

The U.S. Occupational Safety and Health Review Commission

OSHRC

FISCAL YEAR 2022

PERFORMANCE BUDGET AND JUSTIFICATION



May 2021

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Fiscal Year 2022
Performance Budget and Justification

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I. INTRODUCTION – MISSION, VISION, AND STRATEGIC GOALS

The U.S. Occupational Safety and Health Review Commission

Our Mission

The U.S. Occupational Safety and Health Review Commission (OSHRC or Review Commission) is an independent adjudicatory agency created by the Occupational Safety and Health Act of 1970 (the Act). The sole statutory mandate is to serve as an administrative court providing fair and expeditious resolution of disputes involving the Occupational Safety and Health Administration (OSHA), employers charged with violations of federal safety and health standards, and employees and/or their representatives. The Review Commission was created by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law and that parties are accorded due process.

Functions and Procedures

The Act and the Review Commission's Rules of Procedure provide two levels of adjudication when an employer timely contests an OSHA citation. The first level affords an employer and/or affected employee who files a timely notice of contest with the opportunity for a hearing before a Review Commission Administrative Law Judge (ALJ). The ALJ's decision becomes a final order under the Act unless a member of the three-member Commission exercises their discretion to direct the case for review. The second level involves the Commission's review of an ALJ decision. The Commission's three members, appointed by the President and subject to Senate confirmation, serve six-year terms. The principal (National) office of the Review Commission is located in Washington, DC. There are also regional offices in Atlanta and Denver, where additional Review Commission ALJs and staff are assigned. Before both its ALJs and the Commission members, the agency seeks to provide fair, impartial, and timely adjudication of cases concerning employee safety and health.

Vision Statement

The Review Commission strives to be:

- An adjudicative body that is, and is recognized for being, objective, fair, prompt, professional, and respected.
- An agency that creates a body of law through its decisions that define and clarify the rights and responsibilities of employers and employees under the Act.
- A model federal agency with highly effective processes, a highly motivated, qualified and diverse workforce, and modern information management, communications, and administrative systems.
- An agency that values teamwork, develops its employees, and strives to improve its performance, service, and value to the American people.

Strategic Goals

The Review Commission has set measurable, outcome-oriented objectives that advance the agency's ability to meet its strategic goals. The agency has included its strategic goals and objectives and their associated measures in its Strategic Plan (fiscal years 2018 through 2022) and as part of its performance budget. OSHRC has four overarching strategic goals:

1. Promptly and fairly resolving the cases before it, including reducing the average age of Review-level cases;
2. To the extent consistent with the agency's statutory authority and responsibilities, seeking to enhance the transparency of its operations;
3. Promoting organizational excellence, including a culture of professionalism, mutual respect, and organizational pride, and ensuring that staff members are adequately trained and developed; and
4. Managing agency resources in a manner that instills public trust, including using information and technology to monitor, evaluate, and improve programs and processes in order to better accomplish the agency's mission.

II. BUDGET REQUEST SUMMARY

Budget Request Summary

The Review Commission requests an appropriation of \$15,028,000 to continue its mission of adjudicating OSHA-issued workplace safety and health citations, fund essential agency programs, support 63 full-time equivalent (FTE) positions, and maintain our electronic filing (e-filing) system in fiscal year (FY) 2022. This represents an increase of \$1,803,000, and 8 FTE positions relative to the 2021 Enacted levels. This request supports the goal in the Review Commission's Strategic Plan to improve service to the public.

This funding request would also allow us to fulfill our legislative mandate to serve as an administrative court providing fair and prompt resolution of disputes involving OSHA, employers charged with violations of federal safety and health standards, and employees and/or their representatives. The requested level of FTE positions will assist the Review Commission with handling an increased caseload resulting from OSHA's Coronavirus Disease 2019 (COVID-19) enforcement activity. OSHA issued a National Emphasis Program (NEP) related to the COVID-19 pandemic on March 12, 2021. The purpose of the NEP is to ensure that "employees in high-hazard industries are protected from the hazard of contracting SARS-CoV-2." The NEP directed OSHA to target worksites that have workers with increased potential exposure to this hazard. In addition, it directed OSHA to ensure that workers are protected from retaliation for raising safety and health concerns related to COVID-19. This increased enforcement effort requires that 5% of each OSHA region's total inspections relate to COVID-19 (OSHA-wide this is approximately 1,600 total inspections). This rise in inspections is expected to elevate the number of contested cases docketed with the Review Commission and result in an increased workload.

Our FY 2022 estimated costs, which combined total \$15,028,000, include:

- \$11,325,770 to support direct payroll and related costs for 63 FTE positions. These costs are approximately 75 percent of the Review Commission's budget request;
- \$1,722,466 for office space rent;
- \$444,750 for services provided by other federal agencies, such as support for financial and administrative services provided by the Bureau of the Fiscal Service (BFS) and personnel and payroll services provided by the National Finance Center (NFC);
- \$95,000 to support and maintain OSHRC's e-filing system; and
- \$1,440,014, the remaining amount, to be used for travel expenses for ALJs to hold hearings, court reporting services, management of the language access plan, the annual financial audit, the Federal Information Security Management Act (FISMA) audit, employee training and development, the maintenance and purchase of equipment, to enable the Review Commission to complete its annual performance plan goals and targets, and to implement government-wide and Review Commission specific transparency initiatives.

E-Filing System

The Review Commission maintains an e-filing system that permits the electronic filing and service of litigation documents. The e-filing system supports both the complainant and the respondents' parties as well as agency staff. It also directly supports our annual performance plan's goals and targets, promotes transparency, supports technology improvements, and integrates business process automation to improve accuracy and efficiency in case management practices. This budget request includes \$55,000 for licensing and \$40,000 for customized reporting and continued enhancements to the e-filing system.

Language Access Plan

On February 17, 2011, the U.S. Attorney General issued a Memorandum for Heads of Federal Agencies, among others, regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order (EO) 13166 (AG Memo). The AG Memo requested that each agency join the Department of Justice (DOJ) in recommitting to the implementation of EO 13166 by: (1) establishing a Language Access Working Group (LAWG) to be responsible for implementing the Executive Order; (2) evaluating and/or updating its Limited English Proficiency (LEP) Plan; (3) establishing a schedule to periodically evaluate and update its LEP services, policies, plans, and protocols; (4) ensuring agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; (5) notifying the public of its LEP policies, plans, and procedures; (6) assessing non-English language proficiency when considering hiring criteria; and (7) collaborating with other agencies for written translations intended for mass distribution.

The Review Commission has made significant progress in the development and implementation of a Language Access Plan (LAP) to fulfill its obligation under EO 13166. In 2011, OSHRC revised its LAP to more efficiently implement key actions required by EO 13166 and Title VI of the Civil Rights Act of 1964. In May 2014, responsibility for the LAP was transferred to the Office of the Chief Administrative Law Judge (OCALJ). A draft updated plan was developed and circulated to all judges and key Review Commission staff members for review and feedback. The Review Commission implemented the revised and updated plan in August 2014. Based on feedback received from DOJ, the LAP was revised again in November 2015. The current LAP has been implemented by OSHRC and a copy was forwarded to DOJ.

The Review Commission's goal is to ameliorate LEP as a barrier to accessing its programs and activities; consequently, the agency is committed to taking reasonable steps through which LEP persons can meaningfully access its services consistent with its fundamental mission and existing law. To accomplish this important goal, the FY 2022 budget request includes \$10,000 to cover services for translation of documents and interpreters for individuals with LEP.

III. APPROPRIATIONS LANGUAGE

FY 2022

Appropriations Language

U.S. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the U.S. Occupational Safety and Health Review Commission,
[\$13,225,000] *\$15,028,000*.

**IV. PERFORMANCE
BUDGET JUSTIFICATION
BY ORGANIZATIONAL
UNIT**

Performance Budget Justification

The Review Commission has three main functions that operate in concert to achieve the agency’s overarching mission:

1. The Administrative Law Judge function;
2. The Commission function; and
3. The Office of the Executive Director function.

Each unit has staff and resources assigned exclusively to it, but all three units work collaboratively to meet or exceed the Review Commission’s strategic goals. This separation of staff between the ALJs and Commissioners stems principally from the nature of their functions, so that each review level is, in fact and in appearance, independent of the other. The Office of the Executive Director (OEXD) function supports the ALJ and Commission functions, as well as the agency’s strategic planning efforts.

Funding and staffing by function is as follows:

<u>Funding (in millions) and FTE positions by Function</u>						
	<u>FY 2020</u>		<u>FY 2021</u>		<u>FY 2022</u>	
	<u>Actual</u>		<u>Enacted</u>		<u>Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Administrative Law Judge	6.5	26	6.3	26	6.5	27
Commission	5.0	20	5.2	22	6.6	28
Executive Director	<u>1.7</u>	<u>7</u>	<u>1.7</u>	<u>7</u>	<u>1.9</u>	<u>8</u>
Total	13.2	53	13.2	55	15.0	63

Administrative Law Judge Function

The front line of our agency's delivery of services to the American public rests with the Administrative Law Judges (ALJs). Our ALJs travel around the country to conduct formal hearings and related proceedings in a fair, just, and expeditious manner. This function is directly related to achieving the public service goal of fair, just, and expeditious adjudication of disputes brought before the Review Commission and its ALJs.

The ALJs report through the Chief ALJ to the Chairman of the agency. However, they act independently when arriving at case decisions. The Review Commission's procedural rules are similar to the Federal Rules of Civil Procedure and are designed and administered to secure the just and timely determination of every contested case. In the absence of a specific Review Commission rule, the Federal Rules apply.

Proceedings Before the Review Commission's ALJs

The events leading to the presentation of an OSHA case before a Review Commission ALJ follow an established procedure, and they are designed to provide all parties with a fair hearing and swift adjudication of their case. To contest all or part of a citation, penalty, or abatement period, an employer must file a notice of contest with the Secretary of Labor within 15 working days of receipt of the citation issued by OSHA. An employee and/or employee representative may challenge the abatement period by filing a notice of contest with the Secretary of Labor within 15 working days of receipt of the citation issued by OSHA. The Secretary of Labor transmits the notice of contest and all relevant documents to the Review Commission's Executive Secretary for filing and docketing. After the case is docketed, it is forwarded to the OCAJ for assignment to an ALJ. The case is generally assigned to an ALJ in the Review Commission office closest to where the alleged violation occurred. Thereafter, the ALJ has full responsibility for all pre-hearing and pre-trial procedures and is charged with providing a fair and impartial hearing in an expeditious manner and rendering a decision promptly.

ALJ Operations

The Review Commission strives to expedite the judicial process in a fair and impartial manner and to strengthen its settlement procedures and case management responsibilities by constantly monitoring its Simplified Proceedings and Mandatory Settlement Part programs. The ALJ function handles a caseload that continues to grow in complexity as reflected by the increased number and complexity of OSHA citations over the last several years.

OSHA completed 21,710 inspections in FY 2020 and estimates it will complete 31,013 inspections in FY 2021 and 36,984 inspections in FY 2022. Of particular importance over the last several years from the Review Commission's resources perspective, the number of citations being contested has remained high, resulting in the high number of contested cases being docketed.

Since FY 2008, there has been a notable increase in the number of contested cases. Moreover, OSHA's administrative policy implemented in FY 2011 and the increase in OSHA penalties

required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, have led to an increase in the average penalty for violations, as well as the contest rate. In FY 2017, the Review Commission docketed 2,168 contested cases; 2,144 in FY 2018; 2,017 in FY 2019; 1,845 in FY 2020; and it estimates it will have docketed 2,020 at the end of FY 2021 and 2,100 at the end of FY 2022. We attribute the decrease in the number of docketed cases for FY 2020 to the circumstances created by the national emergency declared on March 13, 2020, due to the COVID-19 pandemic. This emergency has created a situation for OSHA which is destined to affect the Review Commission's workload. Thus, on March 12, 2021, OSHA issued a NEP to ensure that "employees in high-hazard industries are protected from the hazard of contracting SARS-CoV-2." The NEP directs OSHA to target worksites that have workers with increased potential exposure to this hazard. In addition, it directs OSHA to ensure that workers are protected from retaliation for raising safety and health concerns related to COVID-19. This increased enforcement effort requires that 5% of each OSHA region's total inspections relate to COVID-19 (OSHA-wide this is approximately 1,600 total inspections). This rise in inspections is expected to elevate the number of contested cases docketed with the Review Commission and result in an increased workload.

In addition to the high number of contested cases that have resulted from OSHA's penalty increases, OSHA's emphasis in recent years on serious workplace hazards has translated into more complicated cases and more costly trials (e.g., cases involving heat stress, lock-out/tag-out, workplace violence, confined spaces, health care hazards, asbestos, process safety management, construction industry hazards, etc.). Over the past few years, the Review Commission has noted an increase in the complexity of cases handled by ALJs. We attribute this trend to two factors. First, OSHA has increasingly focused its attention on encouraging more resource and time-intensive high-impact inspections. Second, the Department of Labor's Office of the Solicitor has decided to leverage litigation resources and focus less on high volume in favor of high-impact strategic cases. The increase in the complexity of cases challenges the Review Commission's resources because ALJs must invest a greater amount of time in handling those matters.

The complexity of these cases is the result of the existence of one or a combination of the following:

- Intricacies of the law (complex questions of law);
- Volume of documents, including transcripts;
- Large number of witnesses (including expert witnesses in fields such as engineering, architecture, construction, soil, physics, epidemiology, pathology, neurology, and infectious diseases);
- Number of alleged violations, items, and affirmative defenses (including distinct and separate items); or
- Technical, novel, difficult, or new issues raised, such as cases involving workplace violence, heat stress, asbestos, ergonomics, process safety management, and/or confined spaces.

The Review Commission continues to improve the efficiency of case processing by moving a selected number of cases into Mandatory Settlement Part and Simplified Proceedings programs, both of which are innovative methodologies to speed the settlement or adjudication of pending cases. Our Mandatory Settlement Part was deemed a success in 2013. See https://www.oshrc.gov/assets/1/6/IU_Final_Report.pdf - *“Dispute Resolution in the Administrative Process: Evaluation of the Occupational Safety and Health Review Commission Settlement Part Program.* With the higher caseload levels of recent years, the Mandatory Settlement Part has been an important tool in avoiding a backlog of cases at the ALJ level. Furthermore, the Review Commission has ensured that training and regular continuing legal education in mediation and dispute resolution is provided to every ALJ who is expected to serve as a Settlement Judge as reflected in our performance goal in our FY 2018 – FY 2022 Strategic Plan.

Under Commission Rule 120, 29 Code of Federal Regulations (CFR) § 2200.120, and where the parties consent, the Chief ALJ may assign a Settlement Judge to a pending proceeding to aid the parties in disposing of the case. Where the aggregate amount of the penalty sought by the Secretary of Labor is \$185,000 or greater, the Mandatory Settlement Part procedure goes into effect. The Settlement Judge appointed by the Chief ALJ has full control of the proceeding and may require that the parties’ representatives be accompanied at the settlement conference by officials having full settlement authority. This procedure has aided the Commission in disposing of some extremely complex cases, with the approval of all parties (if settlement efforts are not successful, the case may be assigned to a different ALJ for trial).

The Simplified Proceedings process includes cases where the total proposed penalty is not more than \$20,000, or up to \$30,000 when found eligible by the Chief ALJ. The process allows parties with relatively simple cases to have their “day in court” unencumbered by formal procedural and evidentiary rules, while ensuring that due process requirements are maintained. Under this process, a business, with or without counsel, can present its case before an ALJ and receive a prompt decision. Most paperwork, including legal filings, is eliminated so that justice can be rendered swiftly and inexpensively. The process reduces the time and legal expenses to employers contesting relatively small penalty cases.

Twenty-six percent of new cases were assigned to Simplified Proceedings in FY 2020. The Review Commission projects that approximately 29 percent of new cases will be assigned to the Simplified Proceedings process in FY 2021 and FY 2022.

Simplified Proceedings Case Activity

FY 2017 through FY 2022

	FY 2017 <u>Actual</u>	FY 2018 <u>Actual</u>	FY 2019 <u>Actual</u>	FY 2020 <u>Actual</u>	FY 2021 <u>Estimate</u>	FY 2022 <u>Estimate</u>
New Cases	2,168	2,144	2,017	1,845	2,020	2,100
Cases Assigned to Simplified Proceedings	630	649	550	470	600	600

Anticipated ALJ Workload for FY 2022

Four major factors impact the ALJs' workload: (1) the quantity, magnitude, and nature of the cases; (2) the utilization of the Simplified Proceedings process; (3) the time, effort, and complexity of cases assigned to the Mandatory Settlement Part process; and (4) the number of trials held and their length and complexity.

The number of OSHA inspections and their focus also affects the Review Commission's caseload. In particular, high hazard workplace inspections – especially those with high injury and illness rates, fatalities, repeat offenders, and egregious violations – tend to result in more complex and contentious cases, which consume extensive time. Moreover, OSHA's emphasis on COVID-19 related inspections will likely lead to additional cases raising complex and novel issues. The discovery process is lengthy and time-consuming, motion practice is expanded, legal research and decision-writing time is protracted, and, of necessity, the trial process is elongated and complicated. Additionally, these cases tend to result in larger contestable proposed penalties, which leads to more cases being contested.

ALJ Workloads

The following table provides actual ALJ workloads for fiscal years 2017 through 2020 and estimated workloads for fiscal years 2021 and 2022.

	FY 2017 <u>Actual</u>	FY 2018 <u>Actual</u>	FY 2019 <u>Actual</u>	FY 2020 <u>Actual</u>	FY 2021 <u>Estimate</u>	FY 2022 <u>Estimate</u>
OSHA Inspections¹:	32,369	32,020	33,401	21,710	31,013	36,984
Administrative Law Judge Workload:						
A. Case Inventory, Start of Year	1,109	1,129	1,064	1,248	1,259	1,399
B. New Cases	2,168	2,144	2,017	1,845	2,020	2,100
C. Total Caseload	3,277	3,273	3,081	3,093	3,279	3,499
D. Disposals						
(1) With Hearing	44	38	35	44	35	45
(2) Mandatory Settlement Conferences	85	45	35	28	45	55
(3) Without Hearing	2,019	2,126	1,763	1,762	1,800	1,950
E. Total Dispositions	2,148	2,209	1,833	1,834	1,880	2,050
Total Case Inventory, End of Year	1,129	1,064	1,248	1,259	1,399	1,449

¹ Provided by OSHA.

Staffing

The OCALJ requires 27 FTE positions in FY 2022 to support the workload based on OSHA’s planned inspections and contest rates in the coming years and to meet performance targets, given the number and complexity of the cases anticipated.

The complexity of cases increases the time required to resolve cases at the ALJ level. Factors leading to the increased complexity of cases include OSHA’s focus on encouraging more resource and time-intensive high-impact inspections, as well as the Office of the Solicitor’s decision to leverage litigation resources and focus away from high-volume and in favor of high-impact strategic cases. The increase in complexity of cases is a challenge for the Review Commission because processing such cases requires the ALJs to invest a greater amount of time in handling the matters and places an increased demand on the FTE positions assigned to handle the volume of cases. This request supports the goal in the Review Commission’s Strategic Plan to improve service to the public.

The Chief ALJ manages the effort to meet the agency’s goals at the ALJ level including:

- Reviews and screens all docketed cases, determines their level of complexity, and assigns each case to an ALJ;
- Exercises strong management and monitors the progress of cases in order to ensure that performance goals are met;
- Supervises judicial and administrative staff and ensures that they receive appropriate training to perform their responsibilities; and
- Examines judicial case management practices of other entities to ensure that OSHRC’s procedures are as efficient as possible.

<u>FUNDING (IN MILLIONS) AND FTE POSITIONS</u>						
	<u>FY 2020 Actual</u>		<u>FY 2021 Enacted</u>		<u>FY 2022 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Administrative Law Judge Function	6.5	26	6.3	26	6.5	27

Strategic Plan and Outcome Goals

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission’s Strategic Plan for FY 2018 through FY 2022 focuses on four goals: (1) Promptly and fairly resolving the cases before it, including reducing the average age of Review-level cases; (2) Enhancing transparency of its operations; (3) Promoting organizational excellence; and (4) Managing agency resources in a manner that instills public trust. It also identifies innovative and comprehensive strategies to achieve strategic goals and objectives. The Strategic Plan includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goals</u>
<p><i>Promptly and fairly resolving cases, including reducing the average age of cases pending at the agency.</i></p>	<ul style="list-style-type: none"> • Develop and implement case management practices that will minimize the average age of all pending ALJ level cases. • Ensure that a significant proportion of both complex and non-complex cases at the ALJ level are resolved within one year to 20 months from docketing.² • Provide training opportunities to (1) ALJs and (2) all attorneys and support staff, in order to enhance their capabilities on technical and legal issues, legal writing, ethics, and technology and case management.

OCALJ will advance this strategic goal through the following strategies:

1. Expedite the assignment of cases to ALJs;
2. Use objective criteria to designate complex cases and track the processing of these cases;
3. Closely monitor case performance and improve case management information systems and reports;
4. Conduct early review and screen potentially complex cases to expedite the disposition of such cases;

² Complex cases have one or more of the following characteristics: intricacies of the law; number of parties; volume of documents, including transcripts; large number of witnesses (including expert witnesses in such fields as engineering, architecture, construction, soil, physics, epidemiology, pathology, neurology, and infectious diseases); length of the trial; large proposed penalties; number of alleged violations, items (including distinct and separate items), and affirmative defenses; technical, novel, difficult or new standards raised; type of cases, such as those involving toxins (such as asbestos and lead); or extensive pre-trial discovery, including large numbers of interrogatories, conferences, and motions.

5. Implement appropriate changes in the agency’s Rules of Procedure to improve case processing (e.g., Mandatory Settlement Part and Simplified Proceedings), and seek new Alternative Dispute Resolution (ADR) methods, including a review of recommendations resulting from the evaluation of the Mandatory Settlement Part;
6. Provide training to all ALJs on a variety of subjects, including technical and legal issues, legal writing, case management, and ADR to help them develop services and processes equal to the very best in judicial arenas; and
7. Continue to use a team of ALJs to handle, on a rotational basis, extremely complex cases and assign appropriate staff to timely process and monitor such cases, including settlement discussions.

The following are the performance goals for the OCALJ for fiscal years 2018 through 2022:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Develop and implement case management practices that will minimize the average age of all pending ALJ level cases.	Whether new case management practices have been developed and implemented.	Less than 75% of all pleadings received in our electronic filing system were initiated electronically. Target not met (75% of all pleadings received in our electronic filing system would have been initiated electronically)	95% of all pleadings received in our electronic filing system were initiated electronically. Target not met (100% of all pleadings received in our electronic filing system would have been initiated electronically)	98% of cases received in our e-file system as a result of scheduling orders directing e-filing and the implementation of mandatory e-filing in June 2019. Target not met (100% of all pleadings received in our electronic filing system would have been initiated electronically)	100% of all pleadings received in our electronic filing system would have been initiated electronically.	100% of all pleadings received in our electronic filing system would have been initiated electronically.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Ensure that a significant proportion of both complex and non-complex cases at the ALJ level are resolved within one year to 20 months from docketing. ³	-Percent of simplified cases disposed of within one year at ALJ level.	-Dispose of 95% of simplified cases within one year. 97% Target met	-Dispose of 95% of simplified cases within one year. 96% Target met	-Dispose of 95% of simplified cases within one year. 97% Target met	-Dispose of 95% of simplified cases within one year.	-Dispose of 95% of simplified cases within one year.
	-Percent of conventional cases disposed of within 17 months.	-Dispose of 90% of conventional cases within 17 months. 95% Target met	-Dispose of 90% of conventional cases within 17 months. 95% Target met	-Dispose of 90% of conventional cases within 17 months. 96% Target met	-Dispose of 90% of conventional cases within 17 months.	-Dispose of 90% of conventional cases within 17 months.
	-Percent of settlement part cases disposed of within 19 months.	-Dispose of 95% of settlement part cases within 19 months. 96% Target met	-Dispose of 95% of settlement part cases within 19 months. 93% Target not met	-Dispose of 95% of settlement part cases within 19 months. 96% Target met	-Dispose of 95% of settlement part cases within 19 months.	-Dispose of 95% of settlement part cases within 19 months.
	-Percent of complex cases disposed of within 20 months at ALJ level.	-Dispose of 95% of complex cases within 20 months. 86% Target not met	-Dispose of 95% of complex cases within 20 months. 85% Target not met	-Dispose of 95% of complex cases within 20 months. 94% Target not met	-Dispose of 95% of complex cases within 20 months.	-Dispose of 95% of complex cases within 20 months.

³ Except for mandatory settlement cases, which are assigned by the Chief ALJ upon receipt from the Office of the Executive Secretary, ALJs are not assigned cases until initial pleadings have been filed. This assignment generally occurs approximately 60 days after the case has been docketed due to the parties' frequent requests for extensions of time for filing initial pleadings.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
<p>Provide training opportunities to (1) ALJs and (2) all attorneys and support staff, in order to enhance their capabilities on technical and legal issues, legal writing, ethics, and technology and case management.</p>	<p>Increased attendance and participation in training opportunities, internal and/or external, for ALJs and all attorneys and support staff.</p>	<p>Training opportunities were offered to all ALJs, attorneys, and support staff. Target met (Attendance and participation by ALJs and attorneys and support staff, at no less than one training opportunity annually, internally and/or externally.)</p>	<p>Training opportunities were provided to all ALJs, attorneys, and support staff. Attorneys attended live hearings for professional growth. Target met (Attendance and participation in at least one training opportunity devoted to management of electronic documents prior to and during hearings (i.e., e-filing, electronic discovery, or electronic exhibits.))</p>	<p>Training opportunities were provided to all ALJs, attorneys, and support staff. Target met (Attendance and participation in at least one training opportunity devoted to management of electronic documents prior to and during hearings (i.e., e-filing, electronic discovery, or electronic exhibits.))</p>	<p>Attendance and participation in at least one training opportunity devoted to management of electronic documents prior to and during hearings (i.e., e-filing, electronic discovery, or electronic exhibits).</p>	<p>Attendance and participation in at least one training opportunity devoted to management of electronic documents prior to and during hearings (i.e., e-filing, electronic discovery, or electronic exhibits).</p>

Commission Function

OSHRC's Commissioners are appointed by the President and confirmed by the Senate, and they serve as an appellate level of review. The Commissioners review and decide cases contested under the Act, following an initial decision by an ALJ. This appellate level of review must be prompt, fair, and protective of the parties' rights.

Proceedings Before the Commission

Disputed enforcement proceedings are tried initially before the Review Commission's ALJs. The Commission members may then review an ALJ's decision.

Each Commission member has the discretionary authority to direct for review by the full Commission any case decided by any ALJ. Absent such a direction for review, the ALJ's decision becomes a final order of the Review Commission by operation of law. Once a case is directed for review, the Commission members have the authority to review all aspects of a case, including the ALJ's findings of fact, conclusions of law, penalty assessments, and abatement orders.

Each Commissioner has a counsel who is responsible for assisting and providing advice on all pending matters, determining whether cases are appropriate for Commission review, and the proper disposition of motions and cases. The counsel also aids the Commissioner in researching, drafting, and editing opinions after the Commission votes on how to decide a case.

The Office of the General Counsel (OGC) provides legal advice and assists the Review Commission in complying with the various laws, regulations, and executive orders governing its operations. OGC has primary responsibility for preparing and presenting factual and legal analyses to assist Commission members in adjudicating appeals and in their issuance of opinions; it also provides legal advice on ethics, the Freedom of Information Act (FOIA), Equal Employment Opportunity (EEO), procurement, appropriations, the Privacy Act, and other areas.

The Commission function also includes the work of the Commission's Office of the Executive Secretary, which is responsible for docketing cases at both the ALJ and Commission levels. The Executive Secretary serves as the Records Management Officer for the agency in coordination with the National Archives and Records Administration (NARA).

Commission Operations

The Commissioners strive to minimize the time expended for deciding cases. Aided by improved case management technology, the Commission seeks to strengthen the internal processes by which a case is prepared for decision. Three external factors that have a major impact on the operations of the Commission are: (1) the presence of a quorum; (2) the size and complexity of cases; (3) and the novelty of the issues presented for review.

The Act requires a quorum of two Commissioners to take official action, therefore decisions require the affirmative vote of two Commissioners. During periods when the Commission lacks a quorum, no cases can be decided. If there are only two Commissioners, it may be more difficult to reach agreement sufficient to dispose of some cases. In cases where such agreement cannot be reached, deadlocks may result, and action on important issues and issuance of some pending cases may be delayed.

The Commission operated with a full complement of Commissioners for nine months in FY 2020. The Commission resolved 25 cases and met all four of its GPRA goal targets at the Commission level by the end of FY 2020.

Historically, the number of safety and health inspections carried out by OSHA each year, the nature of those inspections, and the rate at which employers choose to contest the citations issued and penalties proposed by OSHA all have an impact on the number of cases before the Review Commission. And more cases before the ALJs can translate into more cases at the Commission Review-level. In addition, OSHA's emphasis during recent years on more serious workplace hazards as well as the increase in proposed penalties has translated to more contested cases, more complicated cases and longer, more costly trials. Consequently, the number, complexity, and size of the cases at the ALJ and Commission levels have increased significantly in recent years.

Anticipated Commission Workload for FY 2022

The Commission is focused on solid case production, including deciding and issuing decisions in older cases in an effort to reduce case inventory. However, because of an increase in the number and complexity of cases that go to hearings before the Review Commission's ALJs (e.g., imposition of higher penalties, and/or more complex technical issues), the result may be a higher percentage of cases being petitioned for review.

In FY 2020, the Commission had 19 cases pending on its docket at the beginning of the year. It received 29 new cases and resolved 25 cases by year-end. Thus, the Commission entered FY 2021 with 23 cases pending review. During FY 2021, the Commission estimates receiving 15 new cases and resolving 17 cases, ending FY 2021 with 21 cases pending review. For FY 2022, the Commission anticipates receiving 17 new cases, and disposing of 18 cases, ending that year with an inventory of 20 cases.

Commission Case Activity

	FY 2017 <u>Actual</u>	FY 2018 <u>Actual</u>	FY 2019 <u>Actual</u>	FY 2020 <u>Actual</u>	FY 2021 <u>Estimate</u>	FY 2022 <u>Estimate</u>
New Cases:						
Cases Directed for Review:	12	14	8	22	13	15
Other New Cases:						
Interlocutory Appeals:	0	0	0	2	0	0
Remands:	0	2	2	5	2	2
Other:	1	0	0	0	0	0
Total Other New Cases:	1	2	2	7	2	2
Total New Cases:	13	16	10	29	15	17
Case Inventory from Prior Year:	29	29	22	19	23	21
Total Caseload:	42	45	32	48	38	38
Dispositions:	14	23	13	25	17	18
Case Inventory, End of Year:	29⁴	22	19	23	21	20

⁴ Revised to reflect actual case inventory for the end of FY 2017.

Staffing

The Commission function requires 28 FTE positions in FY 2022. This includes 9 FTE positions for the three Commissioners and their immediate staff, 14 FTE positions for the Office of General Counsel, and 5 FTE positions for the Office of the Executive Secretary.

<u>FUNDING (IN MILLIONS) AND FTE</u>						
	<u>FY 2020 Actual</u>		<u>FY 2021 Enacted</u>		<u>FY 2022 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Commission Function	5.0	20	5.2	22	6.6	28

Strategic Plan and Outcome Goals

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission's Strategic Plan for FY 2018 through FY 2022 focuses on four goals: (1) Promptly and fairly resolving the cases before it, including reducing the average age of Review-level cases; (2) Enhancing transparency of its operations; (3) Promoting organizational excellence; and (4) Managing agency resources in a manner that instills public trust. It also identifies innovative and comprehensive strategies to achieve strategic goals and objectives. The Strategic Plan includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goals</u> ⁵
<i>Promptly and fairly resolving cases, including reducing the average age of cases pending at the agency.</i>	<ul style="list-style-type: none"> • Resolve all priority cases at the Agency in a timely manner.⁶ • Develop and implement case management practices that will minimize the average age of all pending Review-level cases. • Reduce the average age of all pending Review-level cases to 20 months from direction for review.⁷ • Reduce the number of Review-level cases over two years in age.

The Commission will advance its strategic goal through the following strategies:

1. Focus on reducing the average age of the oldest pending cases and of all pending cases, with immediate aim of developing and implementing improvements in case management;
2. Expedite the disposition of priority cases that are designated as requiring rapid action (e.g., court remands, interlocutory reviews, and certain Rule 60(b) cases), such that they are disposed of within six months of designation;
3. Expand knowledge management and research tools to accelerate the preparation of cases and issuance of decisions;
4. Identify and provide training opportunities to all agency attorneys and support staff that will enhance their capabilities, such as training on technical and legal issues, legal writing, ethics, and technology and case management;
5. Use individual performance standards that support priorities in the Review Commission’s strategic and annual performance plans; and
6. Implement appropriate changes to the agency’s procedures to expedite case processing.

⁵ These goals will not apply to cases that are stayed at the Review Commission because criminal law investigations or prosecutions are being pursued.

⁶ Priority cases include Federal Rule of Civil Procedure (FRCP) 60(b) cases, Commission Rule (CR) 101(a) defaults, court remands, and interlocutory reviews. However, some FRCP 60(b) and CR 101(a) cases – those with significant threshold issues, for instance – are not treated as priority cases because of the complexity of those issues. Also, where the parties have indicated intent to settle a priority case, the timeframe will be tolled.

⁷ External factors, such as lack of a quorum or recusal of a Commissioner, may adversely affect the Review Commission’s ability to meet these goals.

The following are the performance goals for the Commission for FY 2018 – FY 2022:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Resolve all priority cases at the Agency in a timely manner.	Percent of priority cases disposed of within 6 months.	100% Target met (100%)	100% Target met (100%)	100% Target met (100%)	100%	100%
Develop and implement case management practices that will minimize the average age of all pending Review-level cases.	Whether case management practices have been developed and implemented.	Case management practices were developed and assessed. Target met (Assess whether new case management practices should be developed and implemented.)	Case management practices were developed and assessed. Target met (Develop new case management practices.)	New case management practices were implemented. Target met (Implement new case management practices.)	Evaluate implementation of case management practices.	Full implementation of case management practices.
Reduce the average age of all pending Review-level cases to 20 months from direction for review.	Average age of all pending Review-level cases.	Average age of all Review-level cases was reduced to 24 months. Target met (Average age of all Review-level cases reduced to 26 months⁸.)	Average age of all Review-level cases reduced to 26 months. Target not met (Average age of all Review-level cases reduced to 24 months.)	Average age of all Review-level cases reduced to 14 months. Target met (Average age of all Review-level cases reduced to 22 months.)	Average age of all Review-level cases reduced to 20 months.	Average age of all Review-level cases reduced to 20 months.

⁸ For instance, for FY 2018, the target goal now calculates the average age of a review-level case based on: (1) cases that are docketed at the review level and decided during the time frame of October 1, 2017 through September 30, 2018; and (2) the age of all cases pending on September 30, 2018.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Reduce the number of Review-level cases over two years in age.	Percent reduction in the number of Review-level cases over two years in age.	Share of Review-level cases over two years in age was 51% of all cases. Target not met (Reduce the share of Review-level cases over two years in age as follows: No greater than 40% of all cases ⁹ .)	Share of Review-level cases over two years in age was 55% of all cases. Target not met (Reduce the share of Review-level cases over two years in age as follows: No greater than 33% of all cases.)	Share of Review-level cases over two years in age was 25% of all cases. Target met (Reduce the share of Review-level cases over two years in age as follows: No greater than 25% of all cases.)	Reduce the share of Review-level cases over two years in age as follows: No greater than 20% of all cases.	Maintain the share of Review-level cases over two years in age as follows: No greater than 20% of all cases.

⁹ For instance, for FY 2018, the target goal takes into account case production from October 1, 2017 through September 30, 2018, with the final percentage measured as of the end of the FY.

Office of the Executive Director Function

The Office of the Executive Director (OEXD) provides administrative support services for the entire Review Commission to assure success in fulfilling its mission.

Administrative Operations

The Executive Director function provides operational management for the agency, including procurement, information technology management, human resources management, budget and financial management, and administrative services. The day-to-day tasks of this office are led by the Executive Director and include:

- Supporting the development and implementation of the agency's strategic goals;
- Maintaining and enhancing a website to provide the public with greater access to Review Commission information;
- Providing agency-wide support in the areas of finance, budget, procurement and contracting, human resources, equal opportunity, and general administrative services;
- Providing personnel, payroll, benefits, reproduction, mail services, and travel assistance to agency employees;
- Procuring goods and services, maintenance and needed repairs of equipment, training, reference materials, supplies, and office space;
- Implementing case management and administrative systems through IT hardware and software;
- Developing and maintaining computer systems and information security enhancements; and
- Enhancing telecommunications and improving technology efficiency and effectiveness.

Anticipated OEXD Workload for FY 2022

During FY 2022, OEXD staff will:

- Implement the Administration's government-wide performance initiatives;
- Improve financial and administrative services and enhance integrity and efficiency of the agency's financial management and human resources programs;
- Provide greater online access to information generated by OSHRC to citizens and other interested parties as a part of the Review Commission's transparency initiatives;

- Provide faster and better public access to, and dissemination of, Review Commission information and decisions through the use of modern automated technology and techniques, including the agency's website;
- Improve computer information security based on an evaluation of the Review Commission's computer security, compliance with the various security acts, and the implementation of corrections or improvements in any weaknesses found as a result of evaluations;
- Execute the Continuity of Operations Plan (COOP) including maintenance, testing, and (if needed) implementation of the COOP for the National office, and the regional offices in Denver and Atlanta;
- Make use of Knowledge Management practices to ensure that employees are better prepared to perform their work and to provide for continuity and succession planning; and
- Review information technology programs to determine ways to achieve cost savings.

During the past few fiscal years, the Review Commission has made great strides with improving the quality of its web-based transparency initiatives, including enhancing its website to make more information available to internal and external customers, and undertaking other activities in support of our mission. We will continue these efforts in FY 2021 and FY 2022.

In FY 2016, the e-filing system was deployed and fully implemented. Since that time, we have continued to enhance and customize the e-filing system to better support the user community. This budget request includes \$95,000 for continued support (\$55,000 for licensing/hosting and \$40,000 for enhancements) of the e-filing system. Effective management of this e-filing system is demonstrative proof of the agency's commitment of using technology to improve accuracy and efficiency in its case management practices.

Staffing

The Executive Director function requires 8 FTE positions in FY 2022. The Office has responsibility for implementing the Administration's performance improvement efforts, including implementing and monitoring strategic and performance plans and reports, budget, and performance integration, human capital development, and E-government.

<u>FUNDING (IN MILLIONS) AND FTE</u>						
	<u>FY 2020 Actual</u>		<u>FY 2021 Enacted</u>		<u>FY 2022 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Executive Director Function	1.7	7	1.7	7	1.9	8

Strategic Plan and Outcome Goals

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission’s Strategic Plan for FY 2018 through FY 2022 focuses on four goals: (1) Promptly and fairly resolving the cases before it, including reducing the average age of Review-level cases; (2) Enhancing transparency of its operations; (3) Promoting organizational excellence; and (4) Managing agency resources in a manner that instills public trust. It also identifies innovative and comprehensive strategies to achieve strategic goals and objectives. The Strategic Plan includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goals</u>
<i>Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency’s work at all levels, consistent with due process requirements.</i>	<ul style="list-style-type: none"> • Ensure that the Review Commission’s website is user-friendly, accessible to people with disabilities, and serves as a useful repository for information about the agency and its adjudicatory activities. • Broaden the Review Commission’s outreach activities to the regulated community.
<i>Encouraging a culture of professionalism, mutual respect, and organizational pride; ensuring that staff members are adequately trained and developed.</i>	<ul style="list-style-type: none"> • Recruit, invest in, and value all employees through professional development, workplace flexibilities, fair treatment, and recognition. • Ensure that employees are aware of the agency’s mission and how they contribute to its accomplishments.

<p><i>Providing responsible stewardship of resources to monitor, evaluate, and improve programs and processes in order to better accomplish the agency's mission.</i></p>	<ul style="list-style-type: none"> • Develop and present an annual budget and performance plan that clearly presents how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals. • Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, services) to support the effective use of broadband, cyber security, and energy efficiency. • Conduct all internal and external agency business in an ethical and timely manner.
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The OEXD will advance its strategic goals through the following strategies:

1. Develop and present an annual budget and performance plan that clearly presents how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals;
2. Provide greater public access to Review Commission activities, information, and decisions, including education and outreach for LEP individuals and posting procedural decisions and non-dispositive orders on the Review Commission's website;
3. Create a culture that incorporates core values and provides a work environment that encourages diversity and workplace policies and programs that enable employees to excel, including special emphasis programs (e.g., People with Disabilities, Federal Women's Program, Hispanic Employment Program), telework policies, family-friendly policies, and wellness programs;
4. Enhance employee development and learning opportunities by devoting available budgetary resources to staff training;
5. Develop and implement recruitment strategies to ensure a highly qualified and diverse workforce;
6. Streamline IT operations, simplify day-to-day management and maintenance, and create a more stable operating environment by eliminating duplication, investing in standardized platforms, realizing cloud first opportunities, and minimizing storage and application sprawl and locally housed servers;
7. Improve network/communications performance to ensure Commission personnel have seamless access to systems necessary to perform their work in a timely fashion; and

8. Maintain an information security and privacy management program through acceptance and deployment of appropriate federally mandated guidelines and enforce active policies. Ensure annual FISMA audits are performed.

The following are the OEXD performance goals for FY 2018 – FY 2022:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Ensure that the Review Commission’s website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities.	Timeliness of postings to agency website.	Internal process was implemented to allow staff to post materials directly to the agency’s website. All materials were posted within one day after issuance. Target met (All material posted no later than 6 days after issuance.)	Materials were posted to the agency’s website within one day after issuance. Target met (All material posted no later than 5 days after issuance.)	Materials were posted to the agency’s website within one day after issuance. Target met (All material posted no later than 4 days after issuance.)	All material posted no later than 3 days after issuance.	All material posted no later than 3 days after issuance.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Broaden the Review Commission's outreach activities to the regulated community.	-Participation in professional conferences and meetings and strategic engagement with the regulated community. -Creation of electronic subscription service.	Alert service was implemented on the agency's website to engage the public. Target met (-Increased participation in at least two activities or meetings that promote strategic engagement to disseminate information including trends and services (e.g., LEP) provided by the agency. -Use of alert service to engage the public.)	Alert service on the agency's website was utilized and monitored for purposes of engaging the public. Target met (-Increased participation in at least two activities or meetings that promote strategic engagement to disseminate information including trends and services (e.g., LEP) provided by the agency. -Monitor the use of alert service used to engage the public.)	Continued to utilize and monitor the alert service on the agency's website to engage the public. Target met (-Increased participation in at least two activities or meetings that promote strategic engagement to disseminate information including trends and services (e.g., LEP) provided by the agency. -Monitor the use of alert service used to engage the public.)	-Increased participation in activities or meetings that promote strategic engagement to disseminate information including trends and services (e.g., LEP) provided by the agency. -Monitor the use of alert service used to engage the public.	-Increased participation in activities or meetings that promote strategic engagement to disseminate information including trends and services (e.g., LEP) provided by the agency. -Monitor the use of alert service used to engage the public.

<p>Recruit, invest in, and value all employees through professional development, workplace flexibilities, fair treatment, and recognition.</p>	<p>-Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish its mission.</p> <p>-Identify areas in which the agency can enhance diversity and talent through annual analysis of the MD-715¹⁰ guidance.</p>	<p>-Job postings were developed to attract qualified and diverse candidates.</p> <p>-Agency directives pertaining to workplace flexibilities were reviewed.</p> <p>Target met (-Attract qualified and diverse candidates, including veterans and persons with disabilities.</p> <p>-Annually review and/or update agency directives pertaining to workplace flexibilities (e.g., hours of work, telework.))</p>	<p>-Agency directives pertaining to workplace flexibilities were updated.</p> <p>-Reviewed performance management directives and established new critical element for supervisors.</p> <p>-Devoted budgetary resources to training.</p> <p>Target met (-Ensure that the agency's performance management system(s) are aligned with its goals and objectives.</p> <p>-Enhance employee development and learning opportunities by making budgetary resources available for staff training.</p> <p>-Annually review and/or update agency directives pertaining to workplace flexibilities (e.g., hours of work, telework.))</p>	<p>-Agency directives pertaining to workplace flexibilities were updated.</p> <p>-Devoted budgetary resources to training.</p> <p>-Reviewed performance management directives.</p> <p>Target met (-Ensure that the agency's performance management system(s) are aligned with its goals and objectives.</p> <p>-Enhance employee development and learning opportunities by making budgetary resources available for staff training.</p> <p>-Annually review and/or update agency directives pertaining to workplace flexibilities (e.g., hours of work, telework.))</p>	<p>-Ensure that the agency's performance management system(s) are aligned with its goals and objectives.</p> <p>-Enhance employee development and learning opportunities by making budgetary resources available for staff training.</p> <p>-Annually review and/or update agency directives pertaining to workplace flexibilities (e.g., hours of work, telework.)</p>	<p>-Ensure that the agency's performance management system(s) are aligned with its goals and objectives.</p> <p>-Enhance employee development and learning opportunities by making budgetary resources available for staff training.</p> <p>-Annually review and/or update agency directives pertaining to workplace flexibilities (e.g., hours of work, telework.)</p>
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¹⁰ Equal Employment Opportunity (EEO) Management Directive 715 – Reporting Requirement for Federal Agencies.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Develop and present an annual budget and performance plan that clearly presents how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals.	System that links resources to specific activities that support measurable programmatic outcomes and objectives.	<p>Aligned budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure/ space, and facilities).</p> <p>Target met (Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities.))</p>	<p>Aligned budget with agency program goals to efficiently accomplish mission.</p> <p>Target met (Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities.))</p>	<p>Aligned budget with agency program goals to efficiently accomplish mission.</p> <p>Target met (Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities.))</p>	Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities).	Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities).

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Ensure that employees are aware of the agency's mission and how they contribute to its accomplishments.	Communicate significant organizational accomplishments with staff.	<p>Annual Federal Employee Viewpoint Survey results were assessed. Routine meetings were conducted.</p> <p>Target met</p> <p>(-Communicate significant organizational accomplishments with staff during all-hands staff meetings and during supervisory/employee meetings.</p> <p>-Use results of the annual Federal Employee Viewpoint Survey to assess employees' knowledge of how their work relates to the agency's goals and priorities.)</p>	<p>-Routine staff meetings were conducted.</p> <p>-Annual Federal Employee Viewpoint Survey results were analyzed.</p> <p>Target met</p> <p>(-Communicate significant organizational accomplishments with staff during all-hands staff meetings and during supervisory/employee meetings.</p> <p>-Use results of the annual Federal Employee Viewpoint Survey to assess managers and supervisor's communication with employees about the agency's goals and priorities.)</p>	<p>-Routine staff meetings were conducted.</p> <p>-Annual Federal Employee Viewpoint Survey results were analyzed.</p> <p>Target met</p> <p>(-Communicate significant organizational accomplishments with staff during all-hands staff meetings and during supervisory/employee meetings.</p> <p>-Use results of the annual Federal Employee Viewpoint Survey to assess managers and supervisor's communication with employees about the agency's goals and priorities.)</p>	<p>-Communicate significant organizational accomplishments with staff during all-hands staff meetings and during supervisory/employee meetings.</p> <p>-Use results of the annual Federal Employee Viewpoint Survey to assess managers and supervisor's communication with employees about the agency's goals and priorities.</p>	<p>-Communicate significant organizational accomplishments with staff during all-hands staff meetings and during supervisory/employee meetings.</p> <p>-Use results of the annual Federal Employee Viewpoint Survey to assess managers and supervisor's communication with employees about the agency's goals and priorities.</p>

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, services) to support the effective use of broadband, cyber security, and energy efficiency.	<p>-Streamline operations and infrastructure to eliminate duplication; minimize servers, storage, and application sprawl.</p> <p>-Maintain standardized platforms including hardware and software.</p> <p>-Improve network/communications to ensure customers can access necessary information without delay.</p>	<p>Continuous monitoring of the agency's technology infrastructure was done to determine if new or additional resources were necessary.</p> <p>Target met (-Reduce physical servers through virtualization.</p> <p>-Reduce the number of operating systems in use.</p> <p>-Evaluate and address enhancements to our e-filing system.</p> <p>-Increase bandwidth for migration to cloud initiatives (i.e., electronic mail services to the cloud and expand cloud storage space.)</p>	<p>-Enhanced the Office 365 licensing model.</p> <p>-Upgraded the remote access application (Citrix environment).</p> <p>-Upgraded the speed of the agency's Wide Area Network circuits.</p> <p>-Introduced Adobe Acrobat Pro 2017.</p> <p>Target met (-Reduce physical servers through virtualization.</p> <p>-Reduce the number of operating systems in use.</p> <p>-Increase bandwidth for migration to cloud efficiencies.)</p>	<p>-Updated existing server infrastructure.</p> <p>-Began moving server systems to the cloud and expanding existing data circuits to accommodate increased bandwidth usage.</p> <p>Target met (-Reduce physical servers through virtualization.</p> <p>-Reduce the number of operating systems in use.</p> <p>-Increase bandwidth for migration to cloud efficiencies.)</p>	<p>-Reduce physical servers through virtualization.</p> <p>-Reduce the number of operating systems in use.</p> <p>-Increase bandwidth for migration to cloud efficiencies.</p>	<p>-Reduce physical servers through virtualization.</p> <p>-Reduce the number of operating systems in use.</p> <p>-Increase bandwidth for migration to cloud efficiencies.</p>

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2018 Actual (Target)	FY 2019 Actual (Target)	FY 2020 Actual (Target)	FY 2021 (Target)	FY 2022 (Target)
Conduct all internal and external agency business in an ethical and timely manner.	Promote an ethical culture within the Commission through leadership, awareness, resources, and oversight.	<p>Expanded outreach primarily to new employees, in particular political appointees, which generated increased opportunities to provide ethics advice.</p> <p>Target met (-Provide in-person ethics training to all agency filers.)</p> <p>-Increase opportunities for outreach to all agency employees on ethics issues.)</p>	<p>-Provided ethics training to agency filers.</p> <p>-Developed procedures to (1) conduct internal discussions of ethics inquiries as they arise; (2) promptly gather information needed from inquirer to respond; and (3) timely consult OGE regulations and guidance, past advice, and additional resources.</p> <p>Target met (-Provide in-person ethics training to all agency filers.)</p> <p>-Develop a plan to decrease response time to ethics inquiries.)</p>	<p>-Provided live virtual ethics training to agency filers in accordance with training flexibilities allowed by OGE due to the coronavirus pandemic.</p> <p>(1) Promptly conducted internal discussions of ethics inquiries as they arise; (2) gathered information needed from inquirer to respond as soon as need for additional information arose; and (3) timely consulted OGE regulations and guidance, past advice, and additional resources.</p> <p>Target met (-Provide in-person ethics training to all agency filers.)</p> <p>-Implement a plan to decrease response time to ethics inquiries.)</p>	<p>-Provide annual and more frequent ethics training to all agency filers.</p> <p>-Implement a plan to decrease response time to ethics inquiries.</p>	<p>-Provide annual and more frequent ethics training to all agency filers.</p> <p>-Implement a plan to decrease response time to ethics inquiries.</p>

**V. BUDGET BY OBJECT
CLASSIFICATION
CATEGORY**

Budget by Object Classification (BOC) Category

The Review Commission requests an appropriation of \$15,028,000 to continue our mission of timely adjudicating OSHA-issued workplace safety and health citations, particularly in light of COVID-19 enforcement activity. The requested amount would support 63 FTE positions, an increase of 8 FTE positions relative to the 2021 Enacted levels, as well as funding for other expenses.

The proposed budget for FY 2022 along with the FY 2020 actual and FY 2021 enacted amounts is shown in the table below by object classification category. A narrative explanation of the amount requested for each object classification follows the table.

Object Classification Table

Fiscal Years 2020, 2021 and 2022
(Dollars in Thousands)

Budget Object Class		Change FY 2021 – FY 2022				
		FY 2020 Actual	FY 2021 Enacted	FY 2022 Request	\$	%
11.0	Personnel Compensation	\$6,678	\$7,462	\$8,455	+993	+13.31
12.0	Personnel Benefits	2,118	2,237	2,871	+634	+28.34
Subtotal Personnel Services		8,796	9,699	11,326	+1,627	+16.77
21.0	Travel	68	185	230	+45	+24
22.0	Transportation of Things	8	10	10	-0-	-0-
23.1	Space Rental Payments (GSA)	1,679	1,625	1,722	+97	+5.97
23.3	Communications, Utilities and Misc.	272	272	272	-0-	-0-
24.0	Printing and Reproduction	2	17	10	-7	-41.18
25.0	Other Services	1,805	1,005	1,046	+41	+4
26.0	Supplies and Materials	53	43	43	-0-	-0-
31.0	Equipment	277	369	369	-0-	-0-
	Unobligated	265				
Grand Total		\$13,225	\$13,225	\$15,028	+1,803	+13.63

Budget Object Classification Detail

11.0 Personnel Compensation

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
7,462,000	8,455,000	+993,000	+13.31

The Review Commission requests \$8,455,000 to fund direct payroll in FY 2022. This amount will fund 63 FTE positions.

This object class also supports awards to recognize those employees whose performance is superior and who perform special acts or services, which assists in recruiting and retaining talented employees. The Review Commission’s monetary awards program for General Schedule employees’ rewards and recognizes high-performing individuals in accordance with 5 C.F.R § 451. The performance-based awards program is designed to reflect meaningful distinctions based on levels of performance to ensure employees with higher ratings of record receive larger cash awards. Performance plans and critical elements are developed to align with the Review Commission’s strategic goals and to support organizational values (e.g., interpersonal skills, team participation and relationships, innovation), and to focus on specific, measurable, attainable, relevant, and timely results. Recommendations for awards (i.e., rating-based, superior accomplishment, productivity gain, or personal effort that contributes to the efficiency, economy, or other improvements of agency operations) are thoroughly reviewed to determine if they are supportive of the goals and objectives of the Review Commission as expressed in its Strategic Plan for FY 2018 - FY 2022.

In FY 2020, the Review Commission spent two percent of aggregate salaries for all General Schedule employees for the combination of individual performance awards and individual contribution awards (e.g., special act awards). The total spending for General Schedule and Senior Executive Service awards was \$114,000. The Review Commission’s performance management programs are reviewed annually by senior management officials to determine its continued effectiveness and/or the need to make adjustments for future fiscal years.

12.0 Personnel Benefits

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
2,237,000	2,871,000	+634,000	+28.34

The requested amount for benefits in FY 2022 is \$2,871,000. This amount will fund payroll-related costs of employee benefits in FY 2022. These benefits principally consist of the government’s contributions to the Civil Service Retirement System and the Federal Employees Retirement System, life and health insurance programs, the Transportation Subsidy Program, and the Thrift Savings Plan.

21.0 Travel

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
185,000	230,000	+45,000	+24

The requested amount for travel in FY 2022 is \$230,000. Travel of ALJs to conduct hearings accounts for approximately 90 percent of this request. The remaining 10 percent of these funds is for travel associated with training, necessary travel to the regional offices, and other requirements. By law, hearings must be conducted as close as possible to the site of the alleged violation. It should be noted that the COVID-19 pandemic had a significant impact on our ability to hold in-person hearings in fiscal years 2020 and 2021. We were able to hold remote proceedings in mandatory settlement conferences and less complex hearings, however, this was not possible in the more complex cases. Many complex matters will require in-person multi-day and in some instances multi-week hearings. These matters have been continued to the fall of 2021 and into 2022. Accordingly, we have a backlog of cases which would have been heard during fiscal years 2020 and 2021 when travel ceased. In anticipation of these cases, along with the increased caseload, we are requesting a higher amount for travel costs in comparison to previous years.

22.0 Transportation of Things

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
10,000	10,000	-0-	-0-

An amount of \$10,000 is requested to fund the cost of shipping materials between Review Commission offices and other locations.

23.1 Rental Payments to GSA

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
1,625,000	1,722,000	+97,000	+5.97

The request includes \$1,722,000 for office space rental for the National and Regional Offices. These projected rent costs are based on FY 2022 estimates provided by the General Services Administration (GSA) to the Review Commission.

23.3 Communications, Utilities, and Miscellaneous Charges

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
272,000	272,000	-0-	-0-

The Review Commission requests \$272,000 for communication costs in FY 2022. This amount will allow the Review Commission to continue to support the e-filing system. The e-filing system directly supports our annual performance plan’s goals and targets, promotes transparency, supports technology improvements, and allows us to continue our cloud initiative with increased security and bandwidth requirements and pave the way for future cloud initiatives.

The Review Commission maintains an e-filing system with a hosted internet-based interface that accommodates the electronic filing of litigation documents. This budget request includes telecommunication costs to continue our cloud initiative with increased security and bandwidth requirements and pave the way for future cloud initiatives.

Local telephone service and telecommunication expenses are projected to be \$252,000. Postage for the required mailing of letters, case files, and other materials related to cases is expected to be \$20,000.

24.0 Printing and Reproduction

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
17,000	10,000	-7,000	-41.18

The requested amount for printing in FY 2022 is \$10,000. Printing costs consist mainly of the charges for publishing rules, proposed rules, and other announcements in the Code of Federal Regulations (CFR) and/or the Federal Register, and for purchasing copies of the CFR and other GPO publications. Together, these printing/publishing costs are expected to approximate \$5,000 in FY 2022. The balance of the budget – \$5,000 – is needed for printing of Rules of Procedure and Guide to the Review Commission pamphlets, which are provided to parties to Review Commission proceedings.

25.0 Other Services

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
1,005,000	1,046,000	+41,000	+4

The requested for other services in FY 2022 is \$1,046,000. Requirements in this area fall into two basic categories: Interagency Agreements for services provided by other federal agencies and contractual services provided by non-federal vendors. Additional information on each of these is provided in the following paragraphs.

Services Provided by Other Federal Agencies. A total of \$444,750 is requested for services provided by other federal agencies. Our costs have increased in this category as a result of additional service costs associated with a new time and attendance system provided by the NFC, along with higher costs for our Interagency Agreements with the Office of Personnel Management (OPM) and NARA. This area includes \$14,000 for personnel and payroll services

provided by NFC, \$326,000 for financial and administrative services provided by the Bureau of the Fiscal Service (BFS), and \$56,000 for building security (estimated). The remaining amount will be used to fund other Interagency Agreements such as with the U.S. Department of Health and Human Services (Federal Occupational Health), GSA, OPM, and NARA.

Other Contractual Services. OSHRC procures a variety of services to support us in carrying out our mission. These include court reporting (\$100,000); maintenance/incremental enhancements including security of the Review Commission’s information technology system, and for continued enhancements and customized reporting of the e-filing system (\$40,000); services for translation of documents and interpreters for individuals LEP (\$10,000); independent evaluation of IT security under the Federal Information Security Management Act (FISMA) (\$30,000); and on-line legal research (\$48,000). This category also includes funding for other contractual services such as the annual audit of our financial statements (\$35,000), library operations (\$90,000), training, and other requirements to support the agency’s mission. This category also includes funds needed for continuing maintenance of the Review Commission’s website (\$30,000).

26.0 Supplies and Materials

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
43,000	43,000	-0-	-0-

The requested amount for supplies and materials in FY 2022 is \$43,000. This amount includes general office supplies (\$22,000) and information technology supplies and software (\$21,000).

31.0 Equipment

Change FY 2021 Enacted – FY 2022 Request

FY 2021 Enacted	FY 2022 Request	Amount	Percent
369,000	369,000	-0-	-0-

The requested amount for equipment in FY 2022 is \$369,000. The Review Commission deployed an e-filing system in FY 2016 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. As a result, our information technology infrastructure was upgraded, and licensing and hosting costs are required to maintain the system. We estimate that the licensing costs will be \$55,000. Subscriptions and other publications necessary to maintain our legal libraries are included in this object class. The remainder is required for new and/or replacement computers and other information technology requirements and to enable us to comply with government-wide mandates such as the FISMA. Our information technology equipment includes personal computers, printers, a local area network, and associated peripherals. Finally, a small portion of this funding will be used to purchase any office furniture that may be needed.

VI. OTHER TABLES

The U.S. Occupational Safety and Health Review Commission Appropriation History

<u>Fiscal Year</u>	<u>Request to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
2000	\$8,500,000	\$8,100,000	\$8,500,000	\$8,470,000 ¹¹
2001	\$8,720,000	\$8,600,000	\$8,720,000	\$8,720,000
2002	\$8,964,000	\$8,964,000	\$8,964,000	\$8,958,000 ¹²
2003	\$9,577,000	\$9,577,000	\$9,577,000	\$9,673,000 ¹³
2004	\$10,115,000	\$10,115,000	\$9,610,000	\$9,863,000 ¹⁴
2005	\$10,516,000	\$10,595,000	\$10,595,000	\$10,510,240 ¹⁵
2006	\$10,510,000	\$10,510,000	\$10,510,000	\$10,404,900 ¹⁶
2007	\$10,346,000	\$10,510,000	\$10,346,000	\$10,470,779
2008	\$10,696,000	\$10,696,000	\$10,696,000	\$10,696,000 ¹⁷
2009	\$11,186,000	\$11,186,000	\$11,186,000	\$11,186,000
2010	\$11,712,000	\$11,712,000	\$11,712,000	\$11,712,000
2011	\$12,051,000	\$11,712,000	\$12,051,000	\$11,712,000 ¹⁸
2012	\$12,773,000	\$11,689,000	\$11,689,000	\$11,689,000 ¹⁹
2013	\$11,965,000	\$11,667,000	\$11,667,000	\$11,666,908 ²⁰
2014	\$12,634,830			\$11,411,000
2015	\$12,651,000	\$12,651,000	\$12,651,000	\$11,639,000
2016	\$13,212,000	\$12,639,000	\$11,100,000	\$12,639,000
2017	\$13,411,000	\$12,975,000	\$13,411,000	\$13,225,000
2018	\$12,615,000	\$12,875,000	\$13,225,000	\$13,225,000
2019	\$12,615,000	\$12,975,000	\$13,225,000	\$13,225,000
2020	\$13,225,000	\$13,225,000		\$13,225,000
2021	\$13,721,000	\$13,225,000		\$13,225,000
2022	\$15,028,000			

¹¹ Reduced to \$8,470,000 by P.L. 106-113.

¹² Reduced to \$8,958,000 by P.L. 107-206.

¹³ Reduced to \$9,610,125 by P.L. 108-7.

¹⁴ Reduced to \$9,863,000 by P.L. 108-199.

¹⁵ Reduced to \$10,510,240 by P.L. 108-447.

¹⁶ Reduced to \$10,404,900 by P.L. 109-149.

¹⁷ Reduced to \$10,509,141 by P.L. 110-161.

¹⁸ Reduced to \$11,688,576 by P.L. 112-10.

¹⁹ Reduced to \$11,666,908 by P.L. 112-74.

²⁰ Reduced to \$11,056,659 by P.L. 113-6 and Sequestration Order issued March 1, 2013.

Authorized Full Time Positions by Function

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>
	Actual	Enacted	Estimate
Administrative Law Judge:			
AL-II	1	1	1
AL-III	11	11	11
GS-14	7	7	7
GS-13	0	0	0
GS-12	1	1	1
GS-11	0	0	0
GS-10	0	0	0
GS-9	4	3	4
GS-8	<u>2</u>	<u>3</u>	<u>3</u>
<i>Sub-total</i>	26	26	27
Commission:			
Executive Level III	1	1	1
Executive Level IV	2	2	2
ES-00	2	2	2
GS-15	4	5	5
GS-14	5	5	7
GS-13	1	2	1
GS-12	2	2	4
GS-11	2	2	3
GS-9	0	1	1
GS-8	1	0	2
GS-7	<u>0</u>	<u>0</u>	<u>0</u>
<i>Sub-total</i>	20	22	28
Office of the Executive Director:			
ES-00	1	1	1
GS-15	1	1	1
GS-14	1	1	1
GS-13	0	0	0
GS-12	3	3	3
GS-11	0	1	1
GS-9	1	0	0
GS-7	<u>0</u>	<u>0</u>	<u>1</u>
<i>Sub-total</i>	7	7	8
Total full-time positions:	53	55	63

Note: The FY 2022 columns reflect the number of FTE positions needed to continue to support our mission.