ANSWER: There are no statutory or regulatory impediments to the agency's operations.

40. Please list all regulations for which the agency is responsible for oversight or implementation. Please list by chapter and subject heading, including the date of the most recent revisions.

ANSWER: Appeals filed with the Office of Employee Appeals are cover by District Personnel Manual (DPM) chapters 6, 16, and 24. Additionally, the Office of Employee Appeals is governed by D.C. Official Code § 1-606.01 *et seq.*

41. Did the agency receive any FOIA requests in FY 2016? If yes, did the agency file a report of FOIA disclosure activities with the Secretary of the District of Columbia? If yes, please provide a copy of the agency's report as an attachment.

ANSWER: The agency received two FOIA requests in FY2016. An Annual Freedom of Information Act Report for Fiscal Year 2016 was filed. Please see Attachment #5.

42. Has the Inspector General issued any report on any aspect of the agency's activities within the last 3 years? If yes, please list (and also provide a copy of the report) and note what actions have been taken to address the recommendations made by the Inspector General.

ANSWER: The Inspector General has not issued any report on any aspect of the Office of Employee Appeals' activities within the last 3 years.

Agency Specific Questions for the Office of Employee Appeals (OEA)

43. How many of OEA's decisions were appealed in fiscal years 2016 and 2017 (to date)?

ANSWER: In fiscal year 2016, there were twenty-five (25) appeals filed in the Superior Court for the District of Columbia, and two (2) appeals filed in the D.C. Court of Appeals. In fiscal year 2017 (to date), there have been six (6) appeals filed in the Superior Court for the District of Columbia and one (1) appeal filed in the D.C. Court of Appeals.

44. Of those decisions that were appealed in fiscal years 2016 and 2017 (to date), how many were overturned? Please provide a brief description as to why those decisions were overturned.

ANSWER: Please note that although some matters were appealed to the Superior Court of the District of Columbia and the D.C. Court of Appeals in fiscal year 2016, some decisions were not issued until fiscal year 2017. Likewise, there were decisions issued by the courts during fiscal years 2016 and 2017 (to date) that were appealed prior to fiscal year 2016. Moreover, of the thirty-four (34) total appeals filed in both courts in fiscal years 2016 and 2017 (to date), only five (5) decisions have been issued thus far. The other matters are still pending on the courts' dockets. Of the five (5) decisions that have

been issued, the Office of Employee Appeals was upheld in three (3) of those cases and the other two (2) matters were remanded to the Administrative Judges for further consideration.

The total number of cases issued by both courts in fiscal years 2016 and 2017 (to date) was twenty-four (24).[1] Of the twenty four (24) cases, the Office of Employee Appeals was upheld in thirteen (13) of those cases; nine (9) cases were remanded to the Administrative Judges for further consideration; and two (2) matters were reversed. Below is a description of the two matters that were overturned by the courts.

In *William Barnette v. Department of General Services,* OEA Matter No. 2401-0332-10 (later appealed to Superior Court as *William Barnette v. District of Columbia Office of Employee Appeals,* Case No. 2015 CA 005216 P(MPA)), the Superior Court for the District of Columbia reversed the Office of Employee Appeals' ruling that a Reduction-in-Force (RIF) action conducted by the former Office of Public Education Facilities Modernization (now the Department of General Services) was properly approved by its Executive Director and did not require Mayoral approval. Accordingly, the Court ordered that the employee, William Barnette, be reinstated with back pay and benefits. The Department of General Services filed an appeal of the decision with the D.C. Court of Appeals, and on December 12, 2016, the Superior Court for the District of Columbia issued an order to stay its reinstatement order until the D.C. Court of Appeals has rendered its decision in the case.

The second Office of Employee Appeals' case that was reversed by the Superior Court for the District of Columbia was *Ernest Hunter v. D.C. Child and Family Services,* OEA Matter No. 2401-0321-10 (later appealed to Superior Court as *District of Columbia Child and Family Services Agency v. District of Columbia Office of Employee Appeals and Ernest Hunter,* 2014 CA 001857 P(MPA)). In this matter, the Court reversed the Office of Employee Appeals' determination that a consent order did not give the District of Columbia Child and Family Services Agency authority to conduct a RIF without Mayoral approval. During its opposition of the appeal before the Office of Employee Appeals, the District of Columbia Child and Family Services Agency relied on the consent order as its authority to conduct the RIF action. However, on appeal before the court it argued that in accordance with D.C. Official Code § 1-604.06, it was exempt from needing Mayoral approval to conduct a RIF. The Court agreed with Agency's new argument and reversed the Office of Employee Appeals' decision. It does not appear that this matter was further appealed to the D.C. Court of Appeals.

45. What was the caseload for each administrative judge in fiscal years 2016 and 2017 (to date)?

ANSWER:

[1] There were nineteen (19) decisions issued by the Superior Court for the District of Columbia and two (2) decisions issued by the D.C. Court of Appeals in fiscal year 2016. In fiscal year 2017 (to date), there have been three (3) decisions issued by the Superior Court for the District of Columbia and no cases issued thus far by the D.C. Court of Appeals.

In fiscal year 2016, the average number of cases handled by the Administrative Judges was thirty (30). Below is the caseload for each Administrative Judge.

Administrative Judge	Number of Decisions Issued
Judge Lim	29
Judge Robinson	26
Judge Hochhauser	11
Judge Dohnji	36
Judge Harris	31
Judge Cannon	23
Judge Murphy[2]	9
TOTAL	**165**

In fiscal year 2017 (to date), the average number of cases handled by the Administrative Judges is ten (10). Below is the caseload for each Administrative Judge.

Administrative Judge	Number of Decisions Issued
Judge Lim	10
Judge Robinson	15
Judge Hochhauser	3
Judge Dohnji	15
Judge Harris	7
Judge Cannon	10
TOTAL	**60**

46. How many initial decisions, opinions, and orders has OEA issued in fiscal years 2016 and 2017 (to date)? How long, on average, has it taken OEA to issue an initial decision, an opinion, or an order in fiscal years 2016 and 2017 (to date)?

ANSWER: In fiscal year 2016, the Administrative Judges issued one hundred and sixty-five (165) Initial Decisions. It took an average of seven (7) months for the Administrative Judges to issue those decisions. The OEA Board issued fifty-nine (59) Opinions and Orders in fiscal year 2016. It took an average of eleven (11) months to issue those decisions. Although the number of decisions issued by the Board nearly doubled from previous years, the length of time taken to issue the decisions increased because the General Counsel was on maternity leave for four months.

In fiscal year 2017 (to date), the Administrative Judges have issued sixty (60) decisions thus far. It has taken an average of six (6) months for the Administrative Judges to issue those decisions. Therefore, the Administrative Judges are currently issuing decisions within the statutory timeframe of one hundred and twenty (120) business days. The OEA

[2] Please note that Judge Murphy became the Deputy General Counsel in December of 2016. Thus, the low number of decisions issued.

Board has issued ten (10) Opinions and Orders thus far in fiscal year 2017 (to date). It has taken the Board an average of nine (9) months to issue those decisions thus far. It should be noted that the Board was without a quorum of three members from October 2016 through December 2016. Thus, January 2017 is the first month of the current fiscal year that the Board could conduct business.

47. In the agency's responses to Performance Oversight questions in 2016, you identified filling vacant positions within the agency and on the board as your first priority. Have you filled the vacant staff positions? What impediments have delayed the filling of the board chair position?

ANSWER: There are no vacant positions within the agency. Sheree Price is the Board's Interim Chairperson. Her permanent appointment is awaiting confirmation by the Council. No one has been nominated to fill the other vacant position on the board.

48. In the agency's responses to Performance Oversight questions in 2016, you identified providing continuing legal education to Administration Law Judges as your second major priority. What progress have you made towards that goal? Are you satisfied with that progress?

ANSWER: All of the agency's Administrative Judges attended continuing legal education courses in FY2016.

49. In the agency's responses to Performance Oversight questions in 2016, you identified issuing initial decisions within the statutory timeframe as your third major priority. Have you made progress towards that goal? How many decisions are issued within the statutory timeframe, and how many decisions have not been issued within the statutory deadline?

ANSWER: The Office of Employee Appeals has made tremendous progress toward issuing Initial Decisions within the 120-business day statutory deadline. In fiscal year 2016, Administrative Judges issued one hundred (100) decisions within 120 business days or less. There were sixty-five (65) cases issued past the 120-business day deadline.

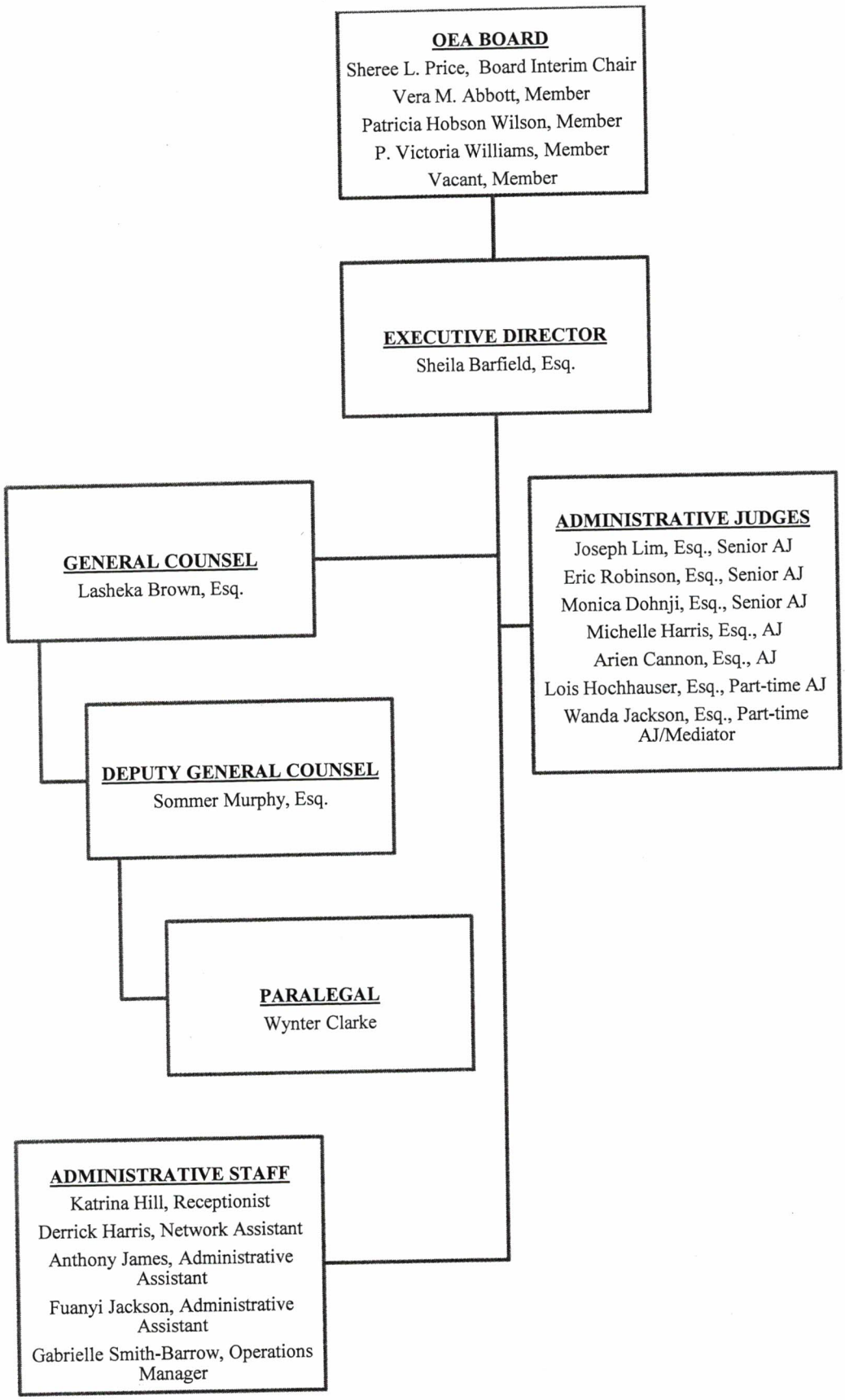
50. In the agency's responses to Performance Oversight questions in 2016, you identified updating the agency's website as your fourth major priority. Have you completed the process of updating the website? If so, what changes were made? If not, why not and what is the new timeline?

ANSWER: Progress has been made in updating the agency's website. Currently, the website is being updated so that, when this process is complete, people can search the agency's decisions by subject matter. As funding becomes available, the website will be further updated so that people can search the agency's decisions by key word.

51. In agency's responses to Performance Oversight questions in 2016, you identified upgrading the agency's database as your fifth major priority. Have you completed an upgrade to the database? If so, what changes were made? If not, why not and what is the new timeline?

ANSWER: Due to the lack of adequate funding, no upgrades were made to the database in Fiscal Year 2016. As funding becomes available, upgrades will be made.

Attachment #1



Effective as of 02/01/2017

Attachment #2

Office of Employee Appeals
FY2017 Position Listing Report
As of January 10, 2017

Title	Name	Salary	Fringe	Prgm Code
Hearing Examiner	Hochhauser,Lois C	$ 54,031.50	$ 11,184.52	2001
GEN COUNSEL	Bassey,Lasheka Brown	$ 158,311.00	$ 32,770.38	1100
EXECUTIVE DIR	Barfield,Sheila	$ 166,247.49	$ 34,413.23	1090
Hearing Examiner	Jackson,Wanda L	$ 52,497.50	$ 10,866.98	1100
Hearing Examiner	Lim,Joseph Edward	$ 117,543.63	$ 24,331.53	2001
Operations Manager	Smith Barrow,Gabrielle P	$ 114,199.00	$ 23,639.19	1100
Senior Administrative Judge	Dohnji,Monica Numbosi	$ 104,995.00	$ 21,733.97	2001
Receptionist	Hill,Katrina	$ 46,317.00	$ 9,587.62	1085
Network Assistant	Harris,Derrick D	$ 59,249.00	$ 12,264.54	1040
PARALEGAL SPECIALIST	Clarke,Wynter A	$ 70,345.00	$ 14,561.42	1100
Hearing Examiner	Robinson,Eric Theodore	$ 106,989.44	$ 22,146.81	1100
Administrative Assistant	James,Anthony Lester	$ 46,317.00	$ 9,587.62	1100
Deputy General Counsel	Murphy,Sommer Joy	$ 115,895.00	$ 23,990.27	2001
HEARING EXAMINER	Harris,Michelle R	$ 83,647.00	$ 17,314.93	2001
HEARING EXAMINER	Cannon,Arien Peyton	$ 96,632.00	$ 20,002.82	2001
Administrative Assistant	Johnson,Fuanyi S	$ 40,167.00	$ 8,314.57	1090

Attachment #3

FY 2016 LOCAL PROGRAM ENHANCEMENT

Agency Code:	CH0
Agency Title:	Office of Employee Appeals
Enhancement Title:	Increase the Number of Full-Time Equivalent Positions
Date:	January 23, 2015
Total Amount of Local Funds:	$118,000
FTEs:	1
Is this Enhancement a one-time cost?	On-going
Agency point of contact:	Sheila G. Barfield, 727-1811

Problem Statement

The Office of Employee Appeals (OEA) is an administrative adjudicatory agency which is responsible for issuing impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia government employees. A District government employee may appeal to OEA a final agency decision which has resulted in the employee being terminated from his or her position, placed on enforced leave for 10 days or more, suspended for 10 days or more, reduced in grade, or having had his or her position abolished pursuant to a reduction in force.

Once the Administrative Judge has issued an Initial Decision, either party may appeal that decision to OEA's Board by filing a Petition for Review. OEA's Board renders its decision in the form of an Opinion and Order on Petition for Review. Currently, OEA's General Counsel must draft all of the Opinions and Orders for the agency's Board as well as provide legal advice to the office.

Proposed Solution

The proposed solution is to increase the agency's number of full-time equivalent positions. This increase would allow the agency to hire a Deputy General Counsel to provide assistance to the General Counsel.

Cost-Benefit Analysis

The total cost of this request is approximately $118,000 which would pay for the salary and benefits of the Deputy General Counsel.

Other Benefits

The primary benefit of this proposal is that OEA will have a Deputy General Counsel who will assist the General Counsel in drafting Opinions and Orders for OEA's Board. Therefore, the Board will be able to issue more decisions and thereby prevent a backlog of cases from developing.

Legislative Analysis

No legislation, or amendments to legislation, is required.

OBP ASSESSMENT

FY 2017 LOCAL PROGRAM ENHANCEMENT

Agency Code:	CH0
Agency Title:	Office of Employee Appeals
Enhancement Title:	Increase to Non-Personal Services Portion of Budget
Date:	December 14, 2015
Total Amount of Local Funds:	$60,000
Is this Enhancement a one-time cost?	On-going
Agency point of contact:	Sheila G. Barfield, 727-1811

Problem Statement

The Office of Employee Appeals (OEA) is an administrative adjudicatory agency which is responsible for issuing impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia government employees. A District government employee may appeal to OEA a final agency decision which has resulted in the employee being terminated from his or her position, placed on enforced leave for 10 days or more, suspended for 10 days or more, reduced in grade, or having had his or her position abolished pursuant to a reduction in force.

Evidentiary hearings are required to be held in most appeals involving an adverse action. Court reporters must be present at those hearings. It is imperative to have adequate funding to pay for court reporting services which are critical to OEA's mission. Without adequate funding, OEA's performance will be negatively impacted as its Administrative Judges will not be able to conduct evidentiary hearings thereby creating a backlog of cases.

Moreover, additional funding is needed for the purpose of hiring a contract attorney. A contract attorney will be able to process appeals and issue Initial Decisions.

Furthermore, additional funding is needed for the purpose of upgrading the agency's website. An upgrade to the website will provide to the public greater access to the agency as well as make the agency more transparent to the public.

Proposed Solution

The proposed solution is to increase the agency's non-personal services portion of its budget so that it can hire court reporters for its evidentiary hearings; hire a contract attorney to assist with issuing Initial Decisions; and upgrade its website.

Cost-Benefit Analysis

The total cost of this request is approximately $60,000. Of that amount, $12,000 would be allocated to court reporting; $12,000 would be allocated to hiring a contract attorney; and $36,000 would be allocated to upgrading the agency's website.

Legislative Analysis

No legislation, or amendments to legislation, is required.

OBP ASSESSMENT

FY 2018 LOCAL PROGRAM ENHANCEMENT #1

Agency Code:	CH0
Agency Title:	Office of Employee Appeals
Enhancement Title:	Increase to Non-Personnel Services Portion of Budget
Date:	January 6, 2017
Total Amount of Local Funds:	$98,000
Is this Enhancement a one-time cost?	On-going
Agency point of contact:	Sheila G. Barfield, 727-1811

Problem Statement

The Office of Employee Appeals (OEA) is an administrative adjudicatory agency which is responsible for issuing impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia government employees. A District government employee may appeal to OEA a final agency decision which has resulted in the employee being terminated from his or her position, placed on enforced leave for 10 days or more, suspended for 10 days or more, reduced in grade, or having had his or her position abolished pursuant to a reduction in force.

As part of the District wide classification and compensation reform project, the Council enacted the "Legal Service Employee Compensation System Changes Approval Resolution of 2016" which changed the compensation system for all Legal Service employees. The new compensation system was reflected on a new Legal Service pay scale which provided an increase to the salaries of those employees who hold appointments within the Legal Service. OEA's General Counsel and Deputy General Counsel hold appointments within the Legal Service. Moreover, there are scheduled salary and fringe benefits increases for all other employees. Additionally, there was a reduction of $34,172 as a result of the Council's attempt to achieve a vacancy savings. The total amount for these compensation increases is $61,124.

In addition to the salary changes, OEA's budget was reduced by $36,000 from FY17 to FY18 which was to cover the next phase of OEA's website project of making the agency more transparent and responsive to the public by allowing the public easier access to the agency's decisions. The salary changes and reduction in budget will result in a $95,982 funding change between FY17 and FY18. The reduction will have a dire impact on the agency's non-personnel services (NPS) budget and will negatively impact the agency's mission and statutory requirements.

Proposed Solution

To fund both the salary increases and reduction in the agency's budget, OEA will have to absorb the cost of these increases by reducing the agency's non-personnel services budget.

Cost-Benefit Analysis

A reduction to the agency's NPS budget to absorb the costs of the aforementioned increases will leave the agency with a total of approximately $26,000 to operate in Fiscal Year 2018. OEA's actual

expenditures in Fiscal Year 2016 from NPS totaled approximately $124,000. OEA cannot operate with only $26,000 in its NPS budget.

With such a drastic cut to its budget, the agency will be forced to reduce its mission critical services. OEA's mission is to adjudicate appeals filed by District government employees. To carry out its mission, OEA must conduct evidentiary hearings. Evidentiary hearings are required to be held in most appeals involving an adverse action. Court reporters must be present at those hearings. It is imperative to have adequate funding to pay for court reporting services which are critical to OEA's mission. Without adequate funding, OEA's performance will be negatively impacted as its Administrative Judges will not be able to conduct evidentiary hearings thereby creating a backlog of cases. Additionally, the OEA Board will not be able to conduct Board meetings because of the lack of funding to pay Board stipends and the inability to pay for court reporting. Cases which cannot be adjudicated in a timely manner will linger in the office and may ultimately have a negative impact upon the District's liability.

The total cost of this request is $98,000.

Legislative Analysis

No legislation, or amendments to legislation, is required.

OBP ASSESSMENT

FY 2018 LOCAL PROGRAM ENHANCEMENT #2

Agency Code:	CH0
Agency Title:	Office of Employee Appeals
Enhancement Title:	Increase to Non-Personnel Services Portion of Budget
Date:	January 6, 2017
Total Amount of Local Funds:	$235,472
Is this Enhancement a one-time cost?	On-going
Agency point of contact:	Sheila G. Barfield, 727-1811

Problem Statement

The Office of Employee Appeals (OEA) is an administrative adjudicatory agency which is responsible for issuing impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia government employees. A District government employee may appeal to OEA a final agency decision which has resulted in the employee being terminated from his or her position, placed on enforced leave for 10 days or more, suspended for 10 days or more, reduced in grade, or having had his or her position abolished pursuant to a reduction in force.

The taskforce involved in the District wide classification and compensation reform project has determined that all of OEA's Administrative Judges should be classified on the Legal Service pay scale. Currently, they are on the Career Service pay scale. However, due to the complex nature of the work performed by OEA's judges and the comprehensive decisions issued by them, they are more akin to an Administrative Law Judge instead of a hearing examiner as they are referred to by the statute. Therefore, all of OEA's judges should be reclassified on the Legal Service pay scale.

The Council has enacted the "Legal Service Employee Compensation System Changes Approval Resolution of 2016" which has changed the compensation system for all Legal Service employees. With the taskforce's recommendation, the resolution would impact all OEA Administrative Judges when they are moved from the Career Service to the Legal Service pay scale.

Proposed Solution

To fund the salary increase and benefit changes for each employee Administrative Judge, OEA will need to have its budget increased by $235,472.

Cost-Benefit Analysis

The affected employees will have to remain on the incorrect pay scale without adequate funding to place them on the Legal Service pay scale as they rightfully should be.

Legislative Analysis

An amendment to D.C. Official Code §§ 1-606.01(d), .03(c), .06(a)(5)-(b), .08(a) and .10(a) is required.

OBP ASSESSMENT

FY 2018 LOCAL PROGRAM ENHANCEMENT #3

Agency Code:	CH0
Agency Title:	Office of Employee Appeals
Enhancement Title:	Increase to Non-Personnel Services Portion of Budget
Date:	January 6, 2017
Total Amount of Local Funds:	$15,600
Is this Enhancement a one-time cost?	On-going
Agency point of contact:	Sheila G. Barfield, 727-1811

Problem Statement

The Office of Employee Appeals (OEA) is an administrative adjudicatory agency which is responsible for issuing impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia government employees. A District government employee may appeal to OEA a final agency decision which has resulted in the employee being terminated from his or her position, placed on enforced leave for 10 days or more, suspended for 10 days or more, reduced in grade, or having had his or her position abolished pursuant to a reduction in force.

OEA is composed of a five member board appointed by the Mayor. Each member is compensated at the hourly rate of $25 per meeting, not to exceed $3,000 for each member per year. The Chairperson is entitled to 20% above the annual maximum. There has been no change to the compensation of OEA's board members for over 20 years.

OEA's board meets on a regular basis to decide on and issue opinions drafted by the agency's General Counsel. Prior to the meeting of the board, each member is given the decisions and all of the relevant documents pertaining to the cases to review at least one week in advance of the meeting. Because of the amount of time each member dedicates to reviewing the documents and meeting, increasingly members are reaching the limit on their annual compensation before the end of the fiscal year. When this happens, the board must either not meet or the member must agree to perform the work without being compensated.

Proposed Solution

The compensation for each board member should be increased to not exceed $6,000 for each member per year. The Chairperson's compensation would remain at 20% above the annual maximum.

The total cost of this request is $15,600 if Local Program Enhancement #1 is fully funded. Within the $98,000 requested was funding to cover the Board's annual stipend at its current statutory level. The additional funding of $15,600 would bring each Board member's total annual maximum to $6,000 with the Chairperson receiving 20% above this amount, as provided herein.

Cost-Benefit Analysis

When the board is unable to meet because members have reached their annual maximum compensation and do not want to perform work without being compensated, decisions are not able to be issued. When decisions are not issued, a backlog within the General Counsel's office is created, thereby prolonging the resolution of a District government employee's case.

Legislative Analysis

An amendment to D.C. Official Code § 1-611.08(c-1)(2) and (c-3) is required.

OBP ASSESSMENT

ATTACHMENT #4

FY2017 PERFORMANCE PLAN
Office of Employee Appeals

MISSION

The mission of the Office of Employee Appeals ("OEA") is to render impartial, legally sufficient, and timely decisions on appeals filed by District of Columbia government employees. OEA has jurisdiction over appeals in which an employee has been removed as a result of an adverse action for cause, placed on enforced leave for 10 days or more, suspended for 10 days or more, reduced in grade, or been subjected to a reduction in force.

SUMMARY OF SERVICES

OEA offers District government agencies and employees the following three-part appeal process: mediation, adjudication, and petitions for review. The mediation process allows the employee and the agency an opportunity to resolve their disputes without going through the lengthy and costly adjudication process. The adjudication process results in disputes being resolved by an administrative judge who issues an initial decision and finds in favor of either the agency or employee. The petition for review process provides an impartial review of initial decisions by OEA's Board.

PERFORMANCE PLAN DIVISIONS

- Adjudication
- Agency Management[1]

SUMMARY OF SERVICES

The Adjudication Division provides mediation sessions, impartial hearings, and adjudication appeals for District government employees who challenge an agency's final decision on personnel matters.

STRATEGIC OBJECTIVE 1: Timely Decisions

Render impartial, legally sound decisions in a timely manner.

Strategic Initiative 1.1: Develop a system whereby decisions which have been remanded to the Office can be prioritized and processed in a timely manner.

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[1] For the purposes of the FY17 Performance Plan, (1000) Agency Management is included with the (2000) Adjudication division to more accurately reflect the functional organization of the OEA.

STRATEGIC OBJECTIVE 2: Adjudication Process

Streamline the adjudication process.

Strategic Initiative 2.1: Mediate all attorney fees and compliance matters.

Strategic Initiative 2.2: Create uniform orders for pre-hearing conferences, evidentiary hearings, good cause matters, jurisdiction matters and brief submissions.

STRATEGIC OBJECTIVE 3: Accessibility of Decisions

Maintain a system to allow the public to have access to all decisions rendered by the Office.

Strategic Initiative 3.1: Upgrade website to create a subject matter search feature.

ATTACHMENT #5