

U.S. DEPARTMENT OF ENERGY

OFFICE OF
HEARINGS AND APPEALS



FY 2016 ANNUAL REPORT

DOE/HG-0028

MESSAGE FROM THE DIRECTOR

I am pleased to report on the FY 2016 operations of the Office of Hearings and Appeals (OHA). OHA's mission is to provide adjudicatory and dispute resolution services to the Department. All of OHA's work supports one or more of DOE's Strategic Goals.

During FY 2016, our average case processing times achieved historically low levels in two areas of our jurisdiction:

Personnel Security Decisions. Our average time for issuing a decision after the receipt of the hearing transcript stood at 15 days, over 33% below our five-year average, and over 79% below our average from 2008.

Freedom of Information Act (FOIA) and Privacy Act Appeals decisions. Our FOIA and Privacy Act average case-processing time was 11 working days, a figure below our most recent five-year average and one-half our average for the last ten years.

Also in FY 2016, we increased our work in the Whistleblower, Exceptions and Alternative Dispute Resolution areas. We increased our reliance on OHA Administrative Judges and mediation staff to hold our mediations. We also conducted management reviews on behalf of other DOE offices.

We strategically used information technology to efficiently provide our services. We conducted 92% of our hearings via video teleconferencing, reduce our travel expenses below \$11,000, which is a 91% reduction from 2009.

In 2016, DOE and OHA announced the conclusion of the crude oil overcharge refund program. Over the course of that program, OHA processed more than 100,000 crude oil refund applications, and distributed approximately \$4.7 billion to individual claimants, the states and federal government.

As we begin FY 2017, we are committed to continued improvement and to meeting any new Departmental needs for our services. To these ends, we will continue to review our operations to identify opportunities for increased efficiency and productivity, while maintaining our commitment to excellence.

We hope that this report is informative. If you have any comments or suggestions for future improvements, please contact Fred Brown, OHA Deputy Director, at fred.brown@hq.doe.gov, or 202-287-1545.

Sincerely,

Poli A. Marmolejos
Director

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INTRODUCTION

The Office of Hearings and Appeals is the central administrative adjudicative forum for the Department of Energy. The Secretary of Energy has delegated to the OHA Director the authority to act for him in many different areas. The OHA Director's decision typically serves as the final agency action.

During its over 35-year history, OHA has had broad-ranging subject matter jurisdiction. Originally, OHA's primary function was to consider exceptions and other petitions related to the petroleum pricing and allocation regulations, as well as Freedom of Information Act (FOIA) and Privacy Act appeals. From that point onward, OHA's jurisdiction has evolved to meet the needs of various DOE programs, including those in the personnel security and whistleblower areas.

Over the years, OHA has adjudicated appeals from a variety of DOE determinations, including those related to: the Department's Alternative Fuel Transportation Program; physician panel reviews of DOE worker occupational illness claims; payment-equal-to-taxes claims under the Nuclear Waste Policy Act of 1982; and equity interests in the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1.

In FY 2016, OHA continued to conduct personnel security and whistleblower proceedings, consider FOIA and Privacy Act Appeals, and rule on requests for exception from energy efficiency regulations. OHA also conducted a number of high level fact-finding reviews.

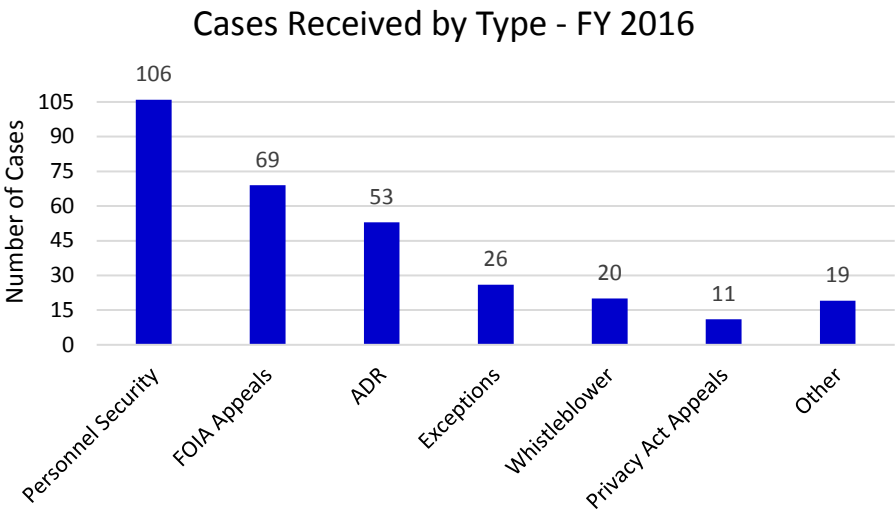
The procedures that OHA uses vary, depending on the type of case involved. OHA procedures are flexible and easily adaptable to new situations, allowing OHA to minimize “start-up” times and to produce high-quality work in new areas. OHA's general procedures and those used for specific proceedings can be found on our web site at <http://energy.gov/oha>, under “Services.”

In the end, OHA's adjudicative work involves more than resolving disputes; the decisions reflect the balancing of important and varied interests, including those of the public, the Department, industry groups, and individual litigants.

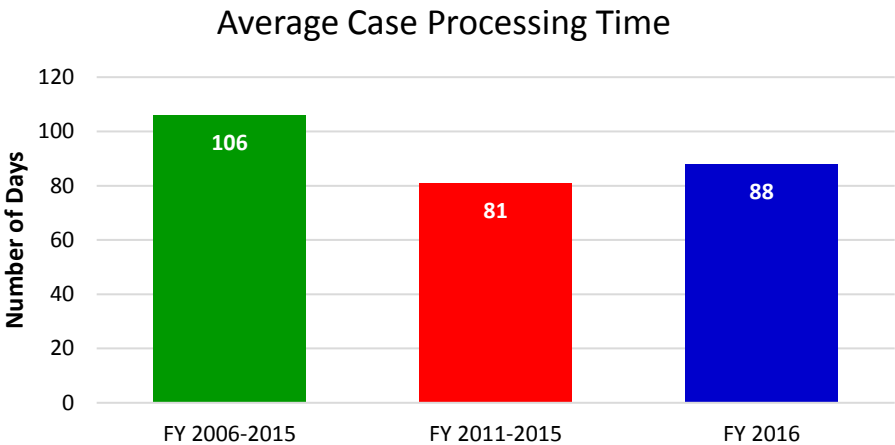
In addition to its adjudicative work, OHA has been promoting the understanding and use of Alternative Dispute Resolution (ADR) throughout the Department. Activities include a mediation program, training, and support for inter-agency ADR activities.

OVERVIEW OF FY 2016 CASE PROCESSING

In FY 2016, OHA received a total of 304 cases. The greatest number of these were personnel security hearings and Human Reliability Program (HRP) cases, followed by FOIA and Privacy Act appeals, ADR inquiries and mediations, exception applications, and whistleblower cases (investigations, hearings, and appeals). The following chart shows the volume of cases, by type.



In FY 2016, OHA closed a total of 272 cases. The chart below shows the average case-processing time for cases closed in FY 2016, and over the last five and ten fiscal years. Our average case-processing time was slightly higher than our most recent five-year average and 17% less than our ten-year average. We attribute the increased processing time to the type and complexity of the cases adjudicated this year.



AREAS OF OHA JURISDICTION

PERSONNEL SECURITY

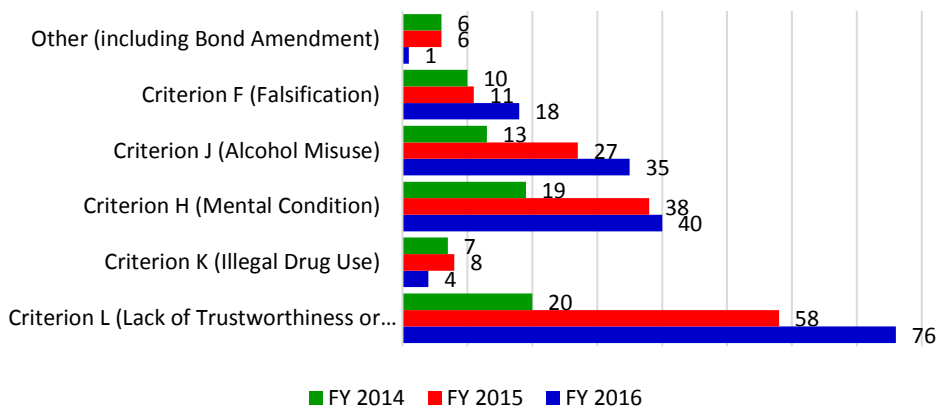
In FY 2016, 106 cases (35% of those received by OHA) concerned a federal or contractor employee's eligibility for a DOE security clearance. Included in this type of case are reviews for eligibility for the Human Reliability Program, a security and safety reliability program for individuals who may have access to certain material, nuclear devices, or facilities. The governing regulations are set forth at 10 C.F.R. Parts 710 (security clearances) and 712 (HRP). Upon request, OHA also conducts security clearance hearings for the Nuclear Regulatory Commission (NRC). In FY 2016, OHA handled three cases for the NRC.

OHA's web site contains a "Frequently Asked Questions" page to assist individuals in understanding the personnel security hearing process.

Personnel security hearings typically involve concerns about excessive alcohol use, substance abuse, mental illness, financial irresponsibility, or conduct raising doubt about an individual's honesty and reliability, among other issues. Evidence and testimony may include expert medical opinion. The OHA Administrative Judge assigned to the case conducts a hearing, analyzes the evidence, and renders a decision, which may be appealed to an Appeal Panel within DOE.

The following chart shows the number of cases in which various types of concerns - also referred to as "criteria" - were raised. Some cases involve multiple criteria. For example, a case may involve a concern about excessive alcohol use (Criterion J) and a mental condition (Criterion H). Notable in FY 2016 was the rise of cases involving a lack of trustworthiness or reliability, an increase we also saw in FY 2015.

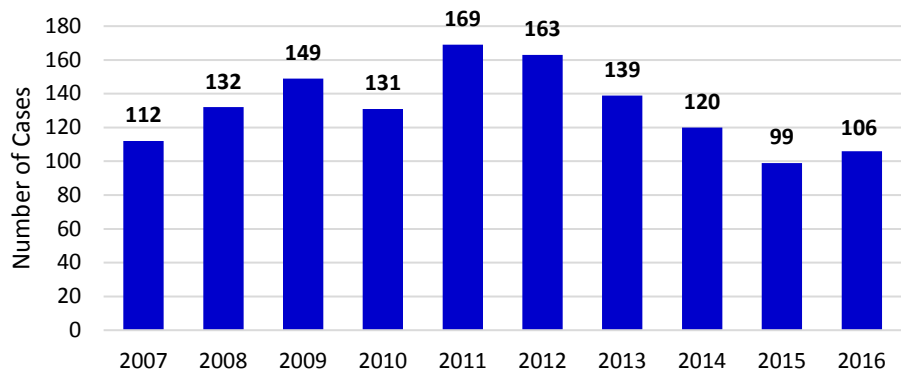
Criteria Invoked in Personnel Security Cases



■ FY 2014 ■ FY 2015 ■ FY 2016

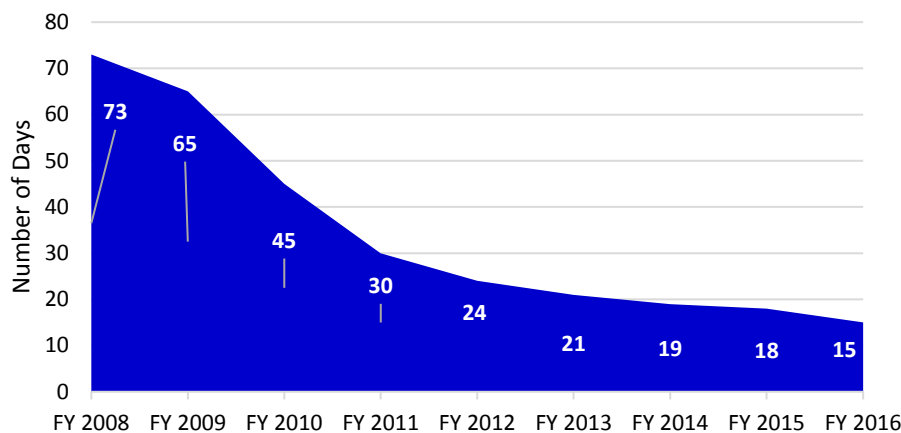
The following chart shows the number of personnel security cases received during each of the last ten years. The number of personnel security cases received in FY 2016 (106) was consistent with the number received in FY 2015, but fewer than in previous years. We expect the number of cases received to increase, as reviews of background investigations are completed and the results provided to the Department.

Personnel Security Cases Received
FY 2007-2016



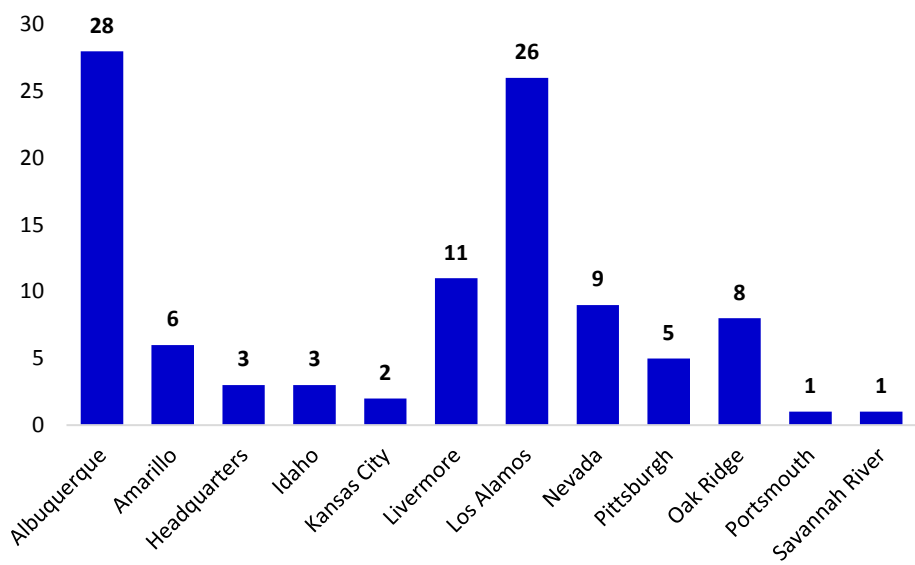
Consistent with our historical trend, we continued to reduce our processing time for personnel security cases. Average case processing time for FY 2016, measured from the receipt of the transcript to the issuance of the decision, was 15 days. This average has been trending downward since 2008, when it was 73 days. See the chart below for data regarding the processing time since FY 2008.

Average Time to Issue Decision After
Receipt of the Hearing Transcript



The majority of our personnel security cases are referred to us from the National Nuclear Security Administration (NNSA), Office of Defense Nuclear Security, in Albuquerque, New Mexico. NNSA personnel holding security clearances are located at Albuquerque, Amarillo, Kansas City, Livermore, Los Alamos, Nevada, Oak Ridge, and Savannah River.

Location of Personnel Security Cases Received in
FY-2016



In the area of personnel security, OHA also serves its DOE customers by regularly participating in the training of those involved in the Administrative Review process. For example, OHA Administrative Judges have participated in training for Personnel Security Specialists.

SAMPLE PERSONNEL SECURITY CASE DECISION SUMMARY

Case No. PSH-16-0050 - In the Matter of Personnel Security Hearing

An OHA Administrative Judge issued a decision in which he determined that an individual's DOE access authorization should not be restored. The individual had: (1) submitted a signed Questionnaire for National Security Positions (QNSP) in which she failed to disclose several outstanding financial delinquencies, including a state tax lien, and five collection accounts; (2) falsely denied having any bills or debt turned over to a collection agency during the past seven years during a Personnel Security Interview (PSI); and (3) had three unpaid collection accounts totaling \$1,779, and one past due account totaling \$471. The individual presented evidence showing that she had satisfied all of her outstanding debts, and that her monthly income now exceeded her expected monthly expenses by a considerable margin. Accordingly, the Administrative Judge concluded that she had resolved the security concerns arising from her outstanding debt. The Administrative Judge, however, found that the security concerns raised by the individual's failure to disclose her financial difficulties and her false statements during the PSI were intentional. Accordingly, the Administrative Judge found that the security concerns arising from them remained unresolved. Therefore, the Administrative Judge found that the individual had not resolved all of the security concerns raised by DOE.

The full text of this decision can be found at

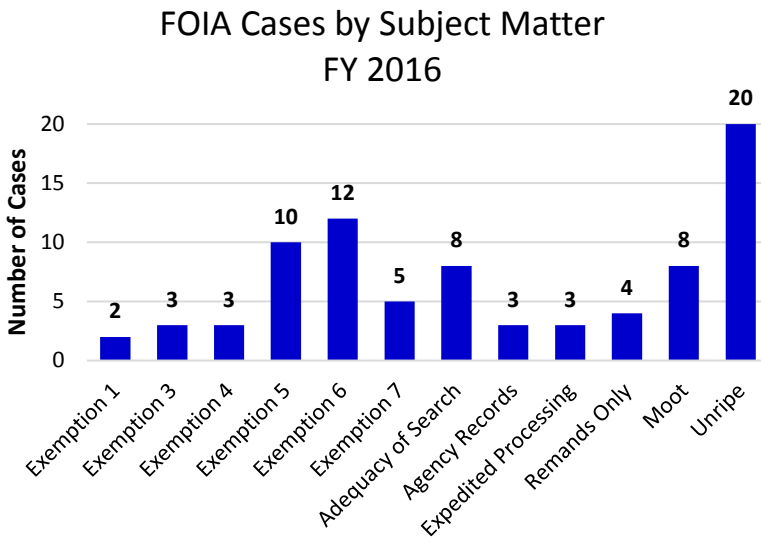
<http://www.energy.gov/sites/prod/files/2016/09/f33/PSH-16-0050.pdf>

FREEDOM OF INFORMATION AND PRIVACY ACTS

OHA considers appeals of agency determinations under the Freedom of Information Act (FOIA) and Privacy Act (PA). The governing regulations are set forth at 10 C.F.R. Parts 1004 and 1008, respectively. These appeals arise from determinations across the DOE complex and involve diverse subject matter areas. OHA facilitates communication between the requester and the agency, which in some cases permits the resolution of the issues without adjudication.

OHA receives appeals from varied entities, most commonly individuals. In FY 2016, the appeals involved records on a broad range of topics, including (but not limited to): (1) records about the requester; (2) the identities of DOE and contractor employees; and (3) DOE current and past operations.

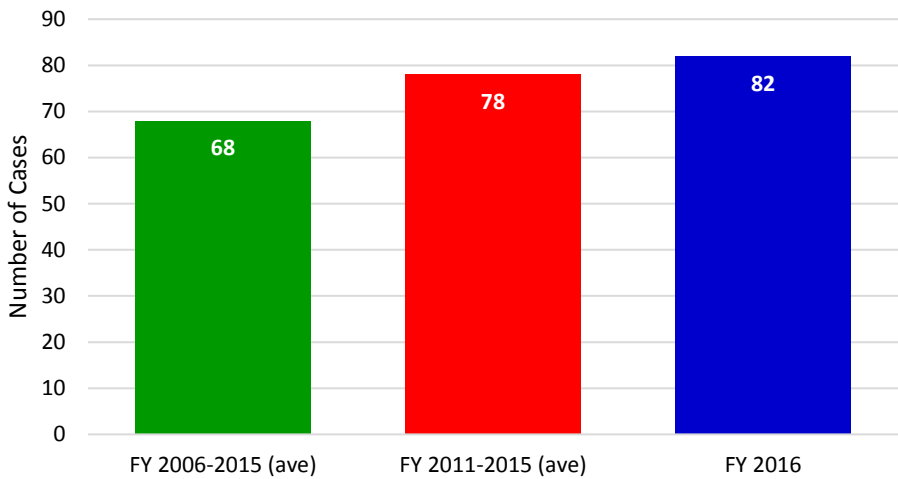
OHA works closely with DOE's FOIA and Privacy Act offices, and participates in complex-wide training. As a result of this collaboration, the DOE FOIA and Privacy Act offices include our email inbox address, OHA.filings@hq.doe.gov, in their determination letters to facilitate electronic filings.



Exemption 1--National Security Information; Exemption 3--non-disclosure under other federal statutes; Exemption 4--trade secrets and commercial or financial information obtained from an entity; Exemption 5--documents exempt in the civil discovery context; Exemption 6--personal privacy interests; and Exemption 7--documents compiled for a law enforcement purpose.

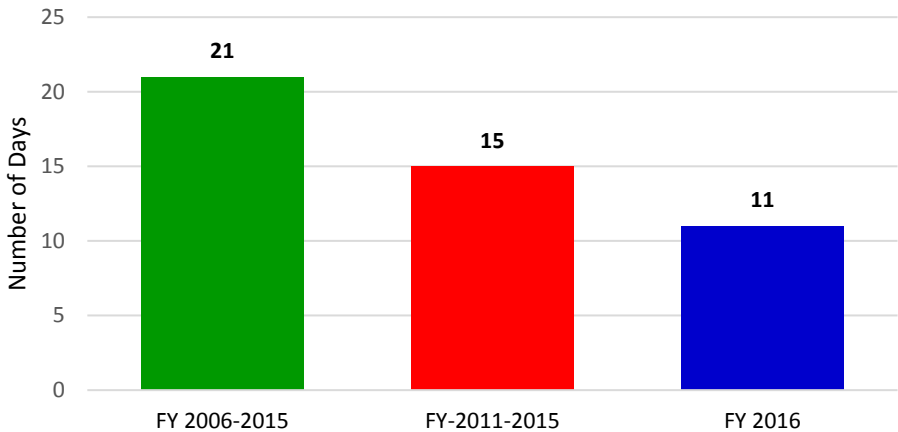
As shown in the chart below, during FY 2016 we received 82 FOIA and Privacy Act Appeals, 5% higher than our most recent five-year average and 17% higher than our most recent ten-year average.

FOIA and Privacy Act Cases Received



Despite the higher number of cases received, our case-processing time in FY 2016 continued a downward trend. The average case processing time for FY 2016 was 11 days, 27% lower than the most recent five-year average of 15 days and 48% lower than the most recent ten-year average of 21 days.

Average FOIA and Privacy Act Processing Time



OHA's FOIA appeals process, which is one of the most efficient in the federal government, has been praised by the Office of Government Information Services, which stated that "appeal responses from the [DOE'S OHA] are detailed and reflect that the office has gone through a thorough process of fact gathering and analysis before issuing the response."

SAMPLE FREEDOM OF INFORMATION ACT CASE DECISION SUMMARY

Case No. FIA-16-0033 - In the Matter of Actuation Test Equipment Company

On June 20, 2016, OHA denied a FOIA Appeal filed by Actuation Test Equipment Company from a determination issued by the Bonneville Power Administration (BPA) of the Department of Energy. In the Appeal, the Appellant challenged BPA's withholdings under FOIA Exemption 7(F), which protects information compiled for law enforcement purposes. The withheld information originated with the U.S. Army Corp of Engineers and the U.S. Bureau of Reclamation, and both those agencies opined that the documents were compiled for law enforcement purposes. After reviewing the withheld information, OHA issued a decision denying the Appeal. OHA cited court precedent, holding that preventing dam attacks and ensuring dam security during emergencies were valid law enforcement purposes, as was the protection of sensitive information that an agency reasonably estimates could be used for nefarious means. Accordingly, OHA held that BPA properly applied Exemption 7(F) to the withheld material.

The full text of this decision can be found at

<https://energy.gov/sites/prod/files/2016/06/f33/FLA-16-0033.pdf>

WHISTLEBLOWER

OHA investigates complaints, conducts hearings, and considers appeals under DOE's Contractor Employee Protection Program. The program provides an avenue of relief for DOE contractor employees who suffer reprisal as the result of making protected disclosures or engaging in other types of protected activity. The governing regulations are set forth at 10 C.F.R. Part 708. OHA's website, available at <http://energy.gov/oha>, contains a "Whistleblower Q&A's" page to assist DOE field personnel and contractor employees in understanding the process for considering contractor employee reprisal complaints.

The main issues in these cases are whether an employee engaged in protected activity and, if so, whether the contractor would have taken an adverse action against the employee in the absence of that activity. An OHA Investigator conducts interviews, examines documentary evidence, and issues a report. Following the issuance of the report, an OHA Administrative Judge is assigned to the case. The Administrative Judge rules on pre-hearing motions, conducts a hearing, and issues an initial agency decision, which may be appealed to the OHA Director. The OHA Director also hears appeals from dismissals of complaints.

A finding of reprisal for certain types of disclosures may result in civil penalties pursuant to the DOE enforcement programs under the Price-Anderson Act and the DOE Worker Safety and Health Rule (10 C.F.R. Part 851).

OHA received 20 whistleblower cases in FY 2016, with a higher than usual percentage of hearings, the most lengthy of the Part 708 processes. Average case-processing time in FY 2016 was 84 days, 3% below our average over the last four years. In addition, no case in our end-of-year inventory was older than 180 days.

The DOE Contractor Employee Protection Program is part of a larger DOE program - the DOE Employee Concerns Program (ECP). On January 1, 2016, responsibility for the ECP was transferred from the Office of Economic Impact and Diversity to the Office of Environment, Health, Safety and Security (EHSS). OHA continues to work closely with the ECP.

SAMPLE WHISTLEBLOWER CASE DECISION SUMMARIES

Case No. WBU-16-0001 – In the Matter of Robert Schweiger

On March 4, 2016, OHA denied an appeal of a dismissal of a Part 708 complaint filed by Robert Schweiger against Bechtel National, Inc. (BNI). Mr. Schweiger was a field piping engineer at BNI's Waste Treatment Plant project at DOE's Hanford Site. In his complaint, Mr. Schweiger alleged that he complained about the quality of his supervisor and BNI management, and that he revealed to BNI management that he acted as a whistleblower while working for a different employer about two decades earlier. He alleged that, in retaliation, BNI denied him training, treated him disrespectfully, and terminated him. DOE's Office of River Protection (ORP) found that Mr. Schweiger had failed to allege that he engaged in any activities that are protected under Part 708. On appeal, OHA agreed with the ORP, finding that Mr. Schweiger's alleged disclosures were not the kind of disclosures that Part 708 protects. In its decision, OHA noted that Part 708 is not intended to manage the day-to-day human resource decisions of DOE contractors.

The full text of this decision can be found at

<http://energy.gov/oha/downloads/wbu-16-0001-matter-robert-schweiger>.

Case No. WBU-16-0007 – In the Matter of Charles Dalton

On August 12, 2016, OHA granted an appeal of a dismissal of a complaint filed by Mr. Charles Dalton against BWX Technologies, Inc. (BWXT). Mr. Dalton is an employee in BWXT's Quality Control division. He alleged in his complaint that he reported to the Nuclear Regulatory Commission and the DOE's Inspector General various problems with the techniques used by BWXT to inspect the fuel elements that it supplies to its customers, including DOE. He further alleged that, in response to his disclosures, managers at BWXT criticized him in a memo sent to colleagues, and that a manager threatened to take disciplinary action. In dismissing the complaint, the Idaho Operations Office found that Mr. Dalton had not alleged that BWXT took an adverse action that could qualify as retaliation under Part 708. However, OHA found that considering all materials in a light most favorable to Mr. Dalton, it could not conclude that Mr. Dalton had failed to allege an act of retaliation. In its decision, OHA stated that written reprimands can in some circumstances qualify as retaliation, as can threats to take disciplinary action. Accordingly, OHA granted the Appeal and remanded the matter for further processing.

The full text of this decision can be found at

<http://energy.gov/sites/prod/files/2016/08/f33/WBU-16-0007.pdf>.

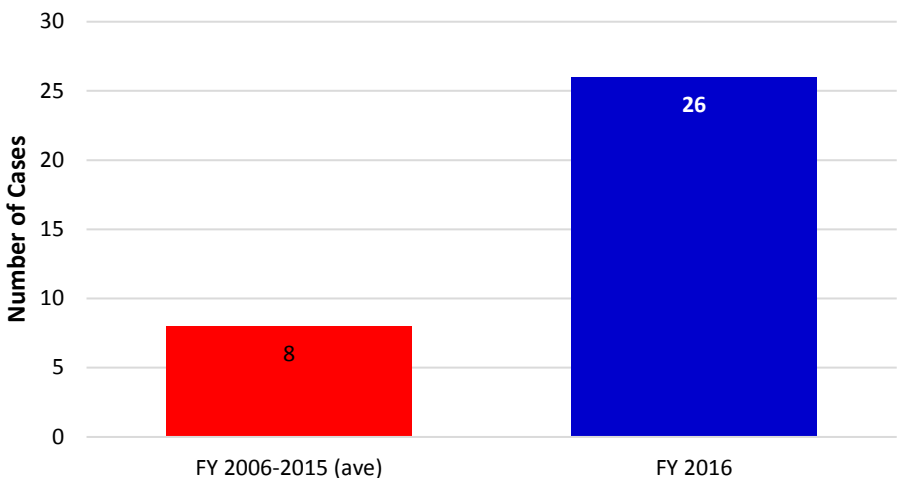
EXCEPTIONS AND SPECIAL REDRESS

OHA considers petitions for special redress, as well as requests for exception from certain DOE regulations and orders. The exception process is a regulatory relief valve. An exception is granted where the application of a regulation, rule, or order would constitute a gross inequity, serious hardship, or unfair distribution of regulatory burdens. OHA may grant an exception, for example, if applying a rule to a specific firm would be inconsistent with the overall purpose of a program or would impose a burden on the firm that would be grossly disproportionate to the burden imposed on other firms. The nature of relief granted varies depending on the DOE regulations at issue, the hardship faced by the firm, and other circumstances. In all cases, OHA consults with the relevant DOE program office(s) prior to issuing a decision.

The number of exception requests tends to increase as the deadline for compliance with a regulation approaches. The energy efficiency standards for which we received exception requests included standards for distribution transformers, external power supplies and electric motors. OHA's exception relief activities in FY 2016 helped ensure that these standards did not impose an undue hardship or inequity on a given firm.

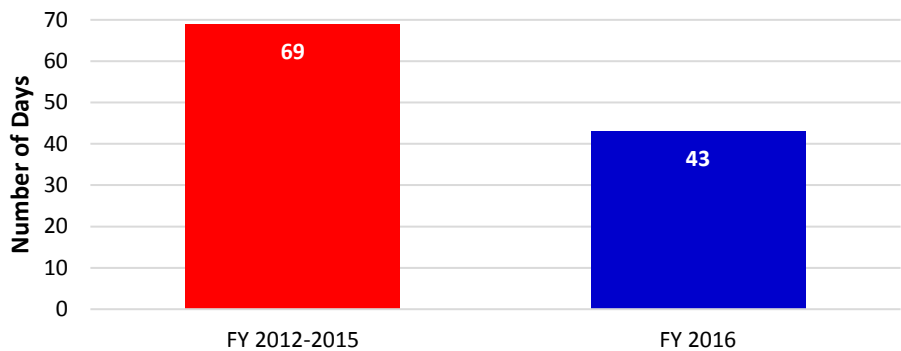
In FY 2016, OHA received a significantly higher number of exception requests than received during the previous 10 fiscal years, receiving 26 cases in FY 2016 versus 8 cases annually, on average, between FY 2006 and FY 2015.

Exception Cases Received



The graph below shows average case processing time. In 2016, OHA closed 24 cases in an average of 43 days, versus an average of 69 days for the average 16 cases OHA handled annually between FY 2012 and FY 2015. (Two exception cases remained open at the end of FY 2016.)

Average Exception Case Processing Time



**SAMPLE EXCEPTIONS AND SPECIAL REDRESS
CASE DECISION SUMMARY**

**Case No. EXC-16-0008 - In the Matter of Visual Sound LLC dba
Truetone**

On July 5, 2016, OHA granted an Application for Exception filed by Visual Sound LLC, also known as Truetone. The firm is a manufacturer of two external power supply (EPS) products that provide a power supply to effects pedals, which musicians use to modify the sounds produced by electric guitars and other electric instruments. Truetone’s EPS products are designed to provide effects pedals with a power supply while also preventing the introduction of unwanted noise caused by high frequency harmonics. In an Application for Exception filed with OHA, Truetone requested exception relief from DOE’s new energy conservation standards for EPSs, which came into effect on February 10, 2016. In its Application, Truetone demonstrated that compliance with the new standards would interfere with the purpose of its EPS products by introducing unwanted noise into the musical signal path. Musicians would then discontinue buying those products, which would in turn cause a serious hardship, a gross inequity, and an unfair distribution of burdens for Truetone. Consequently, OHA granted the Application for Exception.

The full text of this decision can be found at
<http://energy.gov/oha/downloads/exc-16-0010-matter-visual-sound-llc-dba-truetone>.

OTHER AREAS OF OHA JURISDICTION

Hydroelectric Production Incentives Program

OHA received three appeals under the DOE Hydroelectric Production Incentives Program, authorized by Section 242 of the Energy Policy Act of 2005. The Section 242 Program directs DOE to make incentive payments to the owner or operator of a qualified hydroelectric facility based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. Any qualified owner or operator of a hydroelectric facility who added hydropower to non-powered dams or conduits between 2005 and 2015, but where the original dam/conduit was built prior to 2005, is eligible to apply for the Section 242 Incentive Program. In each of the three Section 242 appeals received in FY 2016, OHA upheld a notice of denial of a hydroelectric incentive payment issued by the DOE Office of Energy Efficiency and Renewable Energy, finding that the hydroelectric facilities failed to meet these eligibility requirements.

SAMPLE HYDROELECTRIC PRODUCTION INCENTIVES PROGRAM CASE SUMMARY

Case Number HEA-16-0003 - In the Matter of Steels Pond Hydro Inc.

OHA issued a decision denying an appeal filed by Steels Pond Hydro Inc. (Steels Pond) of a notice issued by DOE's Office of Energy Efficiency and Renewable Energy (EERE). EERE found that Steels Pond was not eligible for an incentive payment under the Program because none of the turbines that Steels Pond installed met the definition of "qualified hydroelectric facility" as defined in a DOE Guidance Document regarding Section 242. In particular, the EERE found that the turbines installed by Steels Pond did not qualify as "added" turbines, because those turbines had not been offline for five consecutive years immediately prior to October 1, 2005. After verifying that Steels Ponds could not establish that any of its turbines had been offline in the five years immediately prior to October 1, 2005, OHA agreed with the EERE that Steels Pond did not install equipment meeting the Guidance Document's definition of "qualified hydroelectric facility." Accordingly, OHA denied the appeal

The full text of this decision can be found at

<http://energy.gov/sites/prod/files/2015/06/f22/HEA-15-0001.pdf>

Medical Certification Disqualification

OHA adjudicated one appeal under the Medical, Physical Readiness, Training, and Access Authorization Standards for Protective Force Personnel, 10 C.F.R. Part 1046. Under this Program, a Security Police Officer who receives a medical certification disqualification may seek a final review by OHA, pursuant to 10 C.F.R. § 1046.15(d).

SAMPLE MEDICAL REVIEW DISQUALIFICATION CASE SUMMARY

Case Number MCD-15-0001 – In the Matter of [DOE Worker]

OHA issued a decision to the Associate Under Secretary for Environment, Health, Safety and Security, remanding a request for Final Review. The Independent Review found that a worker had a permanent medical disqualification from the Special Police Officer (SPO) position due to loss of visual acuity in his left eye. The Individual, in his Final Review request, contended that he can perform the essential functions of his position, citing the recent renewal of his driver's license in August 2015, passing of tests in the "two-man and four-man room clearing skills, porting doorways, active shooter techniques, and direct threat techniques." The Individual also claimed that he met the firing arms depth perception requirements in normal and low light conditions, even prior to receiving contact lenses. OHA found that the doctor performing the Independent Review did not make a medical determination of the Individual's "inability to perform essential functions or to undertake training or the physical readiness qualification test without undue medical risk to the health and safety of the individual" as required by the regulations. 10 C.F.R. § 1046.15(c)(6)(ii). Moreover, the doctor did not analyze the validity of the stated physical requirements and essential functions for the SPO position, which is also required during the Independent Review. Therefore, OHA remanded the matter to the Associate Under Secretary for the Office of Environment, Health, Safety and Security to issue a new determination that includes a record of the Individual's visual acuity at the time of review, and considers all the factors outlined in 10 C.F.R. § 1046.15(c)(6).

Fact Finding Reviews

At the request of DOE management officials, OHA conducts independent fact finding reviews on specified issues. A management official may seek review of a specific allegation of misconduct that has been lodged, or a more general review of the workplace environment. As part of its review, OHA conducts interviews and collects relevant documents, and prepares a written report that is delivered to the management official. In FY 2016, OHA conducted fact finding reviews on behalf of five DOE offices.

Subpart V Refund Proceeding

In 2016, DOE and OHA announced the conclusion of the crude oil overcharge refund program. Over the course of that program, OHA processed more than 100,000 crude oil refund applications, and distributed approximately \$4.7 billion to individual claimants, the states and federal government.

The crude oil refund program started in response to crude oil companies overcharging for petroleum products in the 1970s. Congress authorized DOE to collect and distribute remittances from those companies to individuals, states, and the federal government entities that had been overcharged. Starting in 1980, refunds from violations in the 1970s were collected and held in escrow by the Department through accounts administered by the U.S. Treasury.

In 1986, the Department and other parties entered into a court-approved settlement agreement that formally established the crude oil overcharge refund program. This agreement determined that crude oil producers would remit the money that they had overcharged customers, and that the Department would be responsible for distributing the remittances to claimants, including small businesses, individuals, states, and the U.S. Treasury.

With the completion of the oil overcharge refund program, DOE is transferring over \$250 million remaining in escrowed funds to the U.S. Treasury general fund, where the money will continue to be used as indirect restitution to the American people.

ALTERNATIVE DISPUTE RESOLUTION OFFICE

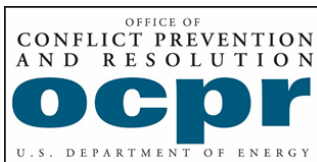
The Alternative Dispute Resolution Office (ADR Office) is the organization within OHA that serves as an ADR resource for all DOE components and contractors. FY 2016 was a transformational year for the ADR Office, in which it undertook several initiatives to build on its past successes and to continue its high level of service in carrying out its mission. The ADR Office is tasked with several responsibilities, including, but not limited to, managing DOE's Mediation Program, providing ADR training services, and promoting the use of ADR throughout DOE.

In FY 2016, the ADR Office came under new leadership and hired additional staff to continue building on its past successes, and to undertake new initiatives.

Name Change

As a part its transformation, the Office changed its name and updated its logo, to better convey its message of trust, collaboration and self-determination.

Former Name & Logo



New Name & Logo



The ADR Office also developed a branding scheme to reinforce the organization's mission and purpose. A new brand for the ADR Office helps to create a durable and distinctive image that serves as a reflection of the office's services. The new branding scheme is now infused in all office guidance documents, presentations, webpages, flyers, and banners in order to create a common thread that imputes professionalism, expertise, and purpose.

Other Improvements

The ADR Office developed and implemented process improvements for its Mediation Program. The purpose of those initiatives was multifaceted. First, the initiatives were geared to keep mediation participants better informed about the stages

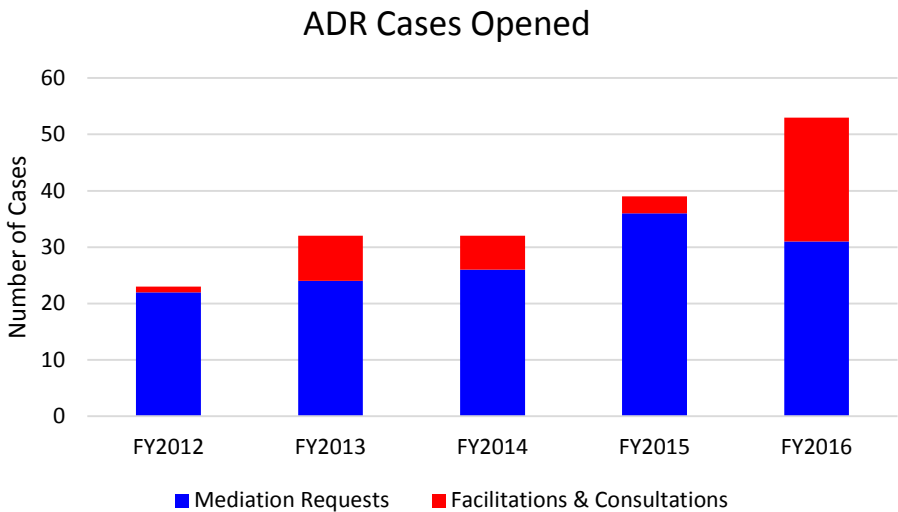
and procedures comprising the mediation process. Second, they were geared to ensuring that the parties had the necessary authority to enter into a settlement agreement. Third, they ensured that the appropriate internal concurrences were received prior to the execution of a settlement agreement.

In coordination with the new process initiatives, the ADR Office updated pre-existing guidance documents and also created several new guidance documents. The use of the guidance documents allowed for more informed participants, more consistent and efficient program management, and continued compliance with the EEOC’s Equal Employment Opportunity Management Directive 110 for EEO cases.

Activities

The ADR Office provides mediation, facilitation, consultation and training services to DOE federal and contractor employees in all levels of the DOE complex to help prevent and resolve disputes at the earliest possible stages without resorting to litigation.

In FY 2016, the ADR Office opened 53 new ADR cases, a 35% increase over FY 2015, which continues the yearly increase in new ADR cases over the last several years. The ADR Office conducted 14 mediations, of which 8 cases settled, marking a settlement rate of 57% which was approximately the same as in FY 2015. Each mediation request case was open for an average of approximately 52 calendar days. In the other ADR cases, the ADR Office provided facilitation or consultation services. At the end of FY 2016, 5 ADR cases remained open.



Events

As in years past, the ADR Office organized events for the annual celebration of Conflict Resolution Day (CRD). CRD is recognized each year on the third Thursday in October, and has been celebrated at DOE for several years. The ADR Office spearheaded this event and invited other resource offices to participate in an effort to promote conflict management and dispute resolution services. As part of the CRD, the ADR Office hosted an inter-agency ADR Lunchtime Series Program on “Civility in the Workplace.” The presentation was designed to offer simple strategies for reclaiming civility as something that is good for an individual, is good for others, and is a useful strategy in preventing and managing conflict in the workplace. The Meet & Greet events provided an opportunity for the DOE workforce to meet and interact directly with the conflict resolution service providers, and obtain more information about the services generally.

The ADR Office works collaboratively with the Federal Interagency ADR Working Group (IADRWG), of which the ADR Office staff have been longstanding members, to organize presentations by guest speakers on ADR-related topics. These presentations, including the one for CRD mentioned above, are hosted at DOE and are open to the public. The majority of participants (approximately 300 individuals on average) attend virtually via telephone and WebEx and consist of ADR practitioners in the public and private sectors nationwide. The presentations are recorded and then posted on the ADR Office website to facilitate broader public access. This year, the ADR Office hosted six ADR Lunchtime Series programs. Some of the highlighted topics included: crisis negotiation, the revised EEO process, and mindfulness and resilience for conflict resolvers.

Training and Outreach

During FY 2016, the ADR Office engaged in training activities in furtherance of its mission. The ADR Office arranged for three customized skills training courses for its mediators and ADRO staff as part of its continuous improvement initiatives. In addition, ADRO staff attended the American Bar Association (ABA) Dispute Resolution Section’s annual conference, which provided an opportunity to learn best practices, network, and keep abreast of emerging topics in the ADR field.

In FY 2016, the ADR Office took steps to increase DOE employee and manager awareness of the ADR Office and its services. For example, ADR Office staff initiated an informational presentation twice a month for new DOE employees during their orientation to introduce them to the concept of ADR, its benefits, and the services available. Moreover, the ADR Office is invited to present as a regular part of the curriculum in DOE comprehensive training sessions for new supervisors, and any supervisors looking for a refresher on essential skills. This training is an expanded

version of the orientation provided to new employees, and includes additional information designed for supervisors to improve identification and management of conflict with their employees or between employees.

The ADR Office also restarted its quarterly ADR Points of Contact (POC) group meetings dedicated to providing direct access to ADR resources to employees within each represented organization. Members include resource providers, managers, and employees from different program offices who problem-solve together and help ensure that information about ADR spreads across the complex.

In FY 2017, the ADR Office will continue to reinforce its programs and look for ways to build on its history to promote the use of ADR throughout DOE.

COLLABORATIONS AND IMPROVEMENTS

Working with Other DOE Offices and Federal Agencies

Over the years, OHA has collaborated and partnered with other DOE offices and federal agencies, and FY 2016 was no exception.

- In the FOIA area, OHA organized and, with the assistance of the Office of the General Counsel (GC), hosted a series of four one-hour discussion sessions in FY 2016 on various Freedom of Information Act (FOIA) topics of current interest. The sessions were conducted by conference call, allowing between 30 and 40 FOIA practitioners and attorneys from throughout the DOE complex to participate in each session. After OHA and GC attorneys delivered a brief presentation on the session's topic, the participants aired their questions, perspectives, and suggestions. We will continue this well-received program in FY 2017.
- OHA continued to collaborate with other DOE offices concerning the Department's processes for addressing employee concerns, including the development of a centralized source of information on resources for employees.
- OHA continued to host the ADR luncheon series, which is sponsored by the Interagency Alternative Dispute Resolution Working Group and attended by ADR practitioners across the federal government and in the private sector.
- OHA conducted reviews on specified issues for DOE organizations requesting fact-finding services.
- OHA hosted a Video Teleconference (VTC) call with ECP managers regarding a possible modification of the Part 708 regulations.
- OHA continued its series of occasional Brown Bag Lunches, open to all DOE employees. Our distinguished guests in the past year included Michael Bogdanow, Senior Legal Liaison, Merit Systems Protection Board, and Tracey Berry, Director, Office of Departmental Personnel Security.
- OHA arranged training opportunities that have been shared with other offices in DOE. OHA hosted "Creating Effective Strategies for Managing the Challenging Workplace," Lexis/Nexis training, and Facilitation Skills Training. In addition, OHA personnel attended training at the Equal Employment Opportunity Commission, including Drafting Final Agency Actions, New Investigator Training, and Investigator Refresher Training.

We continue to learn from our colleagues, and hope that they gain a better understanding of OHA and what they can do to take advantage of the expertise, resources, and services we offer in support of DOE's mission.

Webpage Upgrade

The webpage is the starting point for constituents seeking information about OHA. OHA has had a presence on the web since 1996. The website has gone through many iterations over the years, and FY 2016 was no different. OHA's webpage was revamped to be more streamlined and to enhance its transparency, appeal and more intuitive format

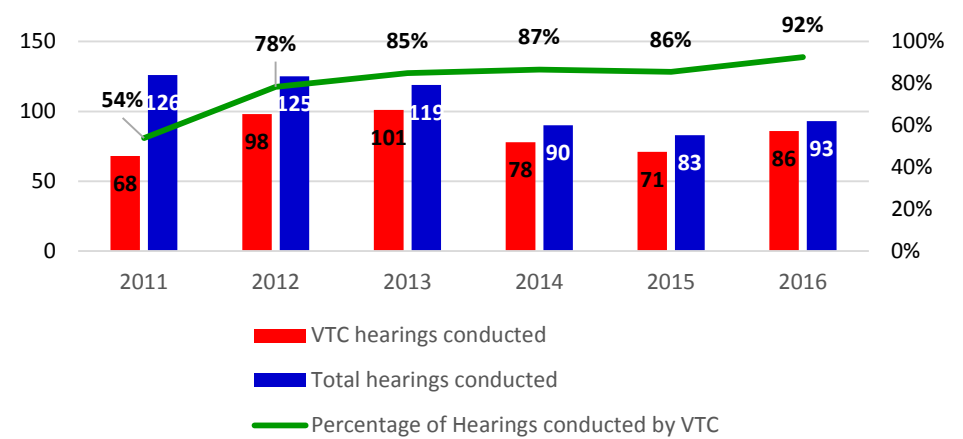
Information Technology

OHA continues to make broad use of technology to accomplish its mission. OHA maintains a website where it publishes its decisions and other information. Also, Lexis/Nexis, a legal decision database service, is now publishing OHA's decisions for its subscribers. Internally, OHA uses an electronic case management system to maintain case files, track the status of pending cases, produce productivity and case status reports, and assist staff attorneys in the timely resolution of assigned cases. To further support the Information Technology effort, OHA has established a wireless network to encompass the OHA office space. This wireless network has improved the use of our conference room and VTC hearing rooms, allowing Administrative Judges to use their laptop computers to conduct hearings without, for example, printing out exhibits.

In FY 2016, OHA continued its drive to utilize technology to reduce paper as outlined in Executive Order, Planning for Federal Sustainability in the Next Decade, issued March 19, 2015, § 3(i)(v). Other DOE offices continue to include our email address, OHA.Filings@hq.doe.gov, in their letters informing parties of their appeal rights. OHA receives most of its incoming submissions by email. Further, most outgoing interoffice communications are sent by electronic means, including personnel security decisions.

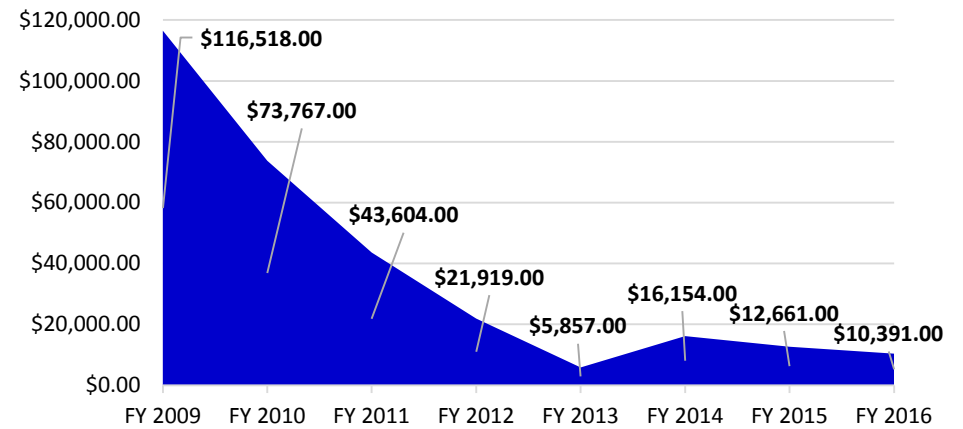
In FY 2016, OHA conducted 86 personnel security hearings via video teleconference, 92% of all hearings conducted in the fiscal year.

Percentage of Hearings Held By VTC FY 2010-2015



VTC hearings have allowed OHA to significantly reduce travel expenditures over the past six years. In 2009, OHA spent over \$116,000 on travel. In 2016, OHA’s travel costs were less than \$11,000, a decrease of 91%.

Obligated Travel Funds



OHA AND THE COMMUNITY

Serving Our Community

In FY 2016, for the seventeenth year in a row, OHA supported the “Everybody Wins!” lunchtime reading program at Amidon-Bowen Elementary School. Apart from this program, OHA staff members donate their time and skills to their communities in a variety of ways.

Our Workforce

In FY 2016, OHA recognized the service of our long-time employees, giving certificates and pins to those who have been in government service for 40, 35, 30, 25, and 10 years. The Deputy Under Secretary for Management and Performance, David M. Klaus, was on hand to present the certificates and pins.



GENERAL INFORMATION

- ▶ Extensive information about the Office of Hearings and Appeals (OHA) is available on our website at <http://energy.gov/oha>. The website includes information about OHA's jurisdiction, including applicable regulations, Frequently Asked Questions, and OHA decisions.
- ▶ For copies of submissions in OHA proceedings, you may contact the Docket and Publications Branch at OHA.Filings@hq.doe.gov. You may also FAX your inquiries to (202) 287-1415.
- ▶ For general information, or to give us feedback on any aspect of our operations, please email us at OHA.Filings@hq.doe.gov.

For more information about the
Office of Hearings and Appeals, please go to
<http://energy.gov/oha>