot be adjudicated within the 90-day period as contemplated by statute. As of November 2017, despite the Department's best efforts, the number of appeals pending at OMHA was approximately 530,000. Until OMHA is able to process incoming appeals on a timely basis and additional adjudication flexibilities are provided to the appeals process through legislation, processing times will continue to rise. As of November 2017, average appeal processing times for the agency had reached 1,217 days.

The FY 2019 budget will enable OMHA to build adjudicatory capacity to match projected incoming receipts beginning in FY 2019, thus halting the growth of the backlog of appeals awaiting decision at OMHA and allowing OMHA to begin to address the backlog of appeals awaiting adjudication, by:

- More than doubling ALJ adjudicatory capacity from 92 to up to 198 ALJ teams
- Adding a Medicare Magistrate program, which provides an independent adjudication for the resolution of appeals having a lower amount in controversy, without a hearing, and at lower cost per claim than the current ALJ adjudication process
- Providing for a modest increase in senior attorneys to support the OMHA Attorney Adjudicator program and other administrative actions.

The increase in adjudication capacity in both the ALJ and Magistrate programs will balance OMHA's adjudication capacity with its projected incoming workload for the first time in over eight years, thus halting the growth of the backlog of appeals pending at OMHA and allowing the department's administrative initiatives to begin its elimination.

In response to increasing receipts between FY 2010 and FY 2014, OMHA took aggressive steps to maximize its adjudicatory capacity at current funding levels and optimized the productivity of its ALJs, increasing dispositions per ALJ team from an average of 500 appeals in FY 2009 to approximately 1,000 in FY 2014 and years following. Further increasing dispositions per team beyond this number would not allow sufficient time for reasoned decision-making, and would sacrifice the quality of the ALJ decision and undermine the integrity of the of the appeals process.

Without the additional resources requested in the FY 2019 budget request, OMHA will be unable to handle its projected incoming receipts in FY 2019 and will continue to be unable to begin the process of resolving its backlog of pending appeals. As additional resources are made available, OMHA stands ready to implement its Adjudication Expansion Initiative to increase the issuance of dispositions and reduce the backlog of unheard appeals.

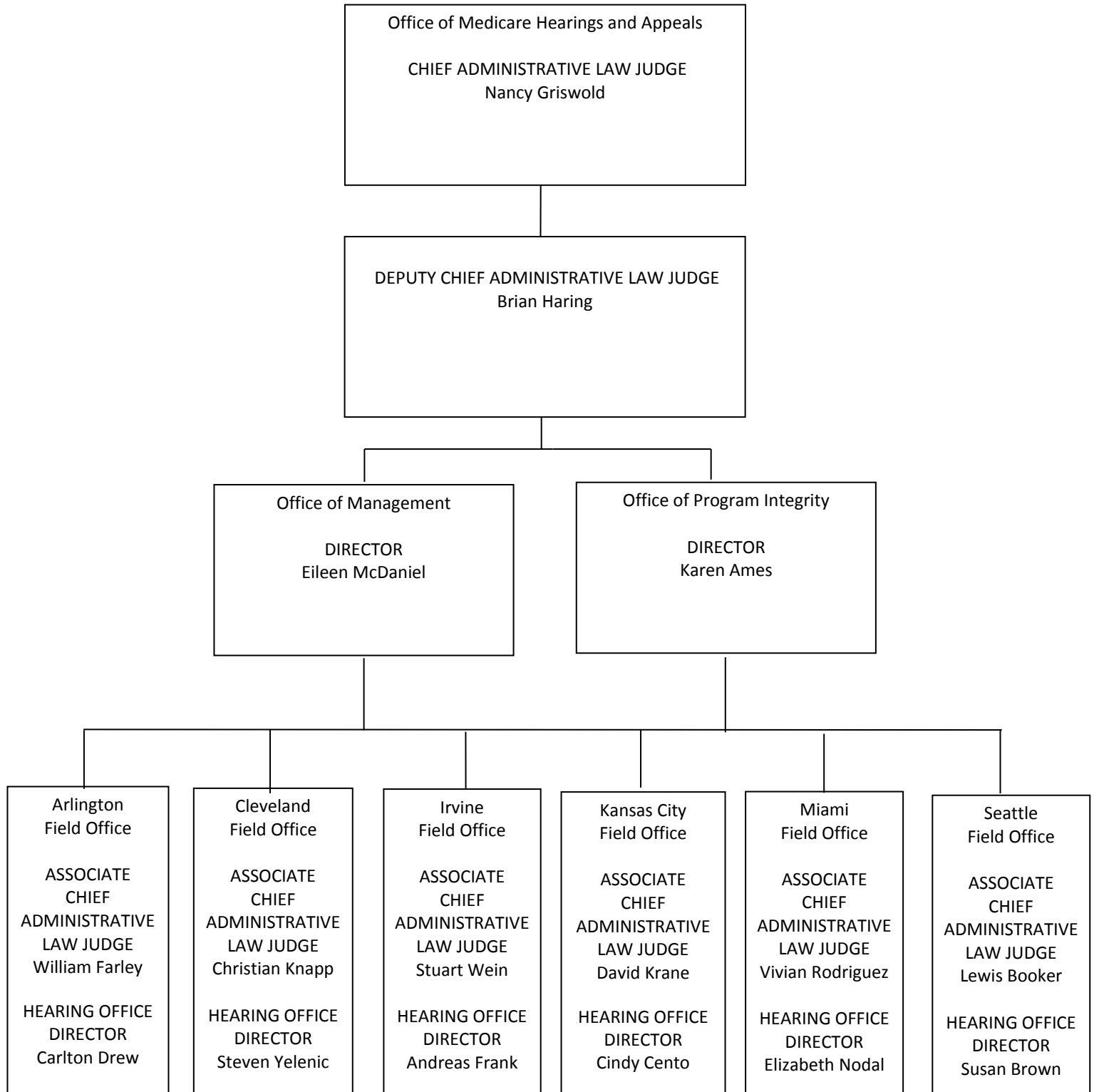
Despite the significant workload challenges facing the agency, OMHA leadership remains committed to OMHA's key priorities: timely adjudicating appeals, maximizing efficiency in utilization of human resources through technological improvements, and enhancing service to the public through quality improvement and superior customer service.

Nancy J. Griswold
Chief Administrative Law Judge

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Organizational Chart



Organization Chart: Text Version

Office of Medicare Hearings and Appeals

- Chief Administrative Law Judge, Nancy Griswold
- Deputy Chief Administrative Law Judge, Brian Haring

The following offices report directly to the Chief Administrative Law Judge:

- Director, Office of Management
 - Eileen McDaniel
- Director, Office of Program Integrity
 - Karen Ames
- Arlington Field Office
 - Associate Chief Administrative Law Judge, William Farley
 - Hearing Office Director, Carlton Drew
- Cleveland Field Office
 - Associate Chief Administrative Law Judge, Christian Knapp
 - Hearing Office Director, Steven Yelenic
- Irvine Field Office
 - Associate Chief Administrative Law Judge, Stuart Wein
 - Hearing Office Director, Andreas Frank
- Kansas City Field Office
 - Associate Chief Administrative Law Judge, David Krane
 - Hearing Office Director, Cindy Cento
- Miami Field Office
 - Associate Chief Administrative Law Judge, Vivian Rodriguez
 - Hearing Office Director, Elizabeth Nodal
- Seattle Field Office
 - Associate Chief Administrative Law Judge, Lewis Booker
 - Hearing Office Director, Susan Brown

Introduction and Mission

The Office of Medicare Hearings and Appeals (OMHA), an agency of the U.S. Department of Health and Human Services (HHS), administers the third level of appeals nationwide for the Medicare program. OMHA ensures that Medicare beneficiaries, providers and suppliers have access to an independent forum and opportunity for a hearing conducted pursuant to the Administrative Procedure Act on disputed Medicare claims. By providing a timely and impartial review of Medicare appeals, OMHA encourages providers and suppliers to continue to provide services and supplies to Medicare beneficiaries. Such access to timely adjudication of disputes is essential to the integrity of the Medicare system. On behalf of the Secretary of HHS, the Administrative Law Judges (ALJs) within OMHA conduct impartial hearings and issue decisions on claim determination appeals involving Medicare Parts A, B, C, D, as well as Medicare entitlement and eligibility appeals.

Mission

OMHA is a responsible forum for fair, credible and timely decision-making through an accomplished, innovative and resilient workforce. Each employee makes a difference by contributing to shaping American health care.

Vision

World class adjudication for the public good.

Statutory Decisional Timeframe

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) envisions that OMHA will issue decisions on appeals of Part A and Part B Qualified Independent Contractor (QIC) reconsiderations within 90 days after a request for hearing is filed.

Overview of Budget Request

The FY 2019 President's Budget request for the Office of Medicare Hearings and Appeals (OMHA) is \$251,060,000; an increase of \$144,408,000 over the FY 2018 Annualized CR level of \$106,652,000. This request includes \$112,381,000 in discretionary budget authority, \$125,000,000 in proposed mandatory funding, \$10,000,000 in proposed access to Recovery Audit Contractor (RAC) collections, \$3,679,000 in proposed user fee collections, and a suite of legislative proposals to address the backlog of Medicare appeals and to improve the Medicare appeals process. This request will allow OMHA to implement HHS and OMHA strategic initiatives to reduce the backlog, and improve the Medicare appeals process by more than doubling adjudicatory capacity while sustaining baseline operational inflationary increases.

With the full enactment of the FY 2019 request, OMHA will be able to increase the agency's overall adjudication capacity to a level that matches projected incoming receipts for the first time in eight years. This request would enable OMHA to implement its Adjudication Expansion Initiative, which will increase capacity from 92 ALJ teams to up to 198 ALJ teams nationwide, including establishing up to five new field offices and 775 new positions. The full impact of the 106 additional ALJ teams proposed in FY 2019 will be realized in out years after new adjudicators gain six to twelve months of experience and will increase ALJ adjudication capacity by more than 100,000 additional appeals annually. In addition, OMHA will be in the position to implement and sustain the Medicare Magistrate program to resolve appeals below the Federal District Court amount in controversy threshold (\$1,600 in calendar year 2018 and updated annually) at a cost 43% lower than the cost of an ALJ team. OMHA projects staffing 100 Magistrates which would increase adjudication capacity by another 75,000 appeals, once the program is fully implemented and Magistrates gain necessary experience.

Overview of Performance

OMHA remains committed to continuous improvement in the Medicare appeals process by implementing initiatives to enhance the quality and timeliness of its services within its legislative authorities and funding levels. Through increased process efficiency and targeted addition of support staff, OMHA has streamlined its business processes and has implemented a number of new initiatives to the maximum extent possible without sacrificing program integrity. Adjudication teams have more than doubled their productivity since 2009, with productivity hovering around the maximum sustainable level of approximately 1,000 appeals per ALJ team annually. In addition, creative solutions implemented as part of the Department's administrative initiatives, combined with ALJ team productivity, have reduced the agency's pending workload by over one third, from a high of approximately 900,000 pending appeals at the beginning of FY 2016 to its present level of approximately 530,000. Most of the Department's higher impact initiatives represent one time reductions (such as settlements), and are neither repeatable nor sustainable and therefore OMHA cannot make lasting progress toward resolving the backlog of pending appeals until its adjudication capacity is in line with projected receipt levels.

As OMHA's workloads have grown dramatically, and it has become impossible for the agency to achieve its goals. As is noted above, appeals grew by 1,222 percent between FY 2010 and FY 2014. While appeals in FY 2017 were lower than FY 2014, as a result of departmental initiatives and the contracting pause in the RAC program, they were still 155 percent higher than the FY 2010 level. Although the backlog has gone down due to the impact of large initiatives which cannot be repeated, OMHA still has 6 years of work on its hand for its current ALJs, and additional cases are being added to the backlog each year that receipts exceed funded capacity. Between FY 2010 and FY 2017, OMHA's appeals receipt total

measured over 1.6 million appeals. Four primary drivers of the increase in volume include increases in the number of beneficiaries; updates and changes to Medicare and Medicaid coverage and payment rules; growth in appeals from Medicaid State Agencies with respect to dual eligible beneficiaries; and national implementation of the Medicare Fee-for-Service RAC Program. At present, projected annual receipts outpace OMHA's sustainable adjudication capacity and initiatives.

The dramatic increase in appeals has had a predictably detrimental impact on the agency's performance and resulted in a backlog of approximately 530,000 pending appeals at Level 3 as OMHA entered FY 2018. Although departmental initiatives, including the Centers for Medicare & Medicaid Services (CMS) Part A Hospital Appeals Settlement Process and OMHA's Settlement Conference Facilitation (SCF) with State Medicaid agencies, have improved OMHA's pending appeals backlog in the short term (from a high of approximately 900,000 appeals at the beginning of FY 2016), the largest initiatives have resulted in one-time reductions of OMHA's pending workload which were possible due to economies of scale. These dramatic reductions are not repeatable. First, settlement of appeals without a review of the merits of those appeals undermines the government's responsibility to protect the Medicare Trust Fund. Moreover, a large percentage of the appeals pending at OMHA were filed by appellants that are currently the subject of program integrity investigations and therefore not eligible for settlements. Second, the settlement of large numbers of appeals without consideration of the merits of the claim encourages the filing of meritless appeals and could increase the number of appeals filed at OMHA. Finally, even if these arguments are overcome, the settlement of large numbers of appeals without taking contemporaneous steps to fund adjudication capacity at OMHA to handle incoming receipts achieves only temporary relief. OMHA will continue to function with a large disparity between adjudication capacity and receipt levels. As long as receipts outpace maximum adjudication capacity, the backlog will re-emerge.

At OMHA's FY 2018 Annualized CR funding level, OMHA is able to sustain 88,000 dispositions (accounting for historical ALJ attrition and the time required to hire and train new ALJs), which is significantly less than projected incoming receipts in FY 2018. OMHA has sought to increase its adjudication capacity through regulatory change, but its ability to do so is limited. On March 20, 2017, OMHA gained regulatory authority for an Attorney Adjudicator program allowing senior attorneys (attorney-adjudicators) to decide cases which do not require a hearing, issue remands, dismiss a request for hearing when the appellant withdraws and dismiss a request for review for any reason. This program frees ALJs to devote more time to hearings, which is something that only an ALJ is allowed to conduct. However, the impact of the attorney adjudicator process is largely limited by appellants' willingness to waive the right to an oral hearing.

Because the Social Security Act provides appellants a right to a hearing before an ALJ, OMHA's other administrative initiatives aimed at increasing productivity—such as settlement conference facilitations, and statistical sampling—are similarly at the discretion of appellants.

As long as cases are being added to the backlog of pending appeals, the average processing time will continue to grow. Indeed, with the exception of beneficiary appeals which are prioritized, OMHA has not been able to issue decisions within the statutorily required 90 days for BIPA appeals since 2010. The average processing time on closed workload in FY 2016 was 877 days and has risen to 1,217 days in FY 2018 (data as of November, 2017). The average age of pending appeals at OMHA has also risen at an alarming rate and measures 1,157 days (data as of November, 2017), far above the 90-day adjudication time frame envisioned by BIPA, indicating that processing times will continue to increase until the backlog of pending appeals has been resolved.

Although adjudication delays at OMHA have impacted almost all categories of appellants, OMHA is able to continue its support of the HHS priority to Reform and Strengthen the Nation's Health Care System through the prioritization of appeals filed by beneficiaries. The average wait time to disposition for prioritized beneficiary appeals has decreased from 244 days for appeals filed in FY 2013, to 66 days for appeals filed in FY 2017 (data as of September 30, 2017). This processing time supports the conclusion that, when properly resourced, OMHA is able to resolve most pending appeals within the anticipated statutory timeframe.

OMHA also continues its support of the HHS priority to Promote Effective and Efficient Management and Stewardship, in part through ongoing evaluation of its customer service through an independent assessment that captures the scope of the Level 3 appeals experience by randomly surveying selected appellants and appellant representatives. Measure 1.5 aims to ensure appellants and related parties are satisfied with their Medicare appeals experience regardless of the outcome of their appeal. The measure is evaluated on a scale of 1 to 5, 1 representing the lowest score (very dissatisfied) and 5 representing the highest score (very satisfied). In FY 2017, OMHA achieved a 3.9 level of overall appellant satisfaction nationwide, exceeding the FY 2017 target of 3.4. Despite the overall satisfaction level, the delays in adjudication have had a predictably detrimental impact on satisfaction scores as the non-beneficiary appellants' frustration with the amount of time it takes for cases to be assigned to an adjudicator continues to rise. Here, the non-beneficiary appellants rated this part of the process only a 2.25 out of a possible 5, bringing down OMHA's satisfaction scores in other areas. Moreover, the overall level of appellant satisfaction still falls short of the 4.3 recorded in FY 2010, prior to increases in processing times resulting from the backlog of pending appeals.

In addition, OMHA organizes the Medicare Appellant Forum and open door calls, events designed to inform and educate the appellant community on the status of the OMHA program and challenges related to the appeals backlog, and available options for appellants. OMHA's Appellant Forums and open door calls have included speakers from all levels of the appeals process and departmental leaders. A primary goal of these events is to be as transparent as possible concerning the challenges faced by the appeals system and to keep appellants informed about current initiatives, pending pilots, demonstration projects, and evolving plans designed to address the workload at all levels of appeal. OMHA conducted four Medicare Appellant Forums (February 2014, October 2014, June 2015, and February 2016), and in FY 2017 began conducting open door calls to provide targeted and specific topical information to the appellant community on new initiatives and the status of pending appeals.

All Purpose Table

(Dollars in Thousands)

| Office of Medicare Hearings and Appeals | FY 2017 Final | FY 2018 Annualized CR | FY 2019 President's Budget Authority | FY 2019 +/- FY 2018 |
|---|---------------|-----------------------|--------------------------------------|---------------------|
| Discretionary Budget Authority | 107,381 | 106,652 | 112,381 | +5,729 |
| Discretionary Budget Authority FTE | 603 | 690 | 705 | +15 |
| Proposed Mandatory Funding | - | - | 125,000 | +125,000 |
| Proposed Mandatory Funding FTE | - | - | 200 | +200 |
| Proposed RAC Collections Funding | - | - | 10,000 | +10,000 |
| Proposed RAC Collections Funding FTE | - | - | 45 | +45 |
| Proposed User Fee Collections | - | - | 3,679 | +3,679 |
| Program Level Funding | 107,381 | 106,652 | 251,060 | +144,408 |
| Program Level FTE | 603 | 690 | 950 | +260 |

Authorizing Legislation.....Titles XVIII and XI of the Social Security Act
 FY 2019 Authorization.....Indefinite
 Allocation Method.....Direct Federal

Appropriations Language

OFFICE OF MEDICARE HEARINGS AND APPEALS

For expenses necessary for the Office of Medicare Hearings and Appeals, [\$106,652,000] *\$112,381,000*, to be transferred in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medicare Insurance Trust Fund: *Provided*, That, in addition, of the amounts the Secretary retains for adjudications related to Recovery Audit Contractor (RAC) appeals under section 1893(h)(1)(C) of the Social Security Act, \$10,000,000 shall be used as additional funds for the necessary expenses of the Office of Medicare Hearings and Appeals and the Departmental Appeals Board to process RAC-related appeals.

Note.- A full-year 2018 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2018 (Division D of P.L. 115-56). The amounts for 2018 reflect the annualized level provided by the continuing resolution.

Amounts Available for Obligation

| Detail | FY 2017 Final | FY 2018 Annualized CR | FY 2019 President's Budget Authority |
|---|---------------|-----------------------|--------------------------------------|
| Trust Fund Discretionary Appropriation | 107,381,000 | 106,652,000 | \$112,381,000 |
| Subtotal, adjusted trust fund annual appropriation | 107,381,000 | 106,652,000 | \$112,381,000 |
| Unobligated balance lapsing | 178,318 | - | - |
| Total Obligations | 107,202,682 | - | - |

Summary of Changes

| Budget Year and Type of Authority | Dollars | FTE |
|--------------------------------------|-----------------|--------------|
| FY 2018 Annualized CR | 106,652 | 690 |
| FY 2019 President's Budget Authority | 251,060 | 950 |
| Net Change | +144,408 | +260* |

*Full impact of FY 2019 hires realized in subsequent fiscal years.

| Increases | FY 2019 FTE | FY 2019 President's Budget Authority | FY 2019 +/- FY 2018 FTE | FY 2019 +/- FY 2018 BA |
|--|----------------|---|----------------------------------|---------------------------------|
| Full-time permanent | 950 | 94,765 | 260 | +34,223 |
| Other personnel compensation | - | 701 | - | +174 |
| Civilian personnel benefits | - | 31,272 | - | +11,174 |
| Travel and transportation of persons | - | 460 | - | +260 |
| Transportation of things | - | 905 | - | +639 |
| Rental Payments to GSA | - | 10,969 | - | +3,590 |
| Communications, utilities, and misc. charges | - | 11,957 | - | +8,265 |
| Printing and reproduction | - | 251 | - | +67 |
| Other services from non-Federal sources | - | 30,850 | - | +30,085 |
| Others goods and services from Federal sources | - | 21,008 | - | +10,917 |
| Operation and maintenance of facilities | - | 38,535 | - | +37,681 |
| Operation and maintenance of equipment | - | 1,047 | - | +93 |
| Supplies and materials | - | 2,910 | - | +2,425 |
| Equipment | - | 5,430 | - | +4,815 |
| Total Increases | 950 | 251,060 | +260 | +144,408 |

| Total Changes | FY 2019 FTE | FY 2019 President's Budget Authority | FY 2019 +/- FY 2018 FTE | FY 2019 +/- FY 2018 BA |
|-------------------------|----------------|---|----------------------------------|---------------------------------|
| Total Increases | 950 | 251,060 | +260 | +144,408 |
| Total Decreases | - | - | - | - |
| Total Net Change | 950 | 251,060 | +260 | +144,408 |

Budget Authority by Activity - Direct

(Dollars in Thousands)

| Activity | FY 2017 Final | FY 2018 Annualized CR | FY 2019 President's Budget Authority |
|--|------------------|-----------------------------|---|
| Discretionary Budget Authority | 107,381 | 106,652 | 112,381 |
| Discretionary Budget Authority, FTE | 603 | 690 | 705 |

Authorizing Legislation

(Dollars in Thousands)

| OMHA | FY 2018 CR Amount Authorized | FY 2018 Annualized CR | FY 2019 Amount Authorized | FY 2019 President's Budget Authority |
|--|------------------------------------|--------------------------|---------------------------------|---|
| Office of Medicare Hearings and Appeals, Social Security Act, Titles XVIII and XI | Indefinite | 106,652 | Indefinite | \$112,381 |
| Total Appropriation | - | 106,652 | - | \$112,381 |

Appropriation History Table

| Details | Budget Estimates to Congress | House Allowance | Senate Allowance | Appropriations |
|-----------------------------|------------------------------------|--------------------|---------------------|----------------|
| 2009 | - | - | - | - |
| Trust Fund Appropriation | 65,344,000 | - | 63,864,000 | 64,604,000 |
| Subtotal | 65,344,000 | - | 63,864,000 | 64,604,000 |
| 2010 | - | - | - | - |
| Trust Fund Appropriation | 71,147,000 | 71,147,000 | 71,147,000 | 71,147,000 |
| Subtotal | 71,147,000 | 71,147,000 | 71,147,000 | 71,147,000 |
| 2011 | - | - | - | - |
| Trust Fund Appropriation | 77,798,000 | - | 77,798,000 | 71,147,000 |
| Rescissions (P.L. 112-10) | - | - | - | (142,000) |
| Subtotal | 77,798,000 | - | 77,798,000 | 71,005,000 |
| 2012 | - | - | - | - |
| Trust Fund Appropriation | 81,019,000 | 71,147,000 | 71,147,000 | 72,147,000 |
| Rescissions (P.L. 112-74) | - | - | - | (136,000) |
| Subtotal | 81,019,000 | 71,147,000 | 71,147,000 | 72,011,000 |
| 2013 | - | - | - | - |
| Trust Fund Appropriation | 84,234,000 | - | 79,908,000 | 72,010,642 |
| Rescissions (P.L. 113-6) | - | - | - | (144,021) |
| Sequestration (P.L. 112-25) | - | - | - | (3,622,567) |
| Transfers | - | - | - | 1,200,000 |
| Subtotal | 84,234,000 | - | 79,908,000 | 69,444,054 |
| 2014 | - | - | - | - |
| Trust Fund Appropriation | 82,381,000 | - | 82,381,000 | 82,381,000 |
| Subtotal | 82,381,000 | - | 82,381,000 | 82,381,000 |
| 2015 | - | - | - | - |
| Trust Fund Appropriation | 100,000,000 | - | - | 87,381,000 |
| Subtotal | 100,000,000 | - | - | 87,381,000 |
| 2016 | - | - | - | - |
| Trust Fund Appropriation | 140,000,000 | - | - | 107,381,000 |
| Subtotal | 140,000,000 | - | - | 107,381,000 |
| 2017 | - | - | - | - |
| Trust Fund Appropriation | 120,000,000 | 107,381,000 | 112,381,000 | 107,381,000 |
| Subtotal | 120,000,000 | 107,381,000 | 112,381,000 | 107,381,000 |
| 2018 | 117,177,000 | 112,381,000 | - | - |
| Subtotal | 117,177,000 | 112,381,000 | - | - |
| 2019 | 112,381,000 | | | |
| Subtotal | 112,381,000 | | | |

Narrative by Activity

Program Description and Accomplishments

OMHA opened its doors in July 2005 pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) which sought to respond to the delays in processing of Medicare appeals that existed at the Social Security Administration (SSA) by establishing an Administrative Law Judge (ALJ) hearing forum dedicated solely to the adjudication of Medicare benefit appeals. According to the Government Accountability Office (GAO), SSA ALJs took on average 368 days to resolve appeals in 2003. While SSA had no statutory timeframe for case adjudication, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) envisioned that most Medicare appeals would be decided by OMHA within 90 days of filing. Furthermore, the MMA provided for the addition of ALJs and staff as needed to insure for the “timely action on appeals before administrative law judges,” (MMA § 931(c), 117 Stat. 2398–99). However, since FY 2010, funding has not been appropriated at a level which would allow OMHA to handle the volume of appeals being received and a backlog of appeals awaiting disposition has developed.

OMHA serves a broad sector of the public, including Medicare service providers and suppliers and Medicare beneficiaries who are often elderly and/or disabled. Ensuring that providers and suppliers have a forum for independent and timely resolution of their disputes over Medicare payments also contributes to the security of the Medicare system by encouraging the provider and supplier community to continue to provide services and supplies to Medicare beneficiaries. OMHA administers its program in six field offices, including Miami, Florida; Cleveland, Ohio; Irvine, California; Arlington, Virginia; Kansas City, Missouri; and Seattle, Washington.

At the time of OMHA’s establishment, it was envisioned that OMHA would receive a traditional workload of Medicare Part A and Part B fee-for-service benefit claim appeals, and Part C Medicare Advantage program organization determination appeals. However, OMHA has seen an increased caseload due to the expansion of its original jurisdiction to include areas not originally envisioned to be within its authority. In 2007, OMHA was also given additional responsibility for conducting hearings and issuing decisions in Medicare Part B Income-Related Monthly Adjustment Amount (IRMAA) appeals.

OMHA also began receiving new cases as a result of the CMS Recovery Audit Contractor (RAC) program, which was piloted in six states beginning in 2007. This program included RAC reviews of Medicare Part A and Part B claims on a post-payment basis, and reviews for Medicare Secondary Payer recoupments. In January 2010, the RAC program became permanent and was expanded to all 50 States. As a result of this expansion, OMHA received nearly 433,000 RAC appeals between FY 2013 and FY 2014, 50 percent of the total agency appeal receipts without receiving additional resources to handle this new workload. The number of RAC appeals declined from FY 2015 to FY 2017 due to the pause in the program while contracts were being re-competed. Although the RAC expansion legislation provided funding for the administrative costs of the program at CMS, OMHA is functionally and fiscally independent of CMS, and OMHA’s administrative costs were not included in the legislation.

Not only has the expansion of appeals from the RAC workload exacerbated OMHA’s workload challenges, but OMHA’s non-RAC (traditional) workload also increased significantly. Between FY 2013 and FY 2014 OMHA also received 380,000 non-RAC appeals as CMS contractors (for example, Medicare

Administrative Contractors and Zone Program Integrity Contractors) increased pre- and post-payment reviews.

Recognizing the importance of timely resolution of Medicare disputes, OMHA has taken a number of steps to maximize the productivity of its ALJ teams and improving the quality and timeliness of its services. These include:

- The development of OMHA's Electronic Case Adjudication Processing Environment (ECAPE) – March 2017 successful testing and roll out to the agency's Central Operations Intake and Case Assignment Division
- A revision to governing regulations (became effective on March 20, 2017) which expanded OMHA's ability to process Level 3 appeals by authorizing attorney adjudicators to decide appeals that can be resolved without a hearing before an ALJ, adopted a number of processing efficiencies at OMHA, and resolved many areas of confusion among stakeholders
- Prioritization of beneficiary appeals to optimize timely adjudication of beneficiary appeals
- A re-engineered field office staffing structure, allocating more of its funding to direct case-support functions (a step which has allowed OMHA to increase ALJ support to include two legal assistants and two attorneys per ALJ)
- An OMHA Case Policy Manual (OCPM) initiative to develop OMHA-wide common business practices for the adjudicative process
- A National Substantive Legal Training Program for new ALJs and attorneys and yearly judicial education to increase consistency in decision-making and address program integrity issues
- Strategic case assignments to assign appellants with a large number of filings to a single ALJ (these "big box" assignments are then rotated among ALJs in accordance with the Administrative Procedure Act), facilitating potential consolidated proceedings and more efficient adjudication
- A Statistical Sampling Pilot to resolve large groups of appeals
- Settlement Conference Facilitation as a less costly alternative to ALJ hearings
- A Senior Attorney screening program to assist with identification and resolution of appeals which can be resolved without a hearing
- Utilization of the Office of Personal Management's Senior ALJ program, which allows for the reemployment of retired ALJs on a temporary and part-time basis

Funding History

| Fiscal Year | Amount |
|-----------------------|---------------|
| FY 2014 | \$82,381,000 |
| FY 2015 | \$87,381,000 |
| FY 2016 | \$107,381,000 |
| FY 2017 | \$107,381,000 |
| FY 2018 Annualized CR | \$106,652,000 |

FY 2019 Budget Request

The FY 2019 President's Budget request for the Office of Medicare Hearings and Appeals (OMHA) is \$251,060,000; an increase of \$144,408,000 over the FY 2018 Annualized CR level of \$106,652,000. This request includes \$112,381,000 in discretionary budget authority, \$125,000,000 in proposed mandatory funding, \$10,000,000 in proposed access to RAC collections, \$3,679,000 in proposed user fee collections, and a suite of legislative proposals to address the backlog of Medicare appeals and improve the Medicare appeals process. This request will allow OMHA to implement HHS and OMHA strategic initiatives to reduce the backlog and improve the Medicare appeals process by more than doubling adjudicatory capacity, improving processing time, reducing overall cost of adjudication per claim, and eliminating the gap between yearly appeals receipts and adjudication capacity.

Between FY 2010 and FY 2017, OMHA's appeals receipt total measured over 1.6 million appeals. OMHA experienced its most significant challenges during FY 2013 and FY 2014. OMHA's appeal receipts grew by 228 percent in FY 2013 (from 117,000 appeals in FY 2012, to 384,000 appeals in FY 2013) while funding levels decreased by 4 percent from the prior year. In FY 2014, OMHA received a record 474,000 new appeals and struggled with fairly stagnant funding levels during the year. During each subsequent year, receipts have dropped slightly due to initiatives implemented at CMS in order to curb appeal levels at OMHA, but have continued to vastly outpace OMHA's adjudication capacity. Thus, OMHA has been unable to recover from the backlogs developed in FY 2013 and FY 2014, or to keep up with incoming receipt levels. Despite the decline in FY 2015 to FY 2017 receipt levels, partly due to the temporary pause in the RAC program, OMHA still has nearly six years of backlogged work for its staff of 92 ALJ teams.

Adjudication Expansion Initiative (AEI)

Despite agency-wide initiatives to streamline business processes, workload demands upon OMHA's ALJs have exceeded their sustainable capacity for case adjudication. This initiative will allow OMHA to increase its staffing levels above its planned FY 2018 Annualized CR level by up to 775 new positions. These positions will be brought on incrementally during FY 2019 equating to 190 FTE in FY 2019. The full impact of the additional positions will be realized in subsequent fiscal years. These additional resources will support up to five new field offices, the full expansion of the Seattle and Arlington field offices, and the augmentation of Headquarters operations necessary to support the expanded administrative, training, oversight and quality assurance requirements associated with the expansion. The additional resources include up to 106 new ALJ teams nationwide above the agency's current 92 teams. Once these new teams have been trained and have become fully productive, their collective adjudication will increase OMHA's output by 106,000 additional dispositions per year (a 125% increase in adjudicatory capacity). This strategy will enable OMHA to expedite backlog reduction efforts and improve

adjudication timeframes, while increasing staff towards a level that can address projected future receipts. The full impact of these additional ALJ teams will be realized in FY 2020 when the teams reach their full annual adjudication capacity.

OMHA will also invest in the hiring of 15 FTE to support its Attorney Adjudicator program. OMHA now has regulatory authority to allow attorney-adjudicators to decide appeals that can be resolved without a hearing before an ALJ. Although the appellant must waive its right to an oral hearing to use this process, OMHA is optimistic that appellant interest in the program will allow for 5,000 dispositions in FY 2018. In addition, these new senior attorneys will support other administrative initiatives such as Settlement Conference Facilitation (SCF). OMHA has been encouraged by the results of SCF, which to date has resolved over 70,000 appeals or the equivalent of one year of work for 70 ALJ teams. While administrative efforts such as SCF are beneficial, they are insufficient to fully reduce the pending workload or manage new incoming receipts. The U. S. Government Accountability Office (GAO) has concurred that, despite these HHS actions, “the Medicare appeals backlog continues to grow at a rate that outpaces the adjudication process and will likely persist.” A summary of all GAO findings and recommendations, and a copy of the report are available through the GAO website at <http://www.gao.gov/products/GAO-16-366>.

Medicare Magistrate Program

A portion of claims and coverage determinations appealed to OMHA involve an amount in controversy (AIC), or amount in dispute, that is far below the cost to adjudicate the claim. Therefore, OMHA has sought authority through a legislative proposal in the FY 2019 Budget for a Medicare Magistrate program in which senior attorneys would serve as independent adjudicators with binding decisional authority in cases with an AIC below the Federal District Court judicial review threshold.

Magistrates would adjudicate these lower value appeals based on a review of the record (in place of a hearing), resulting in a significant reduction in the overall time and cost of adjudications, and bringing the cost for adjudication of these appeals more in line with the amount at issue. This initiative is an ideal model to maximize the use of the agency’s most costly resource (ALJs) to conduct hearings and create a record on appeals in cases in which the amount in controversy is sufficient to allow an appeal to Federal court.

The FY 2019 request will allow OMHA to staff 100 magistrates and the required support positions. These new positions will be brought on incrementally during FY 2019 and equate to 55 FTE. The full impact of the additional positions will be realized in subsequent fiscal years. OMHA estimates these additional resources would further increase adjudication capacity by an estimated 75,000 appeals annually at a savings of 43% compared to an ALJ team.

Proposed Law – Improving the Medicare Appeals Process

The Budget also includes the following legislative proposals to improve the Medicare appeals process:

Provide Additional Resources for Medicare Appeals: This proposal would provide the Office of Medicare Hearings and Appeals (OMHA) and the Departmental Appeals Board (DAB) mandatory funding to address the backlog of pending appeals. The Secretary is authorized to transfer funding across levels 3 and 4 of the appeals system.

Remand Appeals to the Redetermination Level with the Introduction of New Evidence: This proposal would remand an appeal to the first level of appeal when new documentary evidence is submitted into

the administrative record at the second level of appeal or above. Exceptions may be made if evidence was provided to the lower level adjudicator but erroneously omitted from the record, or an adjudicator denies an appeal on a new and different basis than earlier determinations. This proposal incentivizes appellants to include all evidence early in the appeals process and ensures the same record is reviewed and considered at subsequent levels of appeal.

Increase Minimum Amount in Controversy for ALJ Adjudication of Claims to Equal Amount Required for Judicial Review: This proposal increases the minimum amount in controversy required for adjudication by an ALJ to the Federal District Court amount in controversy requirement (\$1,600 in calendar year 2018 and updated annually). This would allow the amount at issue to better align with the amount spent to adjudicate the claim. Appeals not reaching the minimum amount in controversy would be adjudicated by a Medicare magistrate.

Establish Magistrate Adjudication for Claims with Amount in Controversy Below New ALJ Amount in Controversy Threshold: As described above, this proposal allows OMHA to use Medicare magistrates for appealed claims below the Federal District Court amount in controversy threshold (\$1,600 in calendar year 2018 and updated annually), reserving ALJs to conduct hearings and create the record on appeal in cases which have a higher amount in controversy and can reach Federal court.

Expedite Procedures for Claims with No Material Fact in Dispute: This proposal allows OMHA to issue decisions without holding a hearing if there is no material fact in dispute. These cases would include appeals, for example, in which Medicare does not cover the cost of a particular drug or the ALJ cannot find in favor of an appellant due to binding limits on authority.

Change the Medicare Appeal Council's Standard of Review: Change the Medicare Appeals Council's (Council) standard of review under Section 1869(d)(2)(B) of the Social Security Act from de novo to an appellate-level standard of review. Under the proposed standard of review, the Council would be able to grant a request for review of a decision by an ALJ or other adjudicator of Medicare claims if: (1) there is an abuse of discretion; (2) there is an error of law material to the outcome of the case; (3) the findings of fact are not supported by substantial evidence; or (4) there is a need to clarify an important question of law, policy, or fact. The proposal would also clarify that the Council may deny a request for review.

Limit Appeals When No Documentation is Submitted: Limit the right to appeal a redetermination of a claim denied because no documentation was submitted to support the items or services billed, unless the appeal was filed by a beneficiary who is financially responsible for the items or services. If the necessary documentation is not submitted to the Qualified Independent Contractor (QIC) at Level 2, the request for reconsideration would be dismissed.

Require a Good-Faith Attestation on all Appeals: Require all appellants to include in their appeal an attestation that they are submitting the appeal under a good-faith belief that they are entitled to Medicare reimbursement. This proposal would also provide the Secretary the authority to sanction or impose civil monetary penalties on appellants who are found to be submitting appeals not in good-faith. Appellants would be provided a right to challenge a sanction through an administrative review or judicial review. The Secretary would be provided the authority to establish criteria for determining when an appellant is not filing in good faith and associated remedies through regulation.

Establish a Post-Adjudication User fee for Unfavorable Appellants at the 3rd and 4th Levels of Appeal: This proposal would establish a post-adjudication user fee for Medicare Parts A and B claim appeals filed by a provider or supplier, or a State Medicaid Agency (SMA), with respect to appeals that are unfavorable to the appellant (that is, the outcome did not change from the prior level of appeal), and for appeals that

are dismissed. The user fee could be waived by the Secretary if the appealed claim were resolved through settlement or alternate dispute resolution.

The purpose of post-adjudication user fee is to improve the responsiveness of the appeals process by reinvesting funds (e.g., hiring more staff to increase the number of appeals completed and decrease the length of time for review), to partially offset the government’s costs of processing appeals, and to encourage appellants to more carefully assess the merits of their appeals.

Summary

The FY 2019 President’s Budget is a critical step to enable OMHA to make significant strides in reducing the backlog and eliminating the gap between projected incoming receipts and resources. It is clear that OMHA will not be able to resolve the backlog until its adjudication capacity exceeds its projected receipt levels. With the proposed investment in additional adjudicatory resources, OMHA will be able to manage its projected incoming receipts for the first time in eight years, halt the growth in the backlog of appeals, begin to adjudicate the backlog of pending appeals, and ultimately return to the 90-day processing times envisioned by statute.

Outputs and Outcomes Table

| Program/Measure | Year and Most Recent Result / Target for Recent Result / (Summary of Result) | FY 2018 Target | FY 2019 Target | FY 2019 Target +/- FY 2018 Target |
|---|---|-----------------------|-----------------------|--|
| Reduce the percentage of decisions reversed or remanded on appeals to the Medicare Appeals Council | FY 2017: 0.6% Target: 1.0% (Target Exceeded) | 1.0% | 1.0% | Maintain |
| Retain average results from appellants reporting good customer service on a scale of 1-5 at the Medicare Appeals level | FY 2017: 3.9% Target: 3.4% (Target Exceeded) | 3.4 | 3.4 | Maintain |

Budget Authority by Object Class

(Dollars in Thousands)

| Object Class Code | Description | FY 2017 Final | FY 2018 Annualized CR | FY 2019 President's Budget |
|-------------------|---|---------------|-----------------------|----------------------------|
| 11.1 | Full-time permanent | 54,655 | 60,542 | 94,765 |
| 11.5 | Other personnel compensation | 453 | 526 | 701 |
| Subtotal | Personnel Compensation | 55,108 | 61,068 | 95,466 |
| 12.1 | Civilian personnel benefits | 18,269 | 20,099 | 31,272 |
| Total | Pay Costs | 73,377 | 81,167 | 126,738 |
| 21.0 | Travel and transportation of persons | 201 | 200 | 460 |
| 22.0 | Transportation of things | 266 | 266 | 905 |
| 23.1 | Rental payments to GSA | 8,374 | 7,379 | 10,969 |
| 23.3 | Communications, utilities, and misc. charges | 3,947 | 3,693 | 11,957 |
| 24.0 | Printing and reproduction | 177 | 184 | 251 |
| 25.2 | Other services from non-Federal sources | 8,604 | 765 | 30,850 |
| 25.3 | Other goods and services from Federal sources | 9,211 | 10,090 | 21,008 |
| 25.4 | Operation and maintenance of facilities | 853 | 853 | 38,535 |
| 25.7 | Operation and maintenance of equipment | 954 | 954 | 1,047 |
| 26.0 | Supplies and materials | 421 | 485 | 2,910 |
| 31.0 | Equipment | 818 | 616 | 5,430 |
| Total | Non-Pay Costs | 33,826 | 25,485 | 124,332 |
| Total | Budget Authority by Object Class | 107,203 | 106,652 | 251,060 |
| | Average Cost per FTE | 122 | 118 | 133 |
| | FTE | 603 | 690 | 950 |
| | Average Salary | 91 | 88 | 100 |

Salaries and Expenses

(Dollars in Thousands)

| Object Class Code | Description | FY 2017 Final | FY 2018 Annualized CR | FY 2019 President's Budget |
|-------------------|---|---------------|-----------------------|----------------------------|
| 11.1 | Full-time permanent | 54,655 | 60,542 | 94,765 |
| 11.5 | Other personnel compensation | 453 | 526 | 701 |
| Subtotal | Personnel Compensation | 55,108 | 61,068 | 95,466 |
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| 21.0 | Travel and transportation of persons | 201 | 200 | 460 |
| 22.0 | Transportation of things | 266 | 266 | 905 |
| 23.3 | Communications, utilities, and misc. charges | 3,947 | 3,693 | 11,957 |
| 24.0 | Printing and reproduction | 177 | 184 | 251 |
| 25.2 | Other services from non-Federal sources | 8,604 | 765 | 30,850 |
| 25.3 | Other goods and services from Federal sources | 9,211 | 10,090 | 21,008 |
| 25.4 | Operation and maintenance of facilities | 853 | 853 | 38,535 |
| 25.7 | Operation and maintenance of equipment | 954 | 954 | 1,047 |
| Subtotal | Other Contractual Services | 24,213 | 17,005 | 105,013 |
| 26.0 | Supplies and materials | 421 | 485 | 2,910 |
| Subtotal | Non-Pay Costs | 24,634 | 17,490 | 107,923 |
| Total | Salary and Expenses | 98,011 | 98,567 | 234,661 |
| 23.1 | Rental payments to GSA | 8,374 | 7,379 | 10,969 |
| Total | Salaries, Expenses, and Rent | 106,385 | 106,036 | 245,630 |
| Total | Direct FTE | 603 | 690 | 950 |

Detail of Full Time Equivalents

| Detail | FY 2017 Final Civilian | FY 2017 Final Military | FY 2017 Final Total | FY 2018 Estimate Civilian | FY 2018 Estimate Military | FY 2018 Estimate Total | FY 2019 Estimate Civilian | FY 2019 Estimate Military | FY 2019 Estimate Total |
|------------------|------------------------------|------------------------------|---------------------------|---------------------------------|---------------------------------|------------------------------|---------------------------------|---------------------------------|------------------------------|
| Direct | 603 | - | 603 | 690 | - | 690 | 950 | - | 950 |
| Reimbursable | - | - | - | - | - | - | - | - | - |
| Total FTE | 603 | - | 603 | 690 | - | 690 | 950 | - | 950 |

| Fiscal Year | Average GS |
|-------------|------------|
| FY 2015 | 11/5 |
| FY 2016 | 11/5 |
| FY 2017 | 11/3 |
| FY 2018 | 11/2 |
| FY 2019 | 11/2 |

Detail of Positions

| Detail | FY 2017 Final | FY 2018 Annualized CR | FY 2019 President's Budget |
|-----------------------------|------------------|-----------------------------|----------------------------------|
| ALJ I | 1 | 1 | 1 |
| ALJ II | 7 | 7 | 12 |
| ALJ III | 86 | 86 | 187 |
| <i>Subtotal</i> | 94 | 94 | 200 |
| Total – ALJ Salaries | 14,789,567 | 15,570,630 | 33,129,000 |
| ES | 3 | 3 | 4 |
| <i>Total - ES Salaries</i> | 509,122 | 519,482 | 669,482 |
| GS-15 | 15 | 15 | 33 |
| GS-14 | 34 | 36 | 152 |
| GS-13 | 52 | 57 | 111 |
| GS-12 | 168 | 176 | 202 |
| GS-11 | 70 | 76 | 76 |
| GS-10 | - | - | - |
| GS-9 | 24 | 30 | 339 |
| GS-8 | 114 | 130 | 196 |
| GS-7 | 37 | 43 | 49 |
| GS-6 | 22 | 29 | 280 |
| GS-5 | 15 | 20 | 51 |
| GS-4 | 7 | 7 | 17 |
| GS-3 | - | - | - |
| GS-2 | - | - | - |
| GS-1 | - | - | - |
| <i>Subtotal</i> | 558 | 619 | 1,506 |
| <i>Total - GS Salary</i> | 39,809,271 | 43,831,888 | 60,966,518 |
| <i>Total Positions</i> | 655 | 716 | 1,710 |
| <i>Total FTE</i> | 603 | 690 | 950 |
| <i>Average ALJ Salary</i> | 157,336 | 163,064 | 165,645 |
| <i>Average ES salary</i> | 169,707 | 173,161 | 167,371 |
| <i>Average GS grade</i> | 11/3 | 11/2 | 11/2 |
| Average GS Salary | 66,019 | 63,524 | 64,175 |