

*NATIONAL
LABOR
RELATIONS
BOARD*

SEMIANNUAL REPORT

For the Period

April 1, 1992 through September 30, 1992



Office of Inspector General
Sixth Semiannual Report



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE INSPECTOR GENERAL

Washington, DC 20570-0001

October 30, 1992

Honorable James M. Stephens, Chairman
National Labor Relations Board
1717 Pennsylvania Avenue, NW
Washington, DC 20570

Honorable Jerry M. Hunter, General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, NW
Washington, DC 20570

Dear Chairman Stephens and General Counsel Hunter:

I am pleased to provide each of you with two copies of the Semiannual Report on the activities of the Office of Inspector General (OIG) for the period April 1 through September 30, 1992. This is the sixth Semiannual Report to issue since the creation of the OIG.

The entry on duty of the new Supervisory Auditor in September 1991 permitted us to interview and hire two new Auditors in December 1991 and January 1992. Their advent allowed us to commence two more audits, one dealing with the Federal Managers' Financial Integrity Act (FMFIA), both Sections 2 and 4, and the other the use of consultant contracts. This work went forward simultaneously with the completion of that involving the budget execution audit. We issued a discussion draft of the budget execution audit report on August 21 and the final report issued September 30. On September 4, we issued an engagement letter for another audit, dealing with the Agency's controls over capitalized property, which was to commence in early October.

Still another audit, concerned with the Agency's program for responding to allegations it receives which could result in criminal or administrative action against Agency employees, had been begun on November 15, 1991, but temporarily suspended pending an effort to reach a Memorandum of Understanding (MOU) among us. Inasmuch as we have attempted, without success, to reach an MOU since November 21, 1991, the date of my first proposal to you, the OIG will resume work on that audit as soon as an Auditor becomes available. You may recall that on August 4, I requested the names of your respective contact persons for that audit, but, as yet, I

have not had a response. I do not mean to indicate that the audit has been delayed because we do not know the names of your contact persons, although having that information would facilitate matters; rather we are awaiting the availability of an Auditor.

In addition, we have continued to investigate those matters which are brought to our attention, as well as those which are self-initiated. Unfortunately, the lack of adequate staffing, coupled with an influx of case filings over which we have little, if any, control, has caused the backlog of investigations to more than triple between Fiscal Years 1990 and 1992.

Just as in all preceding reporting periods, I have remained active in the successor to the Coordinating Conference of the President's Council on Integrity and Efficiency, the Executive Council on Integrity and Efficiency (ECIE). In addition, I have continued to chair the monthly meetings of the Law Enforcement Committee of the ECIE which explores issues law enforcement agencies, such as ours, have in common.

This will also serve as a reminder that, pursuant to Section 5 (b) of the Inspector General Act of 1978, as amended, this report "shall be transmitted by (the head of the establishment) to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment"

With your continuing cooperation, my staff and I look forward to contributing, in whatever way we can, to the integrity, efficiency and effectiveness of the Agency's operations and programs.

Sincerely,

A handwritten signature in cursive script that reads "Bernard Levine".

Bernard Levine
Inspector General

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For the Period

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Office of Inspector General

Sixth Semiannual Report

SEMIANNUAL REPORT
OF THE
OFFICE OF INSPECTOR GENERAL
NATIONAL LABOR RELATIONS BOARD
FOR THE PERIOD
APRIL 1, 1992 THROUGH SEPTEMBER 30, 1992

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FOREWORD

This Semiannual Report is the sixth issued by the Office of Inspector General (OIG) since the appointment of the Inspector General (IG).¹

The National Labor Relations Board (Agency), which employs about 2,200 employees and, for Fiscal Year 1992, had an annual budget of approximately \$162,000,000, is an independent agency which was established in 1935 to administer the principal labor relations law of the United States, the National Labor Relations Act (NLRA). Upon the filing of a petition in a representation matter or an unfair labor practice charge, the provisions of the NLRA are generally applied to all enterprises engaged in, or in activities affecting, interstate commerce, including health care institutions and the United States Postal Service, but excluding railroads and airlines.

The Agency implements national labor policy to protect the public interest by helping to maintain peaceful relations among employers, labor organizations and employees; encouraging collective bargaining; and, by providing a forum for all parties to peacefully resolve representation and unfair labor practice issues. This function is primarily carried out in two ways: (1) by conducting secret ballot elections to determine if a group of employees wishes to be represented for collective bargaining purposes by a labor organization, and (2) by preventing and/or remedying unfair labor practices committed by employers and unions.

The Chairman, four Board Members and a General Counsel are appointed by the President with the advice and consent of the Senate. The Chairman and Board Members have staggered terms of 5 years each and the General Counsel has a 4-year term.

The Agency, headquartered in Washington, has 33 Regional Offices, some of which have Subregional and/or Resident Offices. This far-flung organization has handled unfair labor practice cases affecting hundreds of thousands of persons and has conducted representation elections in which millions of employees have decided whether they wished to be represented by a labor organization for collective bargaining purposes.

Prior to the creation of the OIG under the Inspector General Act of 1978, as amended, (the Act), the Agency had a Security and Audit Branch under the Division of Administration. The audit function of that Branch is now

¹ The initial Semiannual Report issued prior to the advent of the IG.

contained within the OIG. The OIG Table of Organization provides for an IG; a Supervisory Auditor; three Auditors; a Staff Assistant, a position only filled on a full-time basis during this reporting period; a Counsel to the IG who also assists the IG in conducting investigations; and, a Secretary to the Inspector General, a position left vacant since the filling of the Staff Assistant position.

During this reporting period, the OIG continued to perform priority audits contained in its audit universe, and has continued to investigate those complaints which have been brought to its attention, as well as those matters which have been self-initiated.

One audit report, "A Review of Budget Execution at the National Labor Relations Board for Fiscal Years 1988-1991," issued during this reporting period. It proved to be a very time-consuming process, not only because of its complexities, but because, at its inception, we had only one Auditor and no Supervisory Auditor. Among the audit findings was the fact that the Agency, for three consecutive fiscal years (1988-1990) violated the antideficiency provisions of 31 U.S.C. 1341. That finding resulted in a referral to the Public Integrity Section of the United States Department of Justice for prosecutive consideration.

We commenced two other audits during this reporting period, one concerning the Federal Managers' Financial Integrity Act (FMFIA) and the other the use of consultant contracts, both of which we hope to issue in final in the next reporting period.

INSPECTOR GENERAL SUMMARY

During the current reporting period, the OIG:

- - Referred two matters to the Department of Justice, Public Integrity Section for prosecutive consideration;
- - Referred two matters to United States Attorneys for prosecutive consideration;
- - Referred one matter to the Office of Personnel Management for consideration;
- - Issued one audit report entitled "Review of Budget Execution at the National Labor Relations Board for Fiscal Years 1988-1991;
- - Initiated 17 investigations (exclusive of those referred to the General Counsel on the basis that they concerned purely programmatic matters), 15 of which remain pending in the OIG in the investigative stage (the OIG has a total investigative backlog, as of the end of the reporting period, of 28 cases);
- - Completed 6 investigations which were referred to the Chairman and/or General Counsel for administrative action, 5 of which are still pending in a referred status;
- - Referred 5 matters to the General Counsel which were purely programmatic in nature and fell under the aegis of the General Counsel, 3 of which are still pending;
- - Referred 1 matter to the General Counsel for administrative investigation, which is still pending;
- - Maintained in a pending status the 1 matter referred to the General Counsel's Office of Equal Employment Opportunity during the October 1, 1989 through March 31, 1990 reporting period;
- - Maintained in a pending status 3 of the recommendations and/or suggestions made during the reporting period April 1 through September 30, 1991; and,
- - Maintained in a pending status the 1 recommendation and/or suggestion made during the reporting period October 1, 1991 through March 31, 1992.

- - Maintained in a pending status the 32 recommendations and/or suggestions made during the reporting period April 1, 1992 through September 30, 1992.

A summary of the matters pending before the OIG at the end of the reporting period is as follows:

- - 4 audits in progress, one of which has been temporarily suspended;
- - 28 investigations in progress, excluding the 4 referred to the General Counsel as programmatic matters or for administrative investigation;
- - 3 programmatic matters referred to the General Counsel;
- - 1 matter referred to the General Counsel's Office of Equal Employment Opportunity;
- - 7 matters referred for administrative action, 1 of which was referred to both the Chairman and General Counsel in the immediately preceding reporting period; 2 of which were referred to the Chairman during this reporting period; and, 4 of which were referred to the General Counsel, 3 during this reporting period and 1 during the April-September, 1991 reporting period;
- - 36 recommendations and/or suggestions pending action by the Chairman and/or General Counsel, 32 of which were made during the reporting period and 4 of which were made during prior reporting periods. Of the 4 pending since prior reporting periods, all have been agreed to, but not implemented or fully implemented.

SECTION 1

DESCRIPTION OF SIGNIFICANT PROBLEMS, ABUSES AND DEFICIENCIES RELATING TO ADMINISTRATION OF PROGRAMS AND OPERATIONS AND DESCRIPTION OF OIG RECOMMENDATIONS FOR CORRECTIVE ACTION (MANDATED BY SECTION 5 (a) (1) AND (2) OF THE ACT)

AUDITS

Budget Execution Audit Reveals Violations of Antideficiency Provisions of 31 U.S.C. 1341

An audit report which issued during this reporting period, "A Review of Budget Execution at the National Labor Relations Board for Fiscal Years 1988-1991," Audit Report OIG-F-4, disclosed a number of serious problems or deficiencies with respect to the Agency's execution of its budget during Fiscal Years 1988-1991.

That audit disclosed that the NLRB:

(1) by establishing obligations in excess of its appropriations in three consecutive Fiscal Years (1988-1990), violated the antideficiency provisions of 31 U.S.C. 1341(a) (1)(A), the so-called Antideficiency Act; ²

(2) by failing to assure that some deobligations were supported by documentary evidence setting forth the basis for cancellation or downward adjustment of previously recorded obligations, violated the provisions of 31 U.S.C. 1501, and GAO Manual, Title 7, Section 3.7.B;

(3) failed to record in a timely fashion obligations established during the latter part of Fiscal Years 1988 through 1990;

(4) failed to adequately monitor and reconcile unliquidated obligations, thereby permitting invalid obligations to remain on its financial records;

(5) because of poor accounting practices, permitted spending authority over as much as \$2 million to lapse during the four fiscal years ending with 1991; and,

(6) failed to support, with adequate documentary evidence, obligations amounting to about 14 percent of the \$10.1 million of obligations reviewed in four fiscal years.

² A referral to the Department of Justice has been made based on those actions.

A total of 27 recommendations were made to the Agency to remedy the findings, only 2 of which have been adopted.

Four of these recommendations pertained to the need to adhere to statutory or regulatory provisions, including reporting to the President of the United States and the Congress when the Agency is in a deficiency posture and submitting a copy of this report when the Agency makes its belated submissions.

Nine of the recommendations concerned the need to strengthen internal controls over the budget execution processes through: (1) establishment of proper procedures for deobligations and the maintenance of adequate documentary evidence to support those deobligations; (2) establishment of proper procedures for conducting formal reviews of obligations and unliquidated obligations; (3) creation of a list of individuals authorized to establish obligations; (4) dissemination of that list to the staff recording obligations so they can ascertain that the individual signing an obligating document is in fact authorized to do so; and, (5) codification of the procedures so established.

An additional eight recommendations related to the need to assure a staff adequately trained in all of the procedures required for obligating, deobligating and reobligating Agency funds, as well as internal procedures, so that top level management can assure itself that the training had been accomplished and no untrained staff perform any of the functions critical to the entire process of budget execution.

Four of the recommendations involved the need to: (1) instruct all obligating officials to promptly remit all obligating documents, especially near the end of a fiscal year; (2) timely record those obligations; (3) conduct a year end review of the deobligation and reobligation process; and (4) establish an Agency list of priorities which would facilitate obligating funds at year-end.

Another recommendation dealt with the need to incorporate the financial management responsibilities into the performance plans of employees who play a significant role in the budget execution process.

Finally, one recommendation dealt with the need to take disciplinary action against those responsible for the deficiencies in Fiscal Years 1988-1990 should the Department of Justice decline to prosecute the matters referred to them.

INVESTIGATIONS

Use of Agency Vehicles

Based upon an investigation completed during the previous reporting period, it was disclosed that the Agency practices with respect to documenting the use of the vehicles were inadequate as they did not permit an assessment of whether the vehicle usage was for official purposes.³ The completed Daily Vehicle Usage/Inspection Reports (DVUIR) did not specify the purpose of the trip even though there was a column headed "Purpose of Trip (Include Name(s), Addressee(s))." More often than not, that column was completed by noting the location to which the person was taken, e.g., a street intersection or address, or that other, unnamed persons were picked up or dropped off.

In response to the investigative report, the Chairman and General Counsel noted, shortly prior to the end of the previous reporting period, that in order to respond to the issues raised by the investigation, a new policy statement would issue which would require that passengers either inform the Mail and Transportation Section of the purpose of the trip or maintain contemporaneous records of the purpose of the trip.

Shortly after the end of the previous reporting period, the OIG was advised that passengers would not be required to inform the Mail and Transportation Section of the purpose of the trip or maintain contemporaneous records of the purpose of the trip, but rather it would be recommended that they do so.

As of July 14, 1992, the Agency concluded that the purpose of the trip must be recorded in the appropriate area on the Motor Vehicle Usage Log.

Agency's Request for a Comptroller General Opinion Notwithstanding Its Knowledge of the Pendency of a Criminal Investigation

On February 19, 1992, the OIG opened an investigation into an allegation concerning a former high-ranking member of the General Counsel's staff who allegedly had violated certain criminal provisions of the United States Code. The

³ 44 U.S.C. Sec. 3101 requires, among other things, that the agency head "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government"

then Chief of the Finance Section (now, the Finance Branch Chief) in March, 1992, learned of the criminal investigation and immediately relayed that information to the Director of Administration.

The subject of the investigation then dictated a draft of a submission to the Comptroller General and the Director of Administration, without making any significant changes in that draft, submitted the matter to the Comptroller General for an opinion on May 22, 1992 under her own signature. There was no effort to clear this submission with the OIG to determine if it were the proper course during a criminal investigation and there was no notification to the OIG that a submission had been made.

On June 11, 1992, when the OIG first learned of the submission to the Comptroller General, the then Chief of the Finance Section was asked by OIG personnel whether the Comptroller General had been informed of the ongoing criminal investigation. When he replied in the negative, it was suggested to him that the Agency apprise the Comptroller General of the investigation as it would not be wise to keep that information from him. Later the same day, the OIG was informed by the then Chief of the Finance Section that the Comptroller General's office had been informed of the criminal investigation.

The following day, the same individual in the Comptroller General's office who had allegedly been told of the ongoing investigation by the then Chief of the Finance Section, said he did not know of any investigation and had merely been told that the OIG was examining some vouchers, leading him to the conclusion that an audit was underway.

When the Comptroller General was officially notified by the OIG of the pendency of a criminal investigation, the Comptroller General notified the Agency that it would not proceed further because of the pendency of the criminal investigation.

Alleged Fraudulent Claims for Reimbursement

After a United States Attorney declined prosecution in the matter of an employee who allegedly made fraudulent reimbursement claims for taxi fares for dates when overtime was worked, the matter was referred to the General Counsel with recommendations that: (1) taxi reimbursement claims be supported by receipts and such other verifying evidence as may be warranted, and (2) Agency timekeepers be instructed to keep backup worksheets so that a record of actual overtime hours worked on each day may be verified and overtime and leave records audited.

Utilization of Invalid Social Security Numbers in Recording Travel Advances

An earlier audit report issued on June 24, 1991 (OIG-AMR-4) regarding Agency accountability and control over travel advances found that 111 of 1,170 open travel advance accounts had been assigned invalid social security numbers. In that report, it was concluded that 100 of the 111 invalid social security numbers were probably attributable to clerical or keypunch errors. The remaining 11 were the subject of an investigation to determine whether or not they had been fraudulently entered into the Travel Advance General Ledger.

An intensive analysis of each of the accounts failed to disclose any fraud; however, the absence of documentation for a number of the accounts made it impossible to rule out the potential of fraud on a definitive basis. It was recommended that the Finance Branch's practice of assigning "dummy" social security numbers to accounts which had not been properly reconciled be discontinued and that accounts instead be reconciled on a timely basis.

GENERAL MATTERS

The Attempt to Arrive at a Memorandum of Understanding (MOU)

As an outgrowth of the aborted field office investigation referred to in the previous Semiannual Report, the OIG announced the commencement of an audit to review the Agency's program for responding to allegations it receives which could result in criminal or administrative action against employees. As noted in that Semiannual Report, the audit was postponed in an effort to arrive at an MOU among the Chairman, General Counsel and IG.

The IG submitted a proposal on November 21, 1991 and despite numerous meetings and proposals since that time, all but two of which originated with the Chairman and IG, no MOU has been entered into. Accordingly, the audit will recommence as soon as an Auditor is available. Given the nature of the protracted negotiations, it would not be in the best interest of the entire process to once again stop the audit once it has resumed.

New Accounting System

In October 1990, the Agency replaced its accounting system, FEDCOUNT, because Agency managers were not receiving accurate and timely reports. FEDCOUNT was replaced by NTSB, provided by National Transportation Safety Board, but it quickly became apparent that it too would fail to meet the Agency's needs and, in turn, was replaced, in August 1991, by

FMIAS, obtained from the Federal Railroad Administration. As part of the Office of Management and Budget (OMB) giving its approval to the acquisition of a new accounting system, it mandated that a joint system review, using personnel from OMB, Department of Treasury's Financial Management Service and the OIG, be conducted six months after implementation of the new accounting system.

That review was completed and a joint OMB/OIG report issued on April 24, 1992. A number of recommendations and suggestions were made in the report and the actions taken by the Agency to comply with them were to be reported to OMB by October 31, 1992, after having provided adequate time to the OIG to verify the validity of the Agency response. In abbreviated form, those recommendations and suggestions cover the need to:

- o assign control of the system security file to someone who does not have access to other system functions or to source documents;
- o closely monitor policies and system capabilities to support separation of duties and security;
- o develop a well-articulated plan for financial system operations over the next five years and beyond;
- o complete the systems documentation;
- o change the chart of accounts and transaction codes to accommodate Public Law 101-510 (i.e., the "M-account" legislation);
- o close out the prior year's activity and make appropriate adjustments to equity and escrowed backpay accounts;
- o complete the clean-up process for existing travel advances ⁴ and other advances and enforce the new travel policy;
- o review and adjust receivable records, prior-year unliquidated obligation document records, and budget allowance balances;
- o review use of the ROBS system and its relationship to FMIAS during OIG field audits and reviews;

⁴ Travel advances had been the subject of an earlier OIG audit report.

- o include the case-handling system and the performance measurement data it produces in OIG field audits and reviews;
- o enhance the software to provide a front-end control over transaction codes, restricting users to entering only those types of transaction codes that are appropriate to their duties;
- o review and revise the grade structure, job series classifications, and organization of the finance and budget sections;
- o review debt collection efforts on employee receivables; and,
- o in response to the high risk assessment concerning control of capitalized property during the last budget cycle, the OIG was to follow up and validate the corrective actions in this area set forth in the FY 1991 FMFIA report.

As noted above, the actions taken by the Agency to comply with the recommendations and suggestions were to be reported to OMB by October 31, 1992 (a Saturday), after having provided adequate time to the OIG to verify the validity of the Agency response. On a number of occasions since the issuance of the joint OMB/OIG report, the fact that the OIG was expecting adequate time to perform its function in this regard was brought to the attention of various persons within the Division of Administration. In the hope that the OIG might report favorably on the results of its verification process in this Semiannual Report, its issuance was delayed, awaiting the delivery of the Agency response. The required Agency response was delivered to the OIG at about 3:00 p.m. on October 29, a time which did not provide the specified "adequate time" to review that response and verify its validity. Accordingly, the OIG verification process will have to await a comprehensive review of the Agency response to determine the nature and extent of the Agency's compliance actions.

Request for Additional OIG Staff

The IG, on July 13, 1992, requested of the Chairman and General Counsel 5 additional staff positions (one investigator, 3 auditors and one audit manager, GM-14) for Fiscal Year 1993 based on the following considerations:

1. the pendency of an Agency request to the OIG for a response concerning the tentative space layout in the new Agency headquarters made it imperative that an answer to the request for additional staff be

secured promptly while the space planning was still ongoing;

2. the several audits already issued in final and the results of the budget execution audit which were about to be released ⁵ indicated the potential for additional, very serious, pervasive problems which Agency management as well as the Congress should know about as reasonably soon as possible so they could determine the totality of the Agency's problems;
- 3 it was our estimate that the Audit Universe compiled by the OIG would take 10-15 years to complete with the present staff; that 10-15 years was too long to wait given the nature and extent of the findings we were making; and that in the interest of ascertaining the full extent of the Agency's problems as soon as possible, even though under the circumstances waiting five to seven and a half years to learn that information might be too long, an increase in the OIG staff in the numbers indicated would permit a reduction from 10-15 years down to 5 to 7.5 years;
4. based upon a chart submitted (an updated version of which follows on the next page), the backlog in investigations was growing each year and another investigator would help to alleviate that situation as well as assure timely investigations, an essential ingredient for sound management and staff morale; ⁶
5. it was suggested that the increased staff level need not be the new, permanent staff level, but once the totality of problems were established, the OIG could, by attrition, move to a staff level commensurate with our then needs; and,
6. it was also suggested that the additional OIG staff FTEs be taken from the five largest Agency entities, thus lessening the impact upon any one entity as a large office could more easily sustain the temporary loss of one person.

⁵ Without going into any extensive detail, the Chairman and General Counsel were informed that the audit would indicate the Agency had violated the deficiency provisions of 31 U.S.C. 1341 for three consecutive fiscal years (1988-1990).

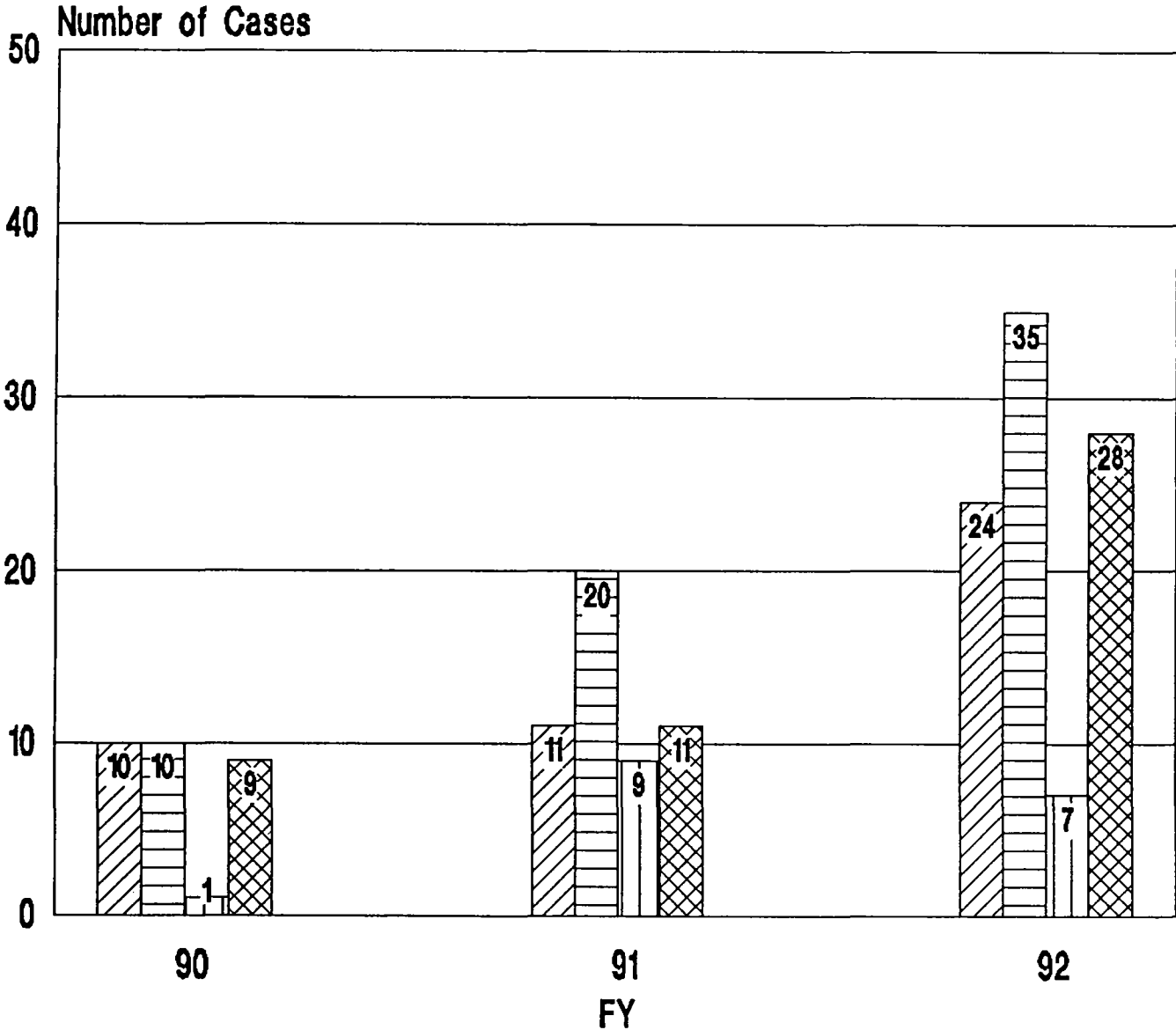
⁶ A chart depicting the growing backlog in investigations is on page 10.

That request for additional staff was also made of representatives of OMB when they met with Agency managers on October 1, 1992 to review the Agency's FY 1994 budget request.

To date, there has been no definitive response from management with respect to the request for additional staff.

CHART DEPICTING OIG INVESTIGATIVE BACKLOG

**NLRB OFFICE OF INSPECTOR GENERAL INVESTIGATIONS
EXCLUSIVE OF THOSE REFERRED TO GENERAL COUNSEL
ON BASIS THEY WERE PURELY PROGRAMMATIC**



▨ OPENED	▤ OPENED PLUS PREVIOUS PENDING
▩ CLOSED	▧ PENDING

SECTION 2

IDENTIFICATION OF EACH SIGNIFICANT RECOMMENDATION DESCRIBED IN PREVIOUS SEMIANNUAL REPORTS ON WHICH CORRECTIVE ACTION NOT COMPLETED (MANDATED BY SECTION 5 (a) (3) OF THE ACT)

Prior Semiannual Reports described several recommendations and/or suggestions for corrective action, most of which have been acted upon to completion. Those on which action remains to be taken or completed are treated separately below.

RECONCILIATION AND REPAYMENT OF TRAVEL ADVANCES

During the April - September, 1991 reporting period, the OIG issued an Audit Report concerning Travel Advances in Case No. OIG-AMR-4, in which, among other things, it was recommended that: (1) the Agency perform interim and year-end reconciliations of the Travel Advance Subsidiary Ledger to supporting documentation, and (2) a request be made of all former employees with outstanding travel advance balances to repay their advance or submit a liquidating travel voucher. The Agency agreed with the recommendations.

With respect to the first recommendation, the Agency, in a memorandum dated March 31, 1992, noted that the reconciliation form had been submitted to the collective bargaining representative and, if approved, it would be used first with headquarters employees, then field employees and, finally, former employees. A self-imposed target date of September 30, 1992 was set by the Agency.

The Agency, in a memorandum of August 14, 1992, noted that the reconciliation forms had been sent to Headquarters staff in May ⁷ and field staff and former employees in June. The self-imposed target date of September 30, 1992 for full implementation remained the same.

With respect to the second recommendation, the Agency, in a memorandum dated March 31, 1992, noted that 89 former employees with outstanding travel advance balances of \$31,800.77 had been identified and that they were to be contacted as noted above. A self-imposed target date of September 30, 1992 was set by the Agency.

The Agency, in a memorandum of August 14, 1992, noted that 46 former employees with outstanding travel advance

⁷ In its June 1, 1992 response to the Semiannual Report for the October 1, 1991 - March 31, 1992 reporting period, the Agency stated at page 7 that this task had been accomplished in April.

balances of \$11,764.30 remained. The self-imposed target date of September 30, 1992 for full implementation remained the same.

As of the close of the reporting period, the OIG had not been apprised that either recommendation had been fully implemented. At a meeting attended by representatives of the Office of Management and Budget, the Chief of the Finance Branch stated that when the process was completed, it would be the first time in the history of the Agency that employees will have been required to pay back a travel advance.

INVESTIGATION OF INVESTIGATION CONDUCTED BY DIRECTOR OF EQUAL EMPLOYMENT OPPORTUNITY

In the OIG Semiannual Report for the April - September, 1991 period, reference was made to an investigation conducted by the Director of Equal Employment Opportunity (DEEO) in which it was alleged the DEEO, while conducting an inquiry into legitimate concerns of the Office of Equal Employment Opportunity, had gone beyond those bounds and had inquired into an area unrelated to the mission of the EEO Office, that is, criticism of the General Counsel for delay in case processing.

The Agency response to the April - September, 1991 Semiannual Report noted that, in view of pending litigation before the Federal Labor Relations Authority (FLRA) regarding other aspects of the DEEO investigation, no action had been taken regarding the Final Investigative Report issued by the OIG.

The Agency response to the October 1, 1991 - March 31, 1992 Semiannual Report referred to an FLRA Administrative Law Judge's dismissal of an unfair labor practice complaint, to which exceptions had been filed by the FLRA General Counsel and National Labor Relations Board Professional Association (NLRBPA). On October 19, 1992, shortly after the end of this reporting period, the FLRA issued a decision finding that the NLRB had violated the Federal Service Labor-Management Relations Statute when its DEEO interviewed one particular employee without affording the NLRBPA which represents that employee prior notice of, and an opportunity to be represented at, the interview, even though the NLRBPA had been given prior notice of, and an opportunity to be present at, the interviews of other unit employees.

To date, the OIG has received no further word on any action regarding the recommendations in the Final Investigative Report as indicated would be done in the Agency response to the April - September, 1991 Semiannual Report.

SECTION 3

SUMMARY OF MATTERS REFERRED TO PROSECUTIVE AUTHORITIES AND RESULTANT PROSECUTIONS AND CONVICTIONS (MANDATED BY SECTION 5 (a) (4) OF THE ACT)

The following matters were referred for prosecution during the reporting period with the noted results:

- (1) On May 1, 1992, we referred Case No. OIG-I-41 to the Public Integrity Section of the Department of Justice (DOJ) for possible prosecution. The allegations concerned the subject of the investigation allegedly: (1) using Agency clerical staff, while paid by the Agency, to perform services for another entity for whom the subject of the investigation was working; (2) using the Agency Printing Section to print a flyer for personal use; (3) using clerical staff, on Agency time, to stuff envelopes with the flyer printed by the Agency Printing Section; (4) using an Agency personal computer (PC) for personal work, including speeches allegedly written for non-Agency personnel for pay; (5) using an Agency PC to write speeches for persons addressing another entity for which the subject worked; (6) conducting business, on Agency time, for another entity for which the subject worked; and, (7) spending a portion of the work day meeting with visitors who were there to conduct business concerning the other entity for which the subject worked.

DOJ informed the OIG that it was declining to prosecute on June 16, 1992 and the matter was then, on the same date, referred to the Chairman for whatever administrative action was deemed appropriate.

The OIG was informed on September 30 that the matter has been referred to the immediate supervisor of the individual involved for an independent recommendation of what action should be taken.

- (2) On July 2, 1992, the OIG referred the matter of the Agency's allegedly violating the antideficiency provisions of 31 U.S.C. 1341 to the Public Integrity Section of DOJ. To date, there has been no response.
- (3) On July 10, 1992, we referred an alleged act of perjury to the United States Attorney in Ft. Worth, Texas. To date, there has been no response.

- (4) On September 21, 1992, we referred instances of alleged fraudulent claims for reimbursement to a United States Attorney who declined prosecution.

SECTION 4

SUMMARY OF RESTITUTION MADE OR FINES PAID AS A RESULT OF CIVIL OR CRIMINAL INVESTIGATIONS AND/OR AUDITS (NOT MANDATED BY THE ACT)

This Section of the Semiannual Report is new. Although not mandated by any provision of the Act, it will serve as a statistical summary of all amounts restituted or fines paid to the government as a result of investigations, both criminal and civil, or audits. Given the fact that it is a new section, this report will go back to the establishment of the OIG on November 7, 1989 and report all amounts to date. Future reports will only summarize the information for that reporting period.

Amounts Restituted by Fiscal Year

Audit Based Restitutions:

FY 1990: none

FY 1991: none

FY 1992: none

Investigation Based Restitutions and/or fines - Civil:

FY 1990: none

FY 1991: - \$4,000 - fine

FY 1992: none

Investigation Based Restitutions and/or fines -

Criminal:

FY 1990: none

FY 1991: - \$6,000 (restitution) and \$1,200 (repayment of travel advance)

FY 1992: none

SECTION 5

SUMMARY OF EACH REPORT TO ESTABLISHMENT HEAD CONCERNING INFORMATION OR ASSISTANCE UNREASONABLY REFUSED OR NOT PROVIDED (MANDATED BY SECTION 5 (a) (5) OF THE ACT)

Section 5 (a) (5) of the Act requires the OIG to include in a semiannual report a summary of each report made to the head of the establishment under Section 6 (b) (2) during the reporting period. Section 6 (b) (2), in turn, authorizes an IG to report to the head of the establishment whenever information or assistance requested under subsection (a) (1) or (3) is, in the judgement of an IG, unreasonably refused or not provided. The subsections referred to authorize an IG to have access to, in effect, all documentation or other material available to the establishment which relate to programs and operations with respect to which the IG has responsibilities under the Act, and authorize an IG to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the Act from any Federal, State, or local governmental agency or unit. Finally, Section 5 (d) of the Act provides that an IG shall report immediately to the head of the establishment involved whenever the IG becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the establishment. The IG's report is then to be transmitted by the head of the establishment to the appropriate committees or subcommittees of Congress within 7 calendar days, together with a report by the head of the establishment containing any appropriate comments.

On September 2, 1992, a request for documents was made of the General Counsel in connection with an audit and related investigation. When the documents were not forthcoming by September 10, the request was repeated. The General Counsel then informed the OIG, by memorandum dated September 16, that the request had been forwarded to to the Director of Administration. When the documents were still not provided by September 30, a memorandum was sent to the Chairman and General Counsel, constituting notice to the Chairman pursuant to Section 6 (b) (2) of the Act, and further advising the General Counsel that if the requested documents were not provided, consideration would have to be given to preparing a report pursuant to Section 5 (d) of the Act for transmittal to the appropriate committees and subcommittees of Congress.

Within hours after delivering the September 30 memorandum, the documents were provided.

SECTION 6

LIST OF EACH AUDIT REPORT ISSUED
(MANDATED BY SECTION 5(a)(6) OF THE ACT)

<u>AUDIT</u> <u>BY</u> <u>TYPE</u>	<u>REPORT</u> <u>NUMBER</u>	<u>QUESTIONED</u> <u>COSTS</u>	Dollar Value (in thousands of \$)	
			<u>UNSUPPORTED</u> <u>COSTS</u>	<u>RECOMMENDATIONS THAT</u> <u>FUNDS BE PUT TO</u> <u>BETTER USE</u>
Financial	OIG-F-4	\$1,400	\$1,400	\$253

SECTION 7

SUMMARY OF EACH SIGNIFICANT AUDIT REPORT IN SECTION 6 (MANDATED BY SECTION 5 (a) (7) OF THE ACT)

As noted above in Section 1, the Office of Inspector General (OIG) conducted an audit entitled, "Review of Budget Execution at the National Labor Relations Board for Fiscal Years 1988-1991," (OIG-F-4). The five findings and 27 recommendations made as a result of that audit are set forth below.

Finding Number One

One finding was that the NLRB, by establishing obligations in excess of its appropriations in three consecutive Fiscal Years (1988-1990), violated the provisions of 31 U.S.C. 1341 (a)(1)(A), the so-called Antideficiency Act;

The OIG arrived at that conclusion on the following bases:

Our analysis disclosed that obligations established in the latter part of Fiscal Years 1988, 1989 and 1990 were not recorded until after those fiscal years had expired. As a result, these obligations were not recorded in the Agency's fiscal year-end financial reports and, therefore, were not taken into account by the Agency in determining whether it had exceeded its appropriation.

However, when the cash expenditures were made in the subsequent year, they constituted disbursements which related back to the fiscal year in which they should have been recorded. Adding those obligations to those which were properly recorded in the previous fiscal years is what, in part, determined that the Agency had been deficient.

An analysis of each year's deficiency follows:

The Fiscal Year 1988 Deficiency

The Agency made 894 cash expenditures totalling \$231,995 in the first 2 months of Fiscal Year 1989, which were for obligations which should have been recorded in Fiscal Year 1988. Based on the results of our audit tests, these cash expenditures were for obligations established, but not recorded, in Fiscal Year 1988 and, therefore, were for obligations which should have been included, but were not, in the Agency's 1988 fiscal year-end financial reports.

Of the 894 cash expenditures which were disbursed during the first 2 months after Fiscal Year 1988 ended, we reviewed 181 totalling \$73,729.75. We determined that 174 of the 181 cash expenditures had never been recorded as an obligation in Fiscal Year 1988 and all 174 were recorded for the first time in the first two months of Fiscal Year 1989 and charged to Fiscal Year 1988. These 174 cash expenditures totalling \$73,196.43 should have been added to the Agency's total obligations reported for Fiscal Year 1988. The Agency's unobligated balance at the end of Fiscal Year 1988 (the amount remaining when the total obligations recorded were subtracted from the total budgetary resources) was \$69,660 which was insufficient to cover the additional obligations totalling \$73,196 disclosed by our audit tests.

The remaining 7 of the 181 cash expenditures totalling \$533.32 had been previously obligated, but, because they were unpaid at the end of the fiscal year, they remained unliquidated (unpaid) obligations as of the end of Fiscal Year 1988. When cash expenditures were made during the first two months of Fiscal Year 1989 regarding these 7 obligations, since the transaction code for cash expenditures did not automatically liquidate an obligation, those 7 unliquidated obligations were not properly extinguished after the payments were made.

When we concentrated our focus on the first of the 2 months involved, October 1988, we observed that there were 508 cash expenditures made in October totalling \$141,012, all of which were related to obligations established in Fiscal Year 1988, but never recorded. This fact becomes very significant in light of the requirement that agencies, in November of each year, submit year-end closing reports to both Treasury and the Office of Management and Budget (OMB). A TFS 2108 and a SF 225 are submitted to Treasury and a SF 133 is submitted to OMB. Neither the TFS 2108, SF 225 nor SF 133 reflect the obligations totalling \$141,012 which related back to Fiscal Year 1988. Had that sum been reflected on those reports, the Agency would have clearly signalled that it was deficient, because the \$141,012 more than offset the unobligated balance for Fiscal Year 1988. The juxtaposition of cash expenditures in October which are not reflected in the November reports raises serious questions about why those obligations were not included.

Illustrative of the above is the following: (1) a FEDCOUNT-generated report for the Agency (Trial Balance) for Fiscal Year 1988 reflects that on September 30, 1988 the Agency had recorded obligations of \$132,691,673.72; (2) the SF 225 (Report on Obligations) submitted to Treasury for the same period (ending September 30, 1988) shows total obligations of \$132,692,000 (a rounded figure); (3) the SF 133 (Report on Budget Execution) submitted to OMB for the same period shows the total obligations to be \$132,691,674

(also rounded); (4) the TFS 2108 (Year-End Closing Statement) submitted to Treasury for the same period shows an unobligated balance of \$710,660.61. The SF 225, SF 133 and TFS 2108 were all submitted in November, 1988; but, (5) between the end of the fiscal year and the time of the November submission to Treasury and OMB, the Agency had made 508 cash expenditures totalling \$141,012, all of which were for Fiscal Year 1988 and never recorded. The fact that they had never been previously recorded required them to be added to the obligations which had been recorded for Fiscal Year 1988. Therefore, between the end of the fiscal year and November, when the reports were sent to Treasury and OMB, the Agency was still reflecting identical obligations of \$132,691,674 (rounded), even though it knew that at least an additional \$141,012 had to be added to its obligations (reflecting only October). The \$141,012 more than offsets the declared unobligated balance of \$69,660. In the Agency's budget submission to Congress for Fiscal Year 1992, it was still reporting the same dollar value for obligations even though it should have long since known that its obligations had increased by the amounts paid in subsequent fiscal years and not previously recorded.

The Fiscal Year 1989 Deficiency

For Fiscal Year 1989, there were 646 cash expenditures totalling \$149,698 during the first 2 months of Fiscal Year 1990 which were obligations established, but not recorded, during Fiscal Year 1989. These unrecorded obligations should have been included, but were not, in the Agency's 1989 fiscal year-end financial reports. The Agency's unobligated balance at the end of Fiscal Year 1989 was \$52,395, an amount which was insufficient to cover the additional obligations totalling \$149,698 disclosed by our audit tests.

In response to the General Counsel's Formal Comments on our draft report, we reviewed all cash expenditures made under transaction code 25 during October and November 1989 and charged to Fiscal Year 1989. Transaction code 25 simultaneously records an obligation and payment for items other than travel and payroll. We analyzed a sample of cash expenditures made under transaction code 51 during October 1989 and charged to Fiscal Year 1989. Transaction code 51 simultaneously records an obligation and payment for travel items. Transactions were reviewed to determine if any of the cash expenditures had been previously recorded and were unliquidated obligations as of the end of Fiscal Year 1989. In tracing the cash expenditures, we considered the General Counsel's assertion that items could have been recorded: under incorrect document numbers, to inaccurate organizations, and with inappropriate transaction codes. See items 16 and 17 in Exhibit E with respect to the General Counsel's assertions set forth in his Formal Comments and

our findings with respect to those assertions.⁸ Many cash expenditures had been previously recorded and, as a result, the Agency had double obligated many transactions. There were 902 cash expenditures totalling \$253,526 during October and November 1989 which were charged to Fiscal Year 1989. Of these 902 cash expenditures, 256 totalling \$103,828 had been previously recorded and therefore the cash expenditure double obligated the transaction. Therefore, we did not consider the \$103,828 as additional obligations for inclusion in the Agency's 1989 fiscal year end financial reports. The \$149,698 (\$253,526 less \$103,828) which we determined as unrecorded obligations included \$74,265 under transaction codes 25 and \$75,433 under transaction codes 51.

As was the case with Fiscal Year 1988, when we concentrated our focus on the first of the 2 months involved, October 1989, we observed that there were 436 cash expenditures made in October totalling \$89,676, all of which were related to obligations established in Fiscal Year 1989, but never recorded. Neither the TFS 2108, SF 225 nor SF 133 submitted to Treasury or OMB reflect the obligations totalling \$89,676 which related back to Fiscal Year 1989. Had that sum been reflected on those reports, the Agency would have clearly signalled that it was deficient, because the \$89,676 more than offset the unobligated balance for Fiscal Year 1989. Again, the juxtaposition of cash expenditures in October which are not reflected in November reports raises serious questions about why those obligations were not included.

Just as in the case of Fiscal Year 1988, the following demonstrates that the same is true of Fiscal Year 1989: (1) a FEDCOUNT-generated report for the Agency (Trial Balance) for Fiscal Year 1989 reflects that on September 30, 1989 the Agency had recorded obligations of \$137,256,549.37; (2) the SF 225 (Report on Obligations) submitted to Treasury for the same period (ending September 30, 1989) shows total obligations of \$137,257,000 (a rounded figure); (3) the SF 133 (Report on Budget Execution) submitted to OMB for the same period shows the total obligations to be \$137,256,549 (also rounded); (4) the TFS 2108 (Year-End Closing Statement) submitted to Treasury for the same period shows an unobligated balance of \$52,394.66. The SF 225, SF 133 and TFS 2108 were all submitted in November, 1989; but (5) between the end of the fiscal year and the time of the November submission to Treasury and OMB, the Agency had made 436 cash expenditures, in October, 1989 alone, totalling \$89,676, all of which were for Fiscal Year 1989 and never recorded.

⁸ This exhibit has been made a part of this Semiannual report at page 29.

The fact that they had never been previously recorded required them to be added to the obligations which had been recorded for Fiscal Year 1989. Therefore, between the end of the fiscal year and November, when the reports were sent to Treasury and OMB, the Agency was still reflecting identical obligations of \$137,257,000 (rounded), even though it knew that at least an additional \$89,676 had to be added to its obligations (reflecting only October). However, as stated in the General Counsel's Formal Comments to our Draft Report, the Agency waited 2 1/2 months after the end of the fiscal year before making the first update to Fiscal Year 1989.

The Fiscal Year 1990 Deficiency

For Fiscal Year 1990, we reviewed 100 cash expenditures totalling \$205,159 which were disbursed after Fiscal Year 1990 ended. Our analyses determined that \$73,385 of obligations should have been included, but were not recorded, in the Agency's 1990 fiscal year-end financial reports.

We ascertained that 20 of the 100 cash expenditures had not been recorded as an obligation on the Agency's 1990 fiscal year-end financial reports. The remaining 80 of the 100 cash expenditures had been recorded as an obligation in the Agency's 1990 fiscal year-end financial reports; however, each of these 80 items had an insufficient unliquidated balance as of September 30, 1990 to cover the amount of the cash expenditures. These 80 unliquidated balances were insufficient because: (1) the amount of the obligation had not been accurately determined at the time it was recorded, or (2) a deobligation had been processed against that item thereby reducing the amount available to cover cash expenditures. These 100 cash expenditures included 48 items which had been recorded as an obligation during Fiscal Year 1990, and subsequently either partially or fully deobligated at the end of Fiscal Year 1990. As a result of these 48 deobligations, \$26,902 of Fiscal Year 1990 money was disbursed but not recorded as obligations against NLRB's appropriation as of September 30, 1990. Since the amounts recorded as obligations for these 48 accounts were legal liabilities of the Agency, these 48 deobligations had no permissible basis in fact and enabled the Agency to under report its year-end obligations.

As previously stated, we determined that \$73,385 of obligations should have been included, but were not recorded, in the Agency's 1990 fiscal year-end financial reports. The Agency's unobligated balance at the end of Fiscal Year 1990 was \$68,319 which was insufficient to cover the additional \$73,385 of obligations disclosed by our audit tests.

The Agency changed accounting systems at the beginning of Fiscal Year 1991. As a result, we could not utilize the same testing procedures performed in Fiscal Years 1988 and 1989. Those testing procedures had enabled the timely determination of cash expenditures which should have been included but were not recorded as obligations in the Agency's fiscal year-end financial reports. The process for reviewing the Fiscal Year 1990 activity was extremely time consuming. Therefore, once the bare minimum to establish a violation of 31 U.S.C. 1341(a)(1)(A) had been verified, we discontinued our analysis. An exhaustive analysis might verify a deficiency for Fiscal Year 1990 in an amount similar to those deficiencies ascertained for Fiscal Years 1988 and 1989.

During a contemporaneously-conducted audit of consultant type contracts in Case OIG-AMR-13, we determined that a financial management consultant had been engaged by the NLRB on September 25, 1990 to determine, among other things, if it was in a status of deficiency. In addition to our audit work, reports and invoices of the consultant provide persuasive evidence that: (1) Agency officials were aware of the deficiency which occurred at the end of Fiscal Year 1990, and (2) NLRB employees, working with a consultant, improperly deobligated funds to free up moneys which made it appear as though there was no deficiency.

Totality of Deficiencies

The following table presents the amount of obligations in excess of total budgetary resources.

	Fiscal Year <u>1988</u>	Fiscal Year <u>1989</u>	Fiscal Year <u>1990</u>
Obligations - Not Recorded:	\$231,995	\$149,698	\$73,385
Unobligated Balance - Year End:	69,660	52,395	68,319
Deficiency:	162,335	97,303	5,066

In addition to the deficiency for Fiscal year 1990, we noted a pattern of inappropriate deobligation activity which occurred near the end of Fiscal Year 1990. Unliquidated obligations (obligations which had been recorded but not paid) were arbitrarily deobligated by a significant percentage and then the deobligated amounts were reobligated, usually on the same day, according to the transaction codes and dates listed in the financial records.

The consultant employed by the Agency to advise it, among other things, on whether it was deficient, testified,

in regard to an investigation being simultaneously conducted with the audit, that a supervisor informed her that the staff, in order to avoid a deficiency, was uniformly deobligating 25 percent of all obligations under \$1,000 and 50 percent of all obligations over \$1,000. The consultant ordered the practice stopped, told the staff to reobligate all amounts deobligated, and issued instructions as to how to properly deobligate. Unfortunately, as found above, the process was still flawed.

Officials Responsible

In addition to the persons who formerly served as General Counsel, Director of Administration, Comptroller and Finance Section Chief, we believe these current NLRB officials were aware, or should have been aware, of the deficiency which occurred at the end of Fiscal Year 1990 but did not report the violation as required in 31 U.S.C. 1351:

- General Counsel
- Then Acting Deputy General Counsel and current Regional Director
- Then Assistant General Counsel and current Acting Deputy General Counsel
- Director of Administration
- Deputy Director of Administration
- Budget Officer

Finding Number Two

A second finding in the audit report concerned the fact that some deobligations were not supported by documentary evidence setting forth the basis for the cancellation or downward adjustment of previously recorded obligations. As a result, the financial environment was more vulnerable to the improper deobligation of valid obligations which contributed to violations of the Antideficiency Act addressed in the previous finding.

GAO Manual, Title 7, Section 3.7.B prescribes that the rules for initially obligating the appropriation also apply to any amounts deobligated. The requirements for obligating funds are set forth in 31 U.S.C. 1501 which prescribes that an amount shall be recorded as an obligation of the U.S. Government only when supported by documentary evidence of a binding agreement between an agency and another person in writing, and for a purpose authorized by law.

We reviewed 53 deobligations totalling \$749,234 which occurred during Fiscal Years 1988 through 1991. At first, OIG personnel reviewed the official files to locate the documentary evidence. When all of the documentation could not be located, we provided the Finance Section (now Branch) with an itemized listing of deobligations for which no

supporting documentation could be found. There was no documentary evidence to support 43 (of the 53) deobligations, totalling \$669,558.

Finding Number Three

A third finding dealt with the situation surrounding year-end closings. Obligations established during the latter part of Fiscal Years 1988 through 1991 were not recorded until after the fiscal year expired. The delinquent recording of obligations contributed to violations of the Antideficiency Act for Fiscal Years 1988, 1989 and 1990.

Our analysis disclosed the following amounts of obligations which were established during the fiscal year but recorded in the financial records after the fiscal year expired.

Fiscal Year <u>1988</u>	Fiscal Year <u>1989</u>	Fiscal Year <u>1990</u>
\$231,995	\$253,526 ⁹	\$73,385

As previously stated, these transactions had a material effect because they represented new obligations for which the Agency did not have sufficient funds.

Finding Number Four

The fourth finding dealt with unliquidated obligations which were not adequately monitored and were not always reconciled in accordance with applicable laws and regulations. As a result, invalid obligations remained on the financial records. Also, the authority to expend NLRB funds, as much as \$2 million over the four fiscal years ending with 1991, expired and those funds were not available to the Agency.

We reviewed 115 unliquidated obligations totalling \$3.5 million. Our sample included obligations which were unliquidated at the end of each fiscal year (1988 - 1991).

⁹ In preparing this Semiannual Report, we noted that at page 26 of the Audit Report, we showed this figure as \$277,804. However, the correct amount is as shown here and at page 16 of the Audit Report. When the OIG reviewed the data for Fiscal year 1989 following receipt of the General Counsel's formal comments to the Audit Report, the correct data was inserted on page 16, but, through oversight, the chart on page 26 was not changed. This fact does not alter any findings or recommendations made.

Our analysis disclosed that 19 of these unliquidated obligations totalling almost \$520,000 were invalid for the reasons noted below and should have been determined as invalid during the fiscal year in which they were established. Of the \$2 million in expired funds, spending authority of at least \$520,000 expired because unliquidated obligations were not adequately managed. The items were invalid primarily because of: (1) erroneous postings to the financial records; (2) the establishment of unsupported obligations, that is, there was no documentation to support the obligations for the next 12 months and no activity took place with respect to the obligations, and, (3) over-stated obligation estimates which could have been more timely adjusted to reflect actual costs. Seven of the 19 invalid items totalling \$253,259.54 were recorded as unliquidated obligations for Fiscal Year 1991 and were still open in June 1992. The OIG provided the necessary details to the Chief of the Finance Branch so that corrective actions could be taken regarding these seven items and, since that time, the necessary corrective action has been taken and confirmed.

Finding Number Five

The final finding centered around obligations which had been recorded in the financial records, but which were not supported by documentary evidence as required by law. The absence of source documents could preclude responsible officials from: (1) ascertaining invalid obligations, (2) comparing billing invoices with government orders, (3) certifying as to whom and how much can be paid, and (4) determining when and by how much an item should be deobligated.

31 U.S.C. 1501 prescribes that no amount shall be reported as an obligation unless supported by documentary evidence of transactions authorized by law, such as: a binding agreement in writing, an order, a liability resulting from pending litigation, expenses of travel and public utilities, or any other legal liability of the United States. Further, 31 U.S.C. 1108 requires that certifications and records be kept by an agency in a form that makes audits and reconciliations easy.

We reviewed 190 obligations totalling \$10.1 million which were recorded during Fiscal Years 1988 through 1991. Of all the obligations reviewed, about 14 percent, or obligations totalling over \$1.4 million, had no documentary evidence to support the obligation. Aside from contravening the above-noted statutory provisions, this presents a situation ripe for fraud.

The Recommendations

In order to remedy the above findings, a total of 27 recommendations were made, only 2 of which have been adopted.

Four of these recommendations pertained to the need to adhere to statutory or regulatory provisions, including reporting to the President of the United States and the Congress when the Agency is in an antideficiency posture and submitting a copy of this report when the Agency makes its belated submissions.

Nine of the recommendations concerned the need to strengthen internal controls over the budget execution processes through: (1) establishment of proper procedures for deobligations and the maintenance of adequate documentary evidence to support those deobligations; (2) establishment of proper procedures for conducting formal reviews of obligations and unliquidated obligations; (3) creation of a list of individuals authorized to establish obligations; (4) dissemination of that list to the staff recording obligations so they can ascertain that the individual signing an obligating document is in fact authorized to do so; and, (5) codification of the procedures so established.

An additional eight recommendations related to the need to assure a staff adequately trained in all of the procedures required for obligating, deobligating and reobligating Agency funds, as well as internal procedures, so that top level management can assure itself that the training had been accomplished and no untrained staff perform any of the functions critical to the entire process of budget execution.

Four of the recommendations concerned themselves with the need to: (1) instruct all obligating officials to promptly remit all obligating documents, especially near the end of a fiscal year; (2) timely record those obligations; (3) conduct a year end review of the deobligation and reobligation process; and (4) establish an Agency list of priorities which would facilitate obligating funds at year-end.

Another recommendation dealt with the need to incorporate the financial management responsibilities of employees who play a significant role in the budget execution process into their performance plans.

Finally, one recommendation dealt with the need to take disciplinary action against those responsible for the deficiencies in Fiscal Years 1988-1990 should the Department

of Justice decline to prosecute the matters referred to them.

As noted above, the General Counsel rejected all but 2 of the 27 recommendations made in the audit report on the basis of the rationale set forth in his formal comments. An exhibit to the audit report, which follows, synopsised those formal comments and set forth the OIG responses to them.

RESPONSE TO GENERAL COUNSEL'S FORMAL COMMENTS ON
DRAFT AUDIT REPORT ¹⁰

GENERAL COUNSEL'S FORMAL
COMMENTS ON DRAFT
AUDIT REPORT ¹¹

OFFICE OF INSPECTOR GENERAL
RESPONSE TO GENERAL COUNSEL

- | | |
|--|--|
| 1. Page 1, Par. 2 - the draft audit report, at page 34 (20), identified \$583,184 in "unrecorded obligations" for FYs 1988-1990. | 1. True, but for purposes of determining whether there is a deficiency, one has to deal with data fiscal year by fiscal year - you cannot total all amounts to reach a determination. |
| 2. Page 1, Par. 2 - the draft audit report, at page 40 (24), identified \$13,908 in "unsupported deobligations." | 2. Not true - There were 43 deobligations for which there was no documentary support, totalling \$669,558. The \$13,908 to which the General Counsel refers concerns 2 deobligations which related to valid liabilities of the Agency and, therefore, should <u>not</u> have been deobligated. |
| 3. Page 1, Par. 2 - the draft audit report, at page 44 (26), notes at least \$2 million of the Agency's appropriation was unspent from FY <u>89 through 91</u> . | 3. The draft audit report, at page 44 (26), says "as much as \$2 million over the <u>four fiscal years ending with 1991, expired . . .</u> " That would indicate we started with FY 88 and not FY 89 as stated. |
| 4. Page 1, Par. 2 - the draft audit report, at page 45 (27), identified " <u>through a sampling procedure, \$520,000 in invalid obligations . . .</u> " | 4. The "sampling procedure" was utilized to get samples from each FY. After that, we looked at each one of the 115 unliquidated obligations and came up with 19 totalling that amount. |
| 5. Page 1, Par. 2 - the draft audit report, at page 51 (32), | 5. The draft audit report, at page 51 (32), states there were a |

¹⁰ The page references in the General Counsel's response are to pages in the discussion draft audit report which was double spaced. As the final audit report was single spaced, the page references herein are to both the draft report and the final, with the pages shown in parentheses being to the final report.

¹¹ The first reference in this column to a page and paragraph number is to the General Counsel's formal comments on the draft audit report.

identified "\$184,656 in unsupported obligations from Fiscal years 1988, 1989 and 1990."

6. Page 1, Par. 2 - "Thus, it appears that the draft audit report itself identifies accounting errors which more than offset the alleged deficiency which it identifies." (Emphasis added.)

total of 34 unsupported obligations totalling \$1,424,507 in FYs 1988-1991, not 1988-1990. The reference to \$184,656 was to unsupported, invalid obligations.

6. This "conclusion" is based on everything that precedes it in the same paragraph, that is, items 1 through 5 above. Examining each of the above items, we find:

a. Item 1 cannot be used to offset the deficiency (there is, incidentally, more than one deficiency) - it is part of the deficiency. The amount of \$583,184 was for unrecorded obligations. They had to be added to the recorded obligations to determine the total amount to be offset against the Agency's total budgetary resources;

b. Item 2 cannot be used to offset the deficiency. The \$13,908 related to unsupported deobligations which, being valid liabilities of the Agency, should not have been deobligated. They were part of the deficiency;

c. Item 3 cannot be used to offset the deficiency. As noted in footnote 2 of the draft audit report, 31 U.S.C. 1341 provides that an agency can be deficient by either spending or obligating more than has been appropriated. If an agency over-obligates, it is deficient even if it does not, in fact, spend more than has been appropriated. The theory being that if you over-obligate you are establishing legal liabilities to pay, even if you ultimately do not over-spend. You should not over-obligate as a means of preventing yourself from overspending;

d. Item 4 cannot be used to

offset the deficiency. It, in effect, was part of the draft audit report dealing with improper procedures, i.e., "Unliquidated Obligations." The draft audit report had concluded that the unliquidated obligations totalling \$520,000 were invalid because of: (i) erroneous postings, (ii) unsupported obligations, and (iii) overstated obligation estimates. None of those three provide a basis for subtracting the amount from the deficiency, unless the invalid obligations had been identified and deobligated in a timely fashion, which was not the case.

Moreover, at page 45 (27) of the draft audit report, we noted that "of the \$2 million in expired funds, spending authority of at least \$520,000 expired because unliquidated obligations were not adequately managed." The General Counsel, assuming it were even possible to offset in the manner indicated, would double count the \$520,000, which already was part of the \$2 million; and,

e. The final item sought to be offset by the General Counsel, item 5, is equally unavailable for the purpose sought. This was part of the audit finding dealing with "Obligating Documents." The General Counsel appears to be saying that if one obligates funds, but does not properly support the obligations with the necessary documentary evidence, then the sums should be deducted from any deficiency. This theory, if sound, would permit an agency to: (i) obligate its entire budgetary resources and beyond, (ii) in doing so, fail to support any obligation with the statutorily required documentation, and (iii) then argue that the entire sum which

was unsupported should be deducted from any deficiency. In actuality, any obligation, whether supported properly or not, is part of the deficiency and cannot be deducted.

7 Page 1, Par. 2 - "The November 7, 1991 report to Treasury [TFS 2108] shows that the unobligated balance in Fiscal Year 1989 was \$871,029.43 and in Fiscal Year 1990 was \$355,119.27."

7 True, but the statement ignores the fact that the cited report to Treasury was two years after the fact of Fiscal Year 1989 and one year after the fact of Fiscal Year 1990. It also ignores the fact that the Agency did not, in those reports, properly report: (a) the obligations which had been established, but not recorded; (b) the amounts which should have been obligated, because of post-year cash expenditures, but were not; nor, (c) did those reports take into account amounts which had been, in error, either deobligated or adjusted downward and which should then have been subtracted from the unobligated balance.

Suffice it to say that the draft audit report, at page 34 (20), correctly reflects the amounts shown on the TFS 2108s for FY 1989 (\$52,395), submitted to Treasury on November 7, 1989 and FY 1990 (\$68,319), submitted to Treasury November 7, 1990. Those were the relevant dates - not periods one and two years after the fact.

Thus, for example, if the Office of Inspector General (OIG) had conducted a budget execution audit of FY 89 or FY 90 and performed it in the six months immediately following the end of the fiscal year being audited and found the same things we did in the instant audit, the General Counsel's argument would privilege him to say, "Just look at us two years from now. We may be deficient now, but we won't be

then."

8. Page 2, Par. 1 - "The audit report findings that there was a violation of the Antideficiency Act . . . rests upon a premise that, if the obligations carried on an Agency's books exceed the resources available to pay the obligations, then the Agency is deficient, and that deficiency must be reported to the President and to the Congress, irrespective of whether those obligations in fact represent binding commitments made by the Agency to another party. We disagree with this interpretation of the Antideficiency Act."

8. The premise cited in the General Counsel's response is, in fact, the position of the OIG. If it were not so, it would fly in the face of every sound principle of financial management, because an agency could claim it was not deficient, because at most it was guilty of bad financial management or having accounting errors even though the agency engaged in the following conduct: (1) over-obligate (e.g., obligate \$2,000 for every \$1,000 of legal liability); (2) fail to record an obligation after having established it, thereby obligating, but under-recording; (3) record invalid obligations on its books, thereby committing agency funds which will never have to be paid; or, (4) fail to record obligations when established and only record them after the close of the fiscal year so a claim can be made, even if erroneously, that the totality of obligations on the books at fiscal year-end, but certainly nothing which came after the year-end, was the determinative factor in establishing a deficiency. That, in effect, is the defense of the General Counsel.

9. Page 2, par. 2 through page 6, incomplete paragraph at the top of the page.

9. No effort will be made here to analyze each citation of authority by the General Counsel. Suffice it to say that we agree with some, disagree with others as not being pertinent and have concluded that still others do not stand for the proposition cited. In fact, when read in their entirety, they support the position of the OIG.

Only by way of example:

(a) we would agree that, in

part, the rationale for the Antideficiency Act was to avoid "coercive" deficiencies, that is, deficiencies which would coerce the Congress into making a supplemental appropriation in order to fulfill them. That is exactly the point made in the draft audit report. If one were to subtract from the total budgetary resources the total of all obligations (those recorded, those not recorded, those deobligated which should not have been, and those for which cash expenditures were made in a subsequent fiscal year), and the net result of the process showed the Agency was deficient, the Agency would have been in a position to "coerce" the Congress into a supplemental appropriation.

In our view, the Congress expects more of an agency. It expects the agency to manage its financial affairs properly so it knows which obligations are valid and which are not; it expects the Agency to record all obligations so it can monitor and reconcile them; it expects the Agency to obligate realistically and not over-obligate; it expects the Agency to know that if it failed to record an obligation and then made cash expenditures, it has to add those cash expenditures to the total of all recorded obligations in order to properly determine the totality of its obligations and manage its finances; it expects the agency to give it, Treasury and OMB an honest count when a fiscal year has ended; and, more importantly, it does not expect an agency to defend a deficiency by saying we are poor financial managers and we had numerous accounting errors which, although made by us, serve to exculpate us;

(b) as noted above, we view any Comptroller General Opinion concerned with an agency that may or may not have been deficient because of loan guarantees it made as being distinguishable from any accounting practice engaged in by this Agency;

(c) the General Counsel cites with approval B-192282 (April 18, 1979) for the proposition that "the basic concept of an obligation . . . is that a binding commitment has been made by the United States to the other party in the transaction." We cannot believe it is the General Counsel's position that the agency was recording obligations that were not binding commitments so it could later claim it had invalid obligations which should be offset against any deficiency;

(d) the General Counsel notes that "the funds earmarked for invalid obligations are not obligated funds at all and are available to cover other valid binding commitments of the Agency." If one does not examine that statement too closely, it appears to have all the earmarks of a sound accounting practice. However, the only missing ingredients are that one should be regularly monitoring and reconciling one's obligations and if one discovers an obligation which is invalid, it should be deobligated immediately, not long after the end of the fiscal year. One cannot leave the deobligation process until some future fiscal year and assert that "we had so many invalid obligations (even if we did not know what they were or in what amount) that the unknown totality of those invalid obligations kept us from being deficient." and,

(e) the General Counsel places reliance on Matter of: Department of Education : Recording of Obligations Under the Guaranteed Student Loan Program, B-219161, (October 2, 1985).

The General Counsel cites the opinion as standing for the proposition that "whether the Antideficiency Act was violated did not turn on whether the payments were recorded on the Department's books as obligations, but on whether the payments were authorized by law even though they exceed available funding."

The problem with the opinion is that it relates to student loan guarantees which were mandated by law and the Comptroller General was saying in effect if an agency complies with the requirements of law, it cannot, on that basis alone, violate the Antideficiency Act.

However, had the opinion been read in its entirety, the following relevant language would have been found:

". . . an agency's failure to properly record and report obligations as they occur 'would violate the reporting requirements' of 31 U.S.C. Sec. 1501(b) " At page 7 of the opinion.

"The prohibitions contained in the Anti-Deficiency Act are not intended to ensure compliance with the provisions of 31 U.S.C. Sec. 1501, which govern the largely ministerial task of recording obligations as they arise . . . In fact, if an agency incurs obligations in excess of available appropriations without the authority to do so, the agency

would be in violation of the Anti-Deficiency Act regardless of whether the obligations were recorded by the agency
The prohibitions contained in the Anti-Deficiency Act are directed at discretionary obligations entered into by administrative officers As our Office has said, the Anti-Deficiency Act specifically 'provides an exception for obligations which are authorized by law to be made in excess of or in advance of appropriations.'" At page 9 of the opinion. (Emphasis provided.)

Thus, under the law, student loan guarantees are of the latter category and constitute an exception. No obligation of the National Labor Relations Board falls into that category - all are discretionary.

10. Page 2, last par. -
"However, the Antideficiency Act does not define the term 'obligation.'"

10. But 31 U.S.C. Sec. 1501 sets forth what an obligation is with some specificity. We also note that, despite this assertion made by the General Counsel on September 21, he found it possible to sign a memorandum to all Agency allowance holders on September 24 in which he and the Chairman define "obligation" in great detail. One can only wonder at the source of the definition.

11. Page 4, last paragraph through top of page 5 - The General Counsel states that, "This and other decisions of the Comptroller General show that, when there have been accounting errors, but there were actually funds available to cover the disputed amounts, no violation of the Antideficiency Act has occurred."

11. What the General Counsel fails to recognize is that in none of the cited opinions did the Comptroller General state that accounting errors excuse a deficiency; nor, in fact, were any of the opinions concerned with situations involving accounting errors in the sense in which the General Counsel uses the term. What they did involve were situations where the funds were expended for an unauthorized purpose.

12. Page 6, first complete paragraph - The General Counsel asserts that an opinion of the Comptroller General which interpreted 31 U.S.C. 1552(a)(2) permitted the Agency to do "exactly what the Agency (did)" which was to use its cash surplus to "pay any obligations attributable to those years."

12. The General Counsel's assertion is best handled by first setting forth the language of 31 U.S.C. 1552(a)(2) which provides:

"Section 1552. (a) Each appropriation account available for obligation for a definite period is closed as follows:

. . .

(2) The unobligated balance is withdrawn at the end of the period of availability for obligation and reverts to the Treasury The withdrawal shall be made not later than the November 15 occurring after the period of availability ends. When the head of the agency decides that part of a withdrawn unobligated balance is required to pay obligations and make adjustments, that part may be restored to the appropriate account."

Applying the text of the statute to the facts extant in this audit, we find the following. In each year for which a deficiency was found, the Agency had an unobligated balance which, under the terms of the statute was withdrawn at the end of the fiscal year, but which could have been used in its entirety to pay obligations and make adjustments. The General Counsel overlooks one essential fact. Even if he had used the entire unobligated balance to pay obligations and make adjustments, that would not have been enough, because the amount of cash expenditures for each of those years, made after the year ended, exceeded the amounts of the unobligated balances. That is one of our audit findings. We determined what the unobligated balance was

for each fiscal year and then discovered unrecorded obligations exceeding the balance, resulting in the Agency being deficient.

Another point must be made. The Finance Branch Chief, in the exit conference, said, with respect to all fiscal years under the predecessor financial managers (which includes Fiscal Years 1988-1990), that the Agency never attempted to reconcile its open accounts until some time during or after the third quarter following the end of the fiscal year in question. Had the reconciliation been done in a timely fashion within the fiscal year, the accounts or portions of accounts which should have been deobligated could have received that treatment and the deobligated funds would have been part of the unobligated balance available, under the statute, to pay any obligations and make adjustments. In addition, we know from documentary evidence that the Agency, with respect to Fiscal Year 1990, did not begin the massive deobligation process until after the end of the year and only "deobligated" enough to prevent it from appearing that the Agency was deficient.

We put "deobligated" in quotes, because we also know for a fact that some amounts were deobligated when they remained legal liabilities of the Agency. The persons engaged in the deobligation process only "deobligated" enough to cover (up) the deficiency as of September 30 - they did not deobligate enough to cover the other unrecorded obligations which resulted in the deficiency found in the audit.

Not only is there documentary evidence to support our findings, but we have anecdotal evidence as

well. The former Comptroller of the Agency said, when asked what he would do to handle the massive projected deficiency of \$600,000 in Fiscal year 1990, that he would just perform his magic trick and walk on water. When asked what that meant, he replied he would just pick enough accounts to wipe out the deficiency and deobligate them.

13. Page 6, pars. 2 and 3 - The General Counsel notes that, because of the "serious budgetary problems" being experienced by the Agency in Fiscal Year 1990, it hired an "expert financial manager" to study the operations and procedures in the Financial Management Branch, and, where appropriate, to recommend changes." The General Counsel then goes on to detail the findings of the expert financial manager.

13. The expert financial manager was asked to do more than that noted by the General Counsel. Her report, dated October 30, 1990 notes that the General Counsel asked her to determine if the Agency was deficient.

The detail for the financial consultant's bill for the month of October, 1990, shows that, after the end of Fiscal year 1990, she concluded that "further deobligations" were still needed to avoid a deficiency. That same detail statement shows a meeting 8 days prior to the end of October, 1990 (almost a month after the end of the fiscal year), in which she reviewed the Antideficiency Act with the Director of Administration and the Budget Officer and "instructed all accounting staff on deobligations." Presumably, the deobligation process continued for quite some time after the end of the fiscal year.

The October 30, 1990 report referred to above, also notes:

(a) "I established on September 29, 1990 [one day before the end of the fiscal year] . . . a remaining deficiency of approx. \$600,000 from an original deficit of approx. \$2 5 Mil at the beginning of the FY 1990 The deficiency has now been eliminated [please note that the date of this report is October

30, 1990, a date after the close of the fiscal year and what the consultant is talking about is there was no deficiency in her opinion as of September 30] "

(b) In referring to a conversation with the then Chief of Finance, she says, "I do not think that even today he realizes with increased productivity and accuracy he could have prevented a violation of the anti deficiency act."

With the rush to deobligate after the close of Fiscal Year 1990 (another report of the financial consultant makes it clear that no one was available the final weekend of the fiscal year to do the required deobligating and it would have to wait for the new year), it is understandable how she missed what we found. The unrecorded obligations, despite all the deobligation activity, nevertheless made the Agency deficient.

14. Page 9, first complete unnumbered paragraph through the next two paragraphs - Here the General Counsel comments upon: (a) the OIG refusal to share much of the documentation that led the OIG to arrive at its conclusions, (b) a perceived lack of cooperation by the OIG, and (c) the alleged unreasonableness of the OIG in holding them to a 30 day period in which to respond to the audit.

14. (a) In partial response to the General Counsel's assertions, we have attached as Exhibit E to the final audit report a copy of the Inspector General's September 2, 1992 memorandum to the General Counsel. Aside from noting here that the memorandum goes into very specific detail about the process we used, there is no need to go into that memorandum at length. It is attached to the audit report and speaks for itself;

(b) With respect to sharing documentation and a perceived lack of cooperation, we trust the General Counsel has not forgotten that on September 2, 1992, in the memorandum referred to above, the Inspector General asked for a copy of the memorandum sent to the Office of Management and

Budget (OMB), (among other things) in which the General Counsel was to have asked OMB for technical assistance concerning the audit at issue, that the request was repeated in a memorandum to the General Counsel of September 10, that the General Counsel stated in a memorandum of September 16 that he had forwarded the Inspector General's request to the Director of Administration, and, as of the date of issuance of the final audit report, the request has not been met.

The request of the Inspector General is based on the Inspector General Act, whereas the request of the General Counsel is supported by no such authority. Whatever basis there is for the General Counsel's request is treated in the Inspector General's memorandum of September 2.

We assume the General Counsel is also aware that whenever the OIG staff went to the Finance Branch Chief and asked questions about FEDCOUNT, he stated that he knew nothing about FEDCOUNT, it had been in place prior to his arrival, and the OIG staff should consult Systems Accountant Mohan, who, almost invariably, provided no help. Of necessity, the OIG staff was left to looking at FEDCOUNT manuals and Finance Branch manuals on procedures for the answers they sought. Now, we find we are being criticized in the General Counsel's response to the audit report for not understanding the way things worked. Someone on the General Counsel's staff must have known how things worked, because there is a very detailed explanation on pages 10 and 11 of how they worked. It is indeed unfortunate that when we asked for assistance

and cooperation in conducting the audit, that it was not forthcoming from the individuals who now know so much about how the system worked, but were unwilling to share it with us. One can only wonder about the motivation which would prompt such conduct.

We trust that the General Counsel has also not forgotten that on August 13, 1992, 8 days prior to issuing the draft audit report, the Inspector General spoke with the Acting Deputy General Counsel and asked if we could share the draft report with the Finance and Budget Branch Chiefs, but it took a full week or more to get an affirmative answer.

We also trust the General Counsel has not forgotten that we were prepared to brief him on the audit report and get some definitive answers from him which would have permitted us to share documentation, but, because of the pendency of the matter before the Department of Justice and the fact that the General Counsel stated he had not only not read the rights and assurances served on him, but he had not even read the audit report (to this date, we have not been advised to the contrary), that we were unable to ever meet with him on the substantive issues of the audit and could not make a determination beyond that made in the September 2 memorandum; and,

We trust the General Counsel also remembers that if Finance Branch Chief Karl Rohrbaugh had not attempted to provoke a fight with Supervisory Auditor Michael Griffith, the latter may have been able to share more information with him and Budget Branch Chief about the details of the audit report. Of course, Mr.

Rohrbaugh's expressed unwillingness to work with Mr. Griffith in the future does not bode well for a cooperative sharing of information.

(c) Finally, with respect to the 30 day limit within which to respond to an audit report; it is twice the amount of time set in the past (when the General Counsel was taking about 6 months to respond); it was agreed upon by the General Counsel long before the issuance of the audit report; and, it does not seem to have impeded the General Counsel in responding within the 30 day period to which he agreed. Moreover, based upon the other matters set forth above, it is clear the General Counsel's staff would have had additional time to respond had we gotten a prompt response to our question put to the Acting Deputy General Counsel.

15. Page 9, last paragraph and Page 11, pars. 3 and 4 - On page 9, the General Counsel affirmatively states, ". . . the practice under this system [FEDCOUNT] was to only reconcile open obligations to the extent that the fiscal year would clearly be closed with a positive balance, even though the former Comptroller and the former Finance Officer knew that hundreds of thousands of dollars of invalid obligations were being carried on the books."

On page 11, in paragraph 3 (paragraph 4 says essentially the same thing with respect to the following fiscal year), the General Counsel affirmatively states with respect to an audit finding that the October and November 1989 reports should have been noted on the year-end Forms TFS 2108, SF 133 and SF

15. With respect to the material on page 9, we deem it to be a damaging admission. That is exactly what we found. If there was any end-of-the-year deobligating, it was only to the extent that the Agency appeared to be not deficient on the last day of the fiscal year. Anything which occurred after the end of the fiscal year which would have destroyed that illusion, was ignored. This was the practice even if there were hundreds of thousands of dollars of invalid obligations being carried on the books. We also established that it was the practice of the General Counsel not to disturb year-end obligation figures even if there were unrecorded obligations for which there were cash expenditures made after the year-end. No one was to do anything to destroy the illusion of having been not deficient.

225, that the OIG has "apparently not realized that the first update for Fiscal year 1989 did not occur until December 14, 1989, after these three reports are submitted. There was no FEDCOUNT report available to indicate the need for the adjustments at the time the year-end reports were submitted."

This went as far as informing the Congress in budget requests made as much as three years into the future that the obligations shown on the Agency's books on the last day of the fiscal year were the truth - they did not vary by as much as a dollar. One can only ask, if the Agency now asserts that the obligations were substantially less than found by the OIG, for whatever reasons the Agency can now find, why was it still reporting to Congress years after the events that its obligations had not varied by any amount from that originally reported on the TFS 2108, SF 133 and SF 225? In some circles, this is known as the "see no evil" syndrome.

With respect to the material on page 11, the same "see no evil" syndrome is operative. Assuming, for the sake of argument, that FEDCOUNT was not capable of producing a year-end report until two and a half months after the end of the fiscal year, we believe it was incumbent on the Agency's financial managers to do whatever was possible to know exactly where the Agency stood, even if it meant keeping a running tally on a sheet of paper and using a hand-held calculator. Anything else would be criminal.

16. Page 10, par. 3 through page 11, par. 2 - The General Counsel asserts, among other things that: (a) lacking access to the data the OIG used to arrive at the conclusions for the months of October and November 1988, his staff addressed the alleged deficiency for Fiscal Year 1989; (b) "using the only report (A515) you have provided to us, we have determined that the only two transaction codes you used for your deficiency determination

16. First, before addressing each of the General Counsel's assertions, note should be made of the fact that he never specifically contests the finding with respect to deficiencies in Fiscal Years 1988 and 1990, other than as noted below and already covered in item 15 above.

Addressing each of the assertions in turn, the following should be noted: (a) with respect to the alleged access to data for Fiscal Year 1988, the process was the

are 25 and 51;" (c) "the Codes 51 that you have considered to be direct payments never obligated, in fact, show over \$73,000 previously obligated in October and November 1989 alone;" and, (d) that for a myriad of reasons, including a poor accounting system and accounting technicians who entered data under erroneous document numbers, it was difficult, if not impossible, to locate something which may have been previously recorded.

same as for Fiscal Year 1989 and the Inspector General's memorandum to the General Counsel set out in detail what that process was, therefore, it is difficult to understand what is being raised; perhaps Finance Branch Chief Rohrbaugh has conveniently forgotten that when the Inspector General and Supervisory Auditor visited his office and brought him the A515, that they both said if there were anything else he desired, he need only ask and it would be provided (this was the conversation in which Mr. Rohrbaugh said the data entered based upon his examination was "bogus"); although he never asked for any more data, when Mr. Rohrbaugh said he might need some additional records, he was told to ask and they would be provided; and, finally, perhaps it was Mr. Rohrbaugh's attempting to provoke a fight with the Supervisory Auditor, and his expressed reluctance to work with him in the future, which prompted him to not ask for data he needed; (b) it is surprising that the General Counsel makes it appear that only through the dint of hard effort did his staff determine that the only two transaction codes used were 25 and 51, when the Inspector General informed the General Counsel of that fact on page 15 of the September 2, 1992 memorandum; (c) assuming, for the sake of argument, that the General Counsel is correct about the \$73,000 figure, if one subtracts that from the \$140,000 cited by the General Counsel, one is left with \$67,000 which is more than the unobligated balance of \$52,395 noted in the audit report, thus it would appear that the General Counsel now agrees there was a deficiency at least in Fiscal Year 1989; and (d)

following, in effect, the General Counsel suggestions set forth in his formal comments, i.e., do not follow the procedures set forth in the Agency's accounting manual (something an auditor is normally privileged to rely upon); do not look where you have every right to find something, but look in those places you would never expect (like under the wrong document number or organizational code); we were able to verify the General Counsel's claim that some of the items recorded as never having been obligated before, were in fact recorded previously. However, benefitting from the General Counsel's suggestion, we broadened our sample and, searching everywhere, we still found more than enough to offset the unobligated balance in Fiscal Year 1989. As a result, we changed some of the figures in our audit report which nevertheless shows a deficiency in each year previously demonstrated.

17 Page 10, Par. 4 and Page 11, Par. 1 - The General Counsel asserts, among other things that: (a) "The transaction Code 51 under FEDCOUNT indicated a direct pay of a travel voucher. The procedure for GTRs and car rentals in the regions and Judges' satellite offices was to record payments as Code 51 when the GTR or car rental obligation was paid. The original obligation was removed from the books using a manually entered transaction Code 28R at the time the traveller submitted a travel voucher. The A515 report shows over \$73,000 of these transactions during October and November 1989. The Codes 51 that you have considered to be direct payments never obligated, in fact, show over \$73,000 previously obligated in October

17. The following explanation will assist the reader in understanding the General Counsel's position. The General Counsel asserts that when an employee submitted a travel estimate for an upcoming period, the amount of the estimate was recorded as an obligation using transaction code 28. If that travel involved a car rental or common carrier transportation, when the GTR for the latter or the invoice for the former was received, it was paid using transaction code 51. When the employee submitted the travel voucher for the trip(s) involved a transaction code 28R was utilized to reverse the original transaction code 28, because the transaction code 51 had already recorded common carrier or car rental payments and obligations.

and November 1989 alone. As you know, the timely submission of travel vouchers in this Agency has been an ongoing concern. The amount of Codes 28R that support the Codes 51 could require the review of travel vouchers submitted over the subsequent year or longer;" and (b) "To illustrate how the Codes 51 and 28R can be matched, note Page 69 of the October 1989 A515 report where a Code 28R for \$140.50 recorded for D. Bucksbaum's GTR corresponds to Page 99 of the October report which shows a Code 51 to Delta Airlines for the same amount, cross referencing D. Bucksbaum's social security number. On Page 60 of the November 1989 report we see a Code 28R for \$312 for P. Reinertsen which corresponds to a Code 51 on Page 63 of the October 1989 report to Trans World Airlines, referencing P. Reinertsen's social security number."

We tested the General Counsel's assertions and found two significant problems. First, what the General Counsel describes was not the procedure set forth in the Agency's accounting manual. We have already noted the need to have that manual reflect the procedures being followed or to have the employees follow the procedures in the current manual. In order to audit properly, auditors should be entitled to give credence to the existing accounting manuals, with appropriate testing.

Second, we traced 20, out of a total of 99, manually entered transaction codes 28R which were recorded during October 1989 and which were used to offset transaction codes 28 recorded against Fiscal Year 1989. We traced these 20 transactions forward into November 1989 and then all the way back to October 1, 1988. Eight of these codes 28R, amounting to about one-third of the total dollars involved in the 20, did correspond to a transaction code 51 which had been recorded during October/November 1989 or during Fiscal Year 1989. The remaining 12 manually entered transaction codes 28R had no corresponding transaction code 51 and, therefore, were properly chargeable as obligations and constituted part of the deficiency. Accordingly, there is no basis for dismissing the totality of the obligations generated by these cash expenditures as proposed by the General Counsel.

SECTION 8

STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS
AND TOTAL DOLLAR VALUE OF QUESTIONED AND UNSUPPORTED COSTS
(MANDATED BY SECTION 5 (a) (8) OF THE ACT)

	<u>Number</u>	<u>Dollar Value (thousands of \$)</u>	
		<u>Questioned Costs</u>	<u>Unsupported Costs</u>
A. Reports for which no management decision had been made by the beginning of the reporting period	0	0	0
B. Findings in reports issued during the reporting period	1	\$1,400	\$1,400 ¹²
Subtotal (A + B)	1	\$1,400	\$1,400
C. For which a management decision was made during the reporting period	1		
(i) Disallowed costs	0	0	0
(ii) Costs not disallowed	1	\$1,400	\$1,400
D. For which no management decision has been made by the end of the reporting period	0	0	0

¹² This amount is attributable to the budget execution audit finding regarding obligating documents.

SECTION 9

STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS
AND DOLLAR VALUE OF RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE
(MANDATED BY SECTION 5 (a) (9) OF THE ACT)

	<u>Number</u>	<u>Dollar Value (thousands of \$)</u>
		<u>Recommendations That Funds Be Put To Better Use</u>
A. Reports for which no management decision had been made by the beginning of the reporting period	0	0
B. Findings in reports issued during the reporting period	1	\$253 ¹³
Subtotal (A + B)	1	\$253
C. For which a management decision was made during the reporting period	1	\$253
(i) Recommendations agreed to by management	1	\$253
(ii) Recommendations not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0

¹³ This amount is attributable to the budget execution audit finding regarding unliquidated obligations.

SECTION 10

**SUMMARY OF EACH AUDIT REPORT ISSUED
BEFORE REPORTING PERIOD FOR WHICH NO MANAGEMENT DECISION
MADE BY END OF REPORTING PERIOD
(MANDATED BY SECTION 5 (a) (10) OF THE ACT)**

Not applicable.

SECTION 11

**DESCRIPTION AND EXPLANATION OF REASONS FOR ANY
SIGNIFICANT REVISED MANAGEMENT DECISION
MADE DURING THE REPORTING PERIOD
(MANDATED BY SECTION 5 (a) (11) OF THE ACT)**

During the reporting period, no significant revised management decisions were made.

SECTION 12

INFORMATION CONCERNING ANY SIGNIFICANT MANAGEMENT DECISIONS WITH WHICH INSPECTOR GENERAL IS IN DISAGREEMENT (MANDATED BY SECTION 5 (a) (12) OF THE ACT

The General Counsel's formal comments to the budget execution Audit Report noted, with respect to about half of the OIG's 27 recommendations, that the corrective actions recommended were already in place prior to issuance of the budget execution Audit Report. However, those assertions were not documented. The OIG will have to review those corrective actions to determine if there is documentation to support the General Counsel's assertions. The OIG disagrees with all other management decisions rejecting recommendations concerning the budget execution Audit Report.

SECTION 13

REVIEW OF EXISTING AND PROPOSED LEGISLATION AND REGULATIONS RELATING TO PROGRAMS AND OPERATIONS AND RECOMMENDATIONS CONCERNING THEIR IMPACT ON ECONOMY AND EFFICIENCY IN THE ADMINISTRATION OF PROGRAMS AND OPERATIONS ADMINISTERED OR FINANCED BY DESIGNATED ENTITY OR THE PREVENTION AND DETECTION OF FRAUD AND ABUSE (MANDATED BY SECTION 4 (a) (2) OF THE ACT)

Section 4 (a) of the Act requires the IG to review existing or proposed legislation and regulations and to make recommendations in the semiannual report concerning their impact on the economy and efficiency of the administration of the Agency's programs and operations and on the prevention and detection of fraud and abuse. Among those items reviewed during this reporting period were the following which fall within the mandate of the above-cited section of the Act.

PROPOSED LEGISLATION AND REGULATIONS

Legislation

Bills which would extend the jurisdiction of the Agency, and thereby increase its work, were once again introduced during the period covered by this semiannual report. S. 2663, which would apply the provisions of the National Labor Relations Act (NLRA) to the Congress, was introduced on May 6, 1992, by Senator Seymour. S. 3200, another bill which would apply the NLRA to Congress, was introduced on August 12, 1992, by Senator Daschle. A bill introduced by Senator Akaka on May 14, 1992, S. 2716, would amend the NLRA to require the Agency to assert jurisdiction in a labor dispute which occurs on Johnston Atoll. One additional bill, S. 3235, introduced by Senator Pell on September 15, 1992, would extend coverage of the NLRA to foreign flag vessels. As noted in our prior semiannual report, any measure extending the Agency's jurisdiction would have an impact on the economy and efficiency of the Agency by requiring either additional funding, more efficient use of resources, or the reallocation of resources from other areas. In terms of the OIG, these bills would not affect its ability to detect and prevent waste, fraud and abuse, unless the OIG lost resources in order to accommodate another program or operation.

H.R. 6041, introduced on September 25, 1992, would so substantially amend the NLRA and increase the Board's jurisdiction that additional funding would be essential. The bill would not only extend the jurisdiction of the Agency to United States companies and their subsidiaries operating in any country that is a signatory to a Free Trade Agreement, but would also create a National Public

Employment Relations Commission having jurisdiction over States, territories, and political subdivisions.

The OIG endorses bills aimed at limiting waste and abuse by high-level officials. H.R. 4977, introduced on April 9, 1992, would prohibit use of appropriated funds by any Federal agency for services that are not directly related to the official functions of the agency. S. 2867, introduced on June 18, 1992, and H.R. 5770, introduced on August 4, 1992, would prohibit the use of Government aircraft for political or personal travel, and limit certain benefits such as executive dining facilities, luxury vehicles, physical fitness facilities, and free medical services for Government officers. These bills would also reduce the number of noncareer Senior Executive Service and Schedule C political positions within the Federal Government. While the OIG generally endorses this legislation, we question the wisdom of charging employees a fee for access to medical services of at least a minimal nature at the employee's workplace. The benefits to be gained in terms of both lessened loss of work time and increased productivity through enabling employees to deal with minor medical needs without having to leave the facility would serve to offset funds the Agency expends for these medical services. Further, while NLRB officials do not currently have most of the executive perquisites to be eliminated by these bills, the Agency is currently considering installation of a physical fitness center in new headquarters facilities scheduled to be occupied by NLRB in the Spring of 1993. S. 2867 and H.R. 5770 would require that all costs to equip, operate, and maintain physical fitness facilities be paid by the users of such facilities, and that no administrative leave be granted for physical fitness activities unless such employees must meet physical fitness standards as a condition of employment. NLRB has no physical fitness requirement. However, a large number of Agency positions are of a sedentary nature, and on-site physical fitness facilities might encourage health maintenance activities which would improve productivity and curtail sick leave usage. The OIG prefers to take no position with respect to the issue of administrative leave until it can review the results of pilot programs which permit it. A requirement that users pay the costs of such facilities would seem a reasonable approach.

Another bill, aimed at limiting governmental expenditures for overhead, has the potential of compromising the Agency's accomplishment of its mission by potentially limiting expenditures for items dictated by NLRB's case load. H.R. 5729, introduced on July 31, 1992, would limit overhead expenditures for two years to the level of the prior year, and would allow an increase in overhead expenditures for the following three years to the same amount plus the projected percentage rate of inflation. The

overhead expenditures to be limited include travel and transportation, printing and reproduction, and other services such as court reporting. Because these expenditures, as well as many others, are determined by the Agency's case load over which it has no independent control, their limitation may seriously impede the Agency's ability to accomplish its statutory mandate.

In our last semiannual report, we noted that we believed that H.R. 2263, reported on favorably by the House Committee on Post Office and Civil Service and passed by the House, would assist in the performance of OIG functions by making available funds for cash awards to Federal employees, former Federal employees, and Government contract employees who disclose waste, fraud or mismanagement in the Government. On June 25, 1992, the Senate Committee on Governmental Affairs reported out that bill with an amendment in the nature of a substitute which made permanent current provisions in Federal law concerning awards for cost savings disclosures, but lowered the amount of such awards from that specified in the original bill, limited recipients to Federal employees, and did not include provisions authorizing appropriations needed to carry out this program. The Congressional Budget Office, in the report of H.R. 2263 prepared by the House Committee on Post Office and Civil Service, estimated that the bill before its amendment would increase award costs, but would also create incentives likely to produce new savings that otherwise might not occur and that would exceed the cost of awards. An awards program which must be absorbed out of OIG's overall budget is not as likely to result in awards sufficient to constitute a true incentive. Further, the legislation as passed provides for awards only to Federal employees, and contains no funding provisions. We regret that the amended bill eliminated important provisions included in the original bill.

The OIG provided comments, through the Executive Council on Integrity and Efficiency, with respect to S. 2928, a bill to establish an Office of Contractor Licensing within the Department of the Treasury to license and review Federal procurement services. We particularly noted that the licensing scheme proposed in this bill would impede the Government's goal of promoting competition to the maximum extent practicable. It could preclude small organizations and those that do not regularly contract with the Government from doing so because of the added expense of acquiring and continually renewing a license, or because the prospective bidder could miss the deadline for bids unless it already had obtained a license. We also think, in agreement with other commenters, that the proposed bill would unnecessarily create a cumbersome new bureaucracy with substantial costs to the public, such as for maintaining an on-line computer system for Government contracting officers, and to the

private sector in fees to be imposed for obtaining a license.

Rules and Regulations

The Agency, on September 22, 1992, proposed rules for determining the statutory duties of unions under the Supreme Court's decision in Communications Workers v. Beck, 487 U.S. 735 (1988). The Supreme Court there held that Section 8(a)(3) of the NLRA does not authorize a union, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement for activities unrelated to collective bargaining, contract administration, or grievance adjustment.

This is only the second time the Board has engaged in substantive rulemaking. The Board announced that it had determined that certain of labor organizations' statutory duties under the Beck decision may best be achieved through the use of rulemaking under the Administrative Procedure Act, but that it had also decided to continue adjudicating Beck-related cases during the rulemaking process. The Board stated that it found that engaging in rulemaking and continuing to decide cases coming before it at the same time serves the dual purposes of increasing access to the process of changing regulatory standards while preventing unnecessary delay in processing cases.

One of the Board's stated reasons for engaging in formal rulemaking was the possibility of lessening the cost in all future litigation and enforcement actions through readily applicable rules. The IG believes the proposed rules would add to the Agency's economy and efficiency and in no way impact on the OIG's ability to detect and prevent waste, fraud and abuse.

HELP ELIMINATE

WASTE

FRAUD

ABUSE

AT THE NATIONAL LABOR RELATIONS BOARD

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