

State of Washington
2009-11 BUDGET

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AGENCY STRATEGIC PLAN

Mission Statement and Statutory Authority References

The Board of Industrial Insurance Appeals (BIIA) was created in 1949 to hear appeals from decisions made by the Department of Labor and Industries (L&I). The mission of the BIIA is to serve the public by resolving appeals in a consistent, impartial, timely, and efficient manner.

The Board of Industrial Insurance Appeals was established as a separate and independent agency from L&I to ensure the impartiality and fairness of the dispute resolution process. As an administrative tribunal, the BIIA provides a faster and less expensive forum than available through the court system. The BIIA is able to provide a consistent and predictable service through the expertise of the judges and staff who specialize in the subject matter of the dispute.

Most adjudicatory agencies in our state conduct proceedings under the provisions of the Administrative Procedures Act (APA). The BIIA does not follow the less formal APA. We are required by statute to use the Superior Court Rules of civil procedure and evidence. This makes our proceedings similar to a bench trial in superior court.

Staffing

We have approximately 155 employees in three divisions (see organizational chart page 19). Approximately 38% of the workforce consists of attorneys who serve as Industrial Appeals Judges in one of four areas – New Appeals, Mediation, Hearings, and Review. All Industrial Appeals Judges are required to be active or judicial members of the Washington State Bar Association and must be knowledgeable in all subject areas for which we have

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jurisdiction. Legal and clerical support comprises another 38% of employees: legal secretaries, hearings schedulers, new appeals specialists and leads, and office assistants. Administrative employees (Information Technology, Human Resources, Financial, and Facilities/ Telecommunications) make up approximately 11% of the workforce. Approximately 83% of the agency employees are represented by the Washington Federation of State Employees, AFL-CIO, in one of three bargaining units: judicial staff, support staff, and support supervisors. Workforce demographics are shown in the figure below:

DEMOGRAPHIC	BREAKDOWN	PERCENT
Gender	Male	40.0%
	Female	60.0%
Race/ Ethnicity	African-American	4.7%
	Hispanic	2.0%
	Asian/Pacific Islander	5.3%
	Native American	1.3%
	Caucasian	86.7%
Age	Over 40	86.0%
Education	High School Graduate	12.0%
	Vocational/Business	7.0%
	Some College < 4 years	24.0%
	College Grad 4 Yr Degree	9.0%
	Post Graduate (JD, other Master Degree)	48.0%

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Statutory Authority

BIIA jurisdiction involves several specialized areas of law:

SOURCE	DESCRIPTION
Industrial Insurance	L&I orders issued under Title 51 RCW that affect the rights of a worker, worker's dependent, employer, medical provider, or vocational provider.
Firm Appeals	L&I orders issued under RCW 51.48.120 and RCW 51.48.131. Appeals deal with industrial insurance taxes.
WISHA Appeals	L&I orders issued under Ch. 49.17 RCW, the Washington Industrial Safety and Health Act. Appeals deal with citations for alleged safety violations at work sites.
Health & Safety – Asbestos Appeals	L&I orders issued under RCW 49.26.110, relating to denial, suspension, or revocation of a certificate to abate asbestos.
Safety – Crime Prevention	L&I orders issued under RCW 49.22.030 relating to the safety of employees of late night retail stores.
Charter Boat Safety Act	L&I orders issued under Ch. 88.04 RCW relating to the inspection and operation of charter boats on inland navigable waters not otherwise governed by Coast Guard regulations.
Explosives Act	L&I orders issued Ch. 70.74 RCW concerning the handling of explosives and ammunition and licensing of manufacturers of explosives and ammunition.
Worker and Community Right to Know	L&I orders issued under Ch. 49.70 RCW relating to the handling of hazardous materials and the right of workers and community to know what materials are being used by an employer.
Crime Victim Appeals	L&I orders issued under Ch. 7.68 RCW concerning medical and financial benefits available to Washington State crime victims.
LEOFF Appeals	L&I orders issued under Ch. 41.26 RCW, the Law Enforcement Officers' and Fire Fighters' Retirement System, concerning death benefits to be paid to an officer's or fire fighter's estate or dependents.
Death Benefits	Death benefits for certain public employees, RCW 41.40, RCW 41.32, RCW 41.35, and RCW 41.04.

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Benefits of Dispute Resolution

The appeal process provided by the BIIA has many benefits for workers, employers and other customers throughout the state. The vast majority of the customers of the BIIA are able to avoid the expense and time required to pursue a dispute in the court system. The agency's process also benefits our crowded state judicial system by providing an alternate forum for thousands of disputes each year. The parties to a dispute benefit by receiving dispute resolution services from people who are experts in the particular field of law and hearings before judges similarly expert. Employing the rules of Superior Court, in procedure and evidence, helps ensure impartiality and fairness by providing each party complete access to information and predictability of process. The BIIA also strives for consistency by publishing its significant decisions.

The Dispute Resolution Process

The BIIA provides a forum for resolving disputes arising from the decisions of the Department of Labor and Industries (L&I). Workers, employers, and other parties who dispute DLI orders have a limited time within which to file appeals with the BIIA. Once an appeal is filed, the BIIA has up to sixty days to accept (grant) or deny the appeal. Different processes are deployed at various stages of appeals from (1) New Appeals, (2) Mediation, (3) Hearings and (4) Review.

The first stage in the appeals process begins in our New Appeals unit. In New Appeals, specially-trained support staff develop historical summaries and prepare case files. At this stage we decide whether the appeal needs further attention at L&I or whether it is ready for a judicial determination.

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The next stage is Mediation. In Mediation, an appeal is assigned to an industrial appeals judge who has expertise in mediation and settlement skills (a mediation/review judge). All industrial appeals judges are required to be active or judicial members of the Washington State Bar Association and must be knowledgeable in all subject areas for which the BIIA has jurisdiction.

The BIIA makes every effort to obtain an agreed resolution of every dispute. Settled cases provide a more predictable and timely result for the parties and cannot be further appealed. This reduces demand on the appellate function of the courts. Settlements are also the most efficient use of resources of the parties and the BIIA. The BIIA mediation process uses various methods of alternate dispute resolution (ADR) to facilitate and encourage an agreed result. The agency cannot impose a settlement. The decision to settle is exclusively the prerogative of the parties to an appeal.

In the event an appeal is not settled or dismissed, the case is scheduled for formal hearings. The case is assigned to an Industrial Appeals Judge (a hearings judge) for a decision on the merits of the appeal. The hearing process is adversarial in nature; attorneys represent over 90% of all parties. While the hearing process is technical and applies the rules of Superior Court, the BIIA facilitates the presentation of witnesses and evidence by accommodating the scheduling of expert witnesses at different times and locations and by accepting testimony in the form of depositions.

By statute, hearings are held in the county of the worker's injury, or in the county of residence of the worker, or elsewhere for the convenience of the parties and witnesses. All hearings are, by law, required to be reported verbatim and transcribed. The BIIA record forms the basis for all subsequent levels of appellate review.

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Following the completion of hearings, the hearings judge issues a Proposed Decision and Order (PD&O). This order must contain findings of fact and conclusions of law on all contested issues raised by the appeal. Any party who disagrees with the result of the Proposed Decision and Order may file a Petition for Review (PFR) with the three-member Board. If no petition is filed, the Board adopts the Proposed Decision and Order as its final order. If no petition is filed, no further appeal to the courts may be taken.

If a PFR is filed requesting review of the PD&O, the case moves to the fourth stage, Review. In the Review stage, the Board members must act within twenty days to grant or deny the request for review. To assist the Board members in this function, a staff of industrial appeals judges (review judges) reviews the entire record. Based on this review, a recommendation is made to the Board members regarding whether they should grant the petition and further review the appeal. If the Board denies the petition, the PD&O is adopted as the final order of the Board. If the Board grants the petition, the Board issues a Decision and Order.

A Decision and Order (D&O) is based upon a review by the three Board members of the proposed decision, the petition, and the record of the appeal. The D&O contains a review and analysis of the evidence and applicable law. By statute, the Board's final D&O must be entered within 180 days of the filing of a petition.

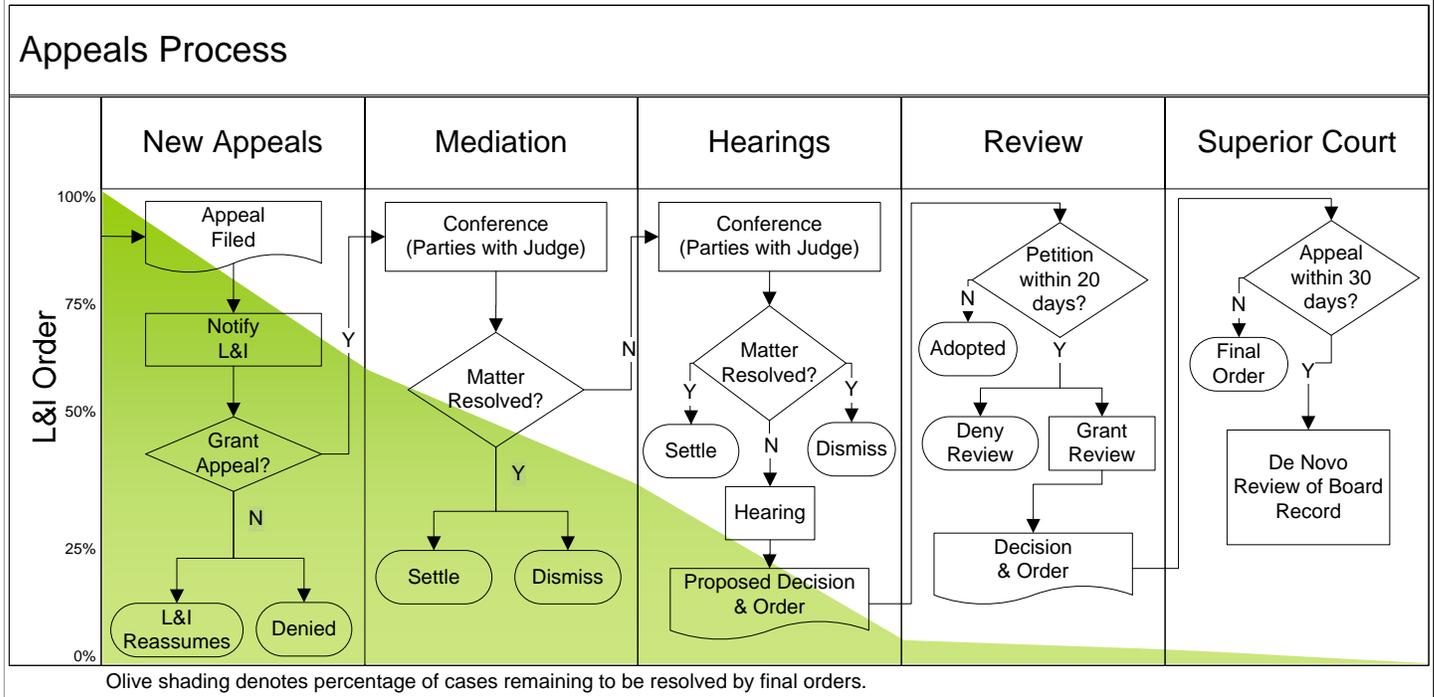
If a party disagrees with the denial of the petition or with the Board's final D&O, a further appeal may be taken to Superior Court. In that event, the Board must forward a certified copy of the entire record of the BIIA proceedings to the parties and to the Superior Court. In recent years, only 4-6% of final BIIA orders have been appealed to Superior Court. The appeal in Superior Court is based exclusively on the record established at the BIIA. The

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parties may also appeal any other final order of the BIIA including Orders Denying Appeal, Orders Fixing Interest, and Orders Fixing Attorney Fees.



Vision, Goals and Strategies

The Vision of the Board of Industrial Insurance Appeals is to provide:

- A respected, unbiased forum for the resolution of disputes; and
- A desirable place to work, supportive of our mission and consistent with our values.

In furtherance of our vision and mission, the BIIA will:

1. Improve our processes to meet the needs of our customers.
2. Use information and technology to improve agency performance.
3. Foster a culture of excellent performance, accountability and professional development.

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The following table shows how our goals and strategies align with the statewide results developed through the Priorities of Government approach to budgeting.

Table 1: Goals Matched to Statewide Results

BIIA Goals and Strategies	Statewide Result
<p>To improve our processes to meet the needs of our customers.</p> <ul style="list-style-type: none"> ▪ GMAP ▪ Multi Track ▪ Expand on-line filing of new appeals ▪ Board Seminar in 2008 ▪ Plain Talk Initiative ▪ Enterprise Risk Management ▪ Mediation Performance Measures <p>OFM Activity Inventory: Hearings, Mediation</p>	<ul style="list-style-type: none"> ➤ Improve the economic vitality of businesses and individuals ➤ Improve the ability of state government to achieve its results efficiently and effectively
<p>Foster a culture of excellent performance, accountability and professional development.</p> <ul style="list-style-type: none"> ▪ GMAP ▪ WSQA Action Plan ▪ Performance Agreement/Goals ▪ Update Affirmative Action Plan ▪ Mediation Performance Measures ▪ Conduct a Judicial Survey <p>OFM Activity Inventory: Hearings, Mediation</p>	<ul style="list-style-type: none"> ➤ Improve the economic vitality of businesses and individuals ➤ Improve the ability of state government to achieve its results efficiently and effectively
<p>Use information and technology to improve agency performance.</p> <ul style="list-style-type: none"> ▪ Expand on-line filing of new appeals ▪ Information Dashboard ▪ Make information available to Spanish-speaking individuals <p>OFM Activity Inventory: Hearings, Mediation</p>	<ul style="list-style-type: none"> ➤ Improve the economic vitality of businesses and individuals ➤ Improve the ability of state government to achieve its results efficiently and effectively

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Strategies

We are committed to being accountable to our stakeholders and customers by seeking input and providing information regarding our services. We also are committed to improving processes, and we have developed and implemented many practices saving time and avoiding costs over the past several biennia. We are making information and services more accessible and understandable to all customers. Some ongoing and more recent strategies are listed below.

- To make the dispute resolution process as efficient and effective as possible, we regularly meet and share information with representatives of the Department of Labor and Industries and the Attorney General's Office.
- We trained our extended management team (Managers and supervisors), consistent with the requirements for the Washington State Quality Award and equipped them with the necessary tools for compliance.
- We implemented Internet filing of appeals through our homepage and are expanding filing options.
- Our internet website relays important information to customers, including quarterly updates of significant Board decisions.
- We are preparing, conducting, and evaluating various aspects of judicial performance through a survey of external customers.
- We provide ongoing legal training to our staff using recognized experts in the field. (IAIABC Worker Compensation College, National Judicial College, Alternative Dispute Resolution Training for Mediation Judges). We make available to judicial staff 15 hours of Continuing Legal Education course credits every year, including at least 2 hours of professional ethics training.
- We created a new Pro Se video/DVD to educate our non-represented litigants on the appeal process. We also created a version for our Spanish speaking customers.

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- We created an agency Information Dashboard which contains real-time performance information and statistics for our staff. This will allow us to make performance management decisions based on the most current data.
- The BIIA will hold a Continuing Legal Education seminar in October 2008, to educate practitioners on our processes and relevant areas of the law. Attorneys, claims adjudicators, other professionals, and interested individuals attend these seminars.
- The BIIA Chairperson reports regularly to the Workers Compensation Advisory Committee on key BIIA performance measures.
- The Business member and Labor member of the board meet regularly with their constituent groups to obtain input and feedback on agency activities.

In addition to the previously noted initiatives we have identified several long-term strategies to enable us to continue to provide excellent public service and fulfill our mission. We continue to test additional alternative forms of dispute resolution with the goal of more effectively meeting the needs of our customers and we are exploring the use of multiple tracks for the assignments of appeals. This process will provide a full spectrum of alternative dispute resolution services.

We continue to review our forms and notices to determine which ones we need to translate into Spanish and have hired Spanish speaking employees to better meet customer needs. The issue of expanding access to information and services in Spanish will persist at the BIIA as the state population of Spanish speaking workers increases.

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We are assessing our risk management practices to ensure a fully integrated enterprise approach to risk. We continue to work with OFM to identify appropriate risk management education opportunities and identify gaps or issues in our current risk management program. One substantial part of this process is reviewing and updating our Disaster Recovery and Business Resumption plan. Recent events, in Myanmar, China and elsewhere, are a fresh reminder that worst-case scenarios sometimes do become reality. We have a planned and tested response to potential crisis as part of our agency risk management program.

We recognize the importance of interagency cooperation with L&I and the Attorney General's Office and have established regular meetings with them. We will continue to participate in the Network of Adjudicatory Agencies to share information and learn from other adjudicatory agencies in state government.

Appraisal of External Environment

We recognize that circumstances continually change in our environment and these changes can have an impact on our strategic plan and budget. We regularly assess our external environment so we can adjust our planning accordingly and respond promptly with needed changes.

New Statutory Obligations

The 2008 Legislature passed 2ESHB3139, effective June 2008, which provides for stays of benefits in industrial insurance cases during the pendency of an appeal. The new law requires the BIIA to conduct a review of the L&I file to determine whether a stay of benefits should be imposed pending the outcome of the appeal. The BIIA is required to conduct an expedited review and issue an order within 25 days of receipt of the motion or granting the appeal, whichever is later. The implementation and analysis of

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this new law is ongoing. The impact has not yet been determined, however, it is likely to be significant. Our initial analysis indicated approximately 5.3 FTEs and \$513,000 per year plus start-up costs. Funding was vetoed for technical reasons. We will seek restoration of the funding in the 2009 supplemental budget process.

Labor and Industries

The Department of Labor and Industries (L&I) regularly proposes strategies that have a direct impact on the BIIA. There continue to be legislative changes to L&I statutory mandates that have a substantial impact on the BIIA. While we can identify circumstances that would have a specific impact on the BIIA, it is difficult to assess the impact now.

In response to customer concerns about fraudulent claims, the L&I continues to increase efforts to detect and eliminate fraud and abuse by workers, employers and providers. These changes will likely result in more enforcement actions by L&I and more appeals to the BIIA.

Modification of the workers' compensation system is also continually being discussed. There will likely be general packages of proposals for the 2009 Legislature. Any new legislative proposals could lead to changes in L&I's current operations, impacting the appeals received at the BIIA.

We continue to work with L&I to improve electronic access to information that we formerly received from them on pages of microfiche. L&I has taken steps to reduce or eliminate the production of microfiche. Online access to claims and imaged documents has been a solid step in that direction.

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Employers and Workers

Employer premiums and assessments and worker payroll contributions fund the dispute resolution program. These two constituencies, employers and workers, are the “owners” of this process. The constituencies, both as broad groups and as individual participants, expect a consistent, impartial, timely and efficient resolution of disputes.

In May 2000, the BIIA completed a survey of most attorneys who had been involved in the appeals process in the prior two years. For the most part they were satisfied or very satisfied with the appeals process. However, they consistently asked that the time required to reach resolution be shortened so that those they represent, the workers and employers, obtain resolution of their disputes in a timely fashion. The 2000 BIIA survey is consistent with more recent information from L&I that indicates fairness, timeliness, and clarity of information in the claims process matter most to employers and workers. The BIIA continues to seek improvement in these areas. Since 2000, the average weeks to complete an appeal through the BIIA process has been reduced by approximately 15%.

Court Reporter Contract

The Board of Industrial Insurance Appeals (BIIA) is statutorily required to use court reporters to transcribe hearings. (RCW 51.52) The transcripts provided by the court reporter serve as the official record for all further decisions in the appeal process, including Superior Court decisions. During FY08 court reporter costs are projected to be approximately \$1,362,000. We anticipate an expenditure of approximately \$1,403,000 in FY09. The current contract for court reporter services ends June 30, 2009. The contract will automatically roll over for another year unless written notice of intent to terminate the contract is served at least 180 days prior to termination. The firm has expressed concern

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over rising inflation and cost of fuel. These concerns cause us to believe that the court reporter contract will need to be re-bid for the ensuing biennium.

Trends in Customer Characteristics

The Hispanic population in Washington continues to grow. We have provided a Spanish voicemail box for our Spanish-speaking customers and have translated many forms into Spanish. We have hired a Spanish speaking receptionist in our headquarters office. We continue to review forms and notices to determine if they should be updated or translated into Spanish. The issue of expanding access to information and services in Spanish will continue at the BIIA as the state population of Spanish speaking workers continues to increase.

Strategy and Capacity Assessment

The Board of Industrial Insurance Appeals has a capable, experienced management team that communicates very effectively. We also have a highly professional, well-educated and committed workforce. This enables us to take a reasoned, inclusive and analytical approach in developing strategies that address critical issues and risks, and to identify opportunities for improvement.

One issue that poses a problem with our workforce is the ability to retain and attract experienced worker compensation professionals. Our current workforce profile is significantly older than the state agency average. We currently have 58 Industrial Appeals Judges (IAJ). By the end of the 2009-2011 Biennium approximately 35% of the IAJs will either have at least 30 years of state service or be at least 65 years old. While the BIIA is a destination employer and can successfully compete with other employers for talent based on organizational culture and our ability to provide an intellectually challenging environment, we cannot compete in the salary arena with other state agencies such as the

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Attorney General, or with private legal sector employers. This will become an increasingly severe problem in the near future.

The work of the BIIA and our goals and strategies rely on responsible investments in technology. We use the DIS IT Portfolio to align our technology investments with our strategic plan and business needs. Our goal is to make sure our IT investments are sound, provide operational efficiencies and are effective.

In 2008-9 the BIIA must evaluate the application of a new generation of Microsoft software into our operating system. This will involve significant effort in training employees and converting current database processes. Existing processes for the resolution of disputes will need to be reviewed and revised to maintain our current strategic advancements and to identify additional improvements in the dispute resolution process.

The outcome of the 09-11 Collective Bargaining negotiations is yet to be determined. We are continuing to communicate with the Labor Relations Office.

Performance Assessment

The BIIA continues to be successful in providing outstanding service to our customers and stakeholders. An external consultant hired in 2003 by OFM (KPMG), assessed our performance in six key areas. The areas assessed include: program effectiveness, quality and process management, internal and external customer satisfaction, independent and internal audit functions, fiscal productivity and efficiency, and statutory and regulatory compliance. We received the highest possible rating in each category.

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Another mechanism we use to obtain information on agency performance is the Department of Personnel Employee Survey. We completed the DOP Employee Survey in October 2007. Nearly 80% of the agency employees participated and the results were outstanding. On a scale of 1-5, with 5 being the highest score, we had an overall agency average score of 4.28. The agency average was above 4.00 in nearly every category. According to representatives at DOP, these are outstanding results. We rank third among all state agencies.

The BIIA has a customized case management database, known as BAIS (Board of Appeals Information System). Statistical information from this system is used to measure performance. Information from the reports is used by the agency at its management conference, GMAP meetings, monthly division meetings, and daily by the managers and supervisors. Data is entered into the system on a daily basis. There are currently more than 60 automated reports in use to track statistical measurements. Table 2 on the following page lists the reports that are commonly used to measure and improve performance.

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Table 2 BIIA statistical measurements and automated reports.

Report	Purpose
NAS Time Lag	Displays the number of appeals filed, the number of appeals reassumed by L&I, denials and grants of appeals processed by each new appeals specialist.
Order Timelines	Reports the date an appeal became ready for an order, the date an order was prepared, and date the order was issued for each judge.
Cases by Completion Month	Shows the status of each judge's caseload. Specifies which appeals are "overage" per our expectations.
Cases made Ready	Lists each judge and the number of appeals ready for order for that month and the fiscal year.
Schedule Status	Lists the number of overage cases at end of month, decrease or increase in number of overage cases for month, new cases assigned that month and during the year, and total cases still pending for each judge.
Monthly & yearly orders	Reports list all orders issued by each judge and the lag time for month and fiscal year.
JA PDO Time Lag	Tracks judicial assistant's time lags—days from date order ready to date order mailed.
Cancel Reset Summary	Used to review the judge's time management. Lists the event time scheduled, the event time canceled, and the time for events that are conducted by the judge.
D&O Time Lag Reports	Time lag for each review judge and the Board Members in a given month. Actual and average time per month is tracked.
Board D&O Time Lag	Lists all D&Os that have been issued within a given report period.
Monthly Statistics	Breaks down time lags for a number of key processes. Often used to trace potential problems that may cause an increase in average weeks to completion for appeals.
Superior Court Statistics	Allows the Board Members to monitor the results of cases appealed to superior court.

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We review our performance throughout the year. Performance measures with historical trend data are used to determine if the goals set out in the Long-Range Plan and Performance Agreement have been met. Certain performance measures have been historically used to assess the past year's performance. These include average weeks to completion of appeals, lag times of the various orders issued by BIIA, and number of cases that are active in the hearing section for more than six months.

We use monthly statistics reports to break down agency performance in multiple areas so that problems can be analyzed and corrected in a short time. Process improvement opportunities can be developed through management discussions, employee suggestions, and customer input. If a correction or improvement is relatively simple, it can be quickly implemented.

The Office of Financial Management (OFM) recently analyzed our agency performance measures. The analysis report recommended that we add an outcome measure related to the purpose of the organization. We added an outcome measure, the percentage of cases appealed to superior court, to our OFM reports. This measure provides an indicator of our success in resolving disputes. We will also report more frequently to OFM to ensure our budget goals are aligned with our performance.

