

# NLRB

## FY2020

PERFORMANCE AND  
ACCOUNTABILITY REPORT



PROTECTING DEMOCRACY IN  
THE WORKPLACE SINCE 1935



# HOW THIS REPORT IS ORGANIZED

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This Performance and Accountability Report (PAR) consists of the following sections:

- SECTION 01**     **The Management's Discussion and Analysis (MD&A) Section** provides an overview of the National Labor Relations Board's (NLRB, the Agency) mission, organization, mission-related goals, performance and financial systems highlights as well as the Agency's operational and casehandling highlights for Fiscal Year (FY) 2020. The MD&A also contains an analysis of financial statements and a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act (FMFIA).
- SECTION 02**     **The Performance Section** compares the NLRB's performance to its strategic goals as set forth in its FY 2019 to FY 2022 Strategic Plan. The Strategic Plan includes two mission-related goals and two support goals to help achieve the Agency's mission and vision. The performance measures associated with the mission-related goals are outcome-based. The Agency has several outcome-based performance measures for the support goals combined with those that are management strategy driven to ensure alignment with the mission and needs of stakeholders.
- SECTION 03**     **The Financial Section** is composed of the NLRB's financial statements, related footnotes, and the Independent Auditors' report.
- SECTION 04**     **Other Information** provides the Top Management and Performance Challenges identified by the Inspector General in the current FY, and the NLRB's summary of audit and management assurances, which details the Agency's review of compliance with the Payment Integrity Information Act of 2019. For an update on the Board's progress in addressing management and performance challenges from FY 2020 please see <https://www.nlrb.gov/reports/inspector-general-reports/oig-semiannual-reports>.
- SECTION 05**     **Appendices:**
- Appendix A: Acronyms cited throughout this report
  - Appendix B: Glossary of terms cited throughout this report
  - Appendix C: Historical performance data
  - Appendix D: Complete strategic goal structure

An electronic version of the NLRB FY 2020 PAR is available on the NLRB's website at [www.nlrb.gov](http://www.nlrb.gov).

The NLRB's Strategic Plan is also available at this website along with graphs and data which reflect the NLRB's work.

# TABLE OF CONTENTS

---

Message From The Chairman	4
Board Members	5
Message From The General Counsel	6
2020 Year In Review	14
Agency Operations	14
Technology Advances	16
Public Information Program	18
FY 2020 Statistical Highlights	19
<b>SECTION 01</b>	
About the NLRB	22
The National Labor Relations Act	22
The National Labor Relations Board	22
Employee Rights Under The NLRA	23
Statutory Structure	24
Organization	26
Casehandling Functions	27
Unfair Labor Practice Proceedings	27
Representation Proceedings	28
Compliance Proceedings	29
Administrative Functions	29
Casehandling Highlights	30
Performance Highlights	40
Financial and Systems Highlights	43
COVID-19 Activity	43
Operational/Performance Highlights	43
Budget	43
Finance	44
Charge Card Program	44
Systems	45
Analysis of Financial Statements	46
Limitations of Principal Financial Statements	47
Compliance with Laws and Management Assurances	48
Antideficiency Act	48
Debt Collection Improvement Act	48
Digital Accountability and Transparency Act	48
OPEN Government Data Act	49

Federal Information Security Management Act	49
Government Charge Card Abuse Prevention Act	49
Improper Payments Elimination and Recovery Improvement Act	49
Prompt Payment Act	50
Federal Financial Management Improvement Act	50
Federal Managers' Financial Integrity Act	50
Statement of Assurance	53
<b>SECTION 02</b>	
Program Performance	56
Performance Goals and Objectives	56
Measuring Performance	57
Factors Affecting Agency Performance	80
Case Intake	80
Settlements	80
Board Member Terms	80
Potential Effect of Statutory Changes	81
Reliability of Performance Data	82
Program Evaluation	82
<b>SECTION 03</b>	
Message From The Chief Financial Officer	86
Independent Auditor's Report	89
Principal Financial Statements	95
Notes To Principal Statements	99
<b>SECTION 04</b>	
Inspector General's Top Management & Performance Challenges	126
Summary of Audit and Management Assurances	129
Payment Integrity Information Act Reporting	130
Fraud Reduction Report	132
Real Property	132
<b>SECTION 05</b>	
Appendices	138
Appendix A - Acronyms	138
Appendix B - Glossary	140
Appendix C - Historical Performance Measures	143
Appendix D - Goal Structure	194

## MESSAGE FROM THE CHAIRMAN

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As Chairman of the National Labor Relations Board (NLRB), I am pleased to submit the Performance and Accountability Report for Fiscal Year (FY) 2020. This annual report provides insight into the finances and activities of the NLRB, an independent federal agency established in 1935, which serves the interests of employees, employers, and unions. Contained in this report are the NLRB's audited financial statements and performance information related to the goals set forth in the Agency's Strategic Plan.

FY 2020 was challenging because of the COVID-19 pandemic. The NLRB was forced to convert nearly all employees to telework in mid-March, and the Agency then converted all mission-related activities to a virtual environment. Although the Agency had limited videoconferencing capacity prior to the onset of the pandemic, we quickly acquired this capacity, and adapted interactions with stakeholders and the public to this new medium, including conducting videoconference hearings in unfair labor practice (ULP) and representation (R) cases. With the exception of a two-week suspension of representation elections in March, we continued to process representation petitions and conduct elections throughout the course of the year.

Despite these significant challenges, the Board remained focused on carrying out our important work. The Board continued its efforts to more-efficiently and expeditiously process cases, issuing 374 decisions in contested cases against its target of 300. Focusing the FY on our oldest cases, the Board reduced the median age of pending cases from 157 days at the end of FY 2019 to 85 days at the end of FY 2020, a 46 percent reduction in the median age of cases pending before the Board. This is quite an accomplishment following impressive results from the prior FY, in which we reduced the median age of pending cases from 233 days to 157 days, a nearly 33 percent reduction. The Board also continued its ambitious rulemaking agenda, which included issuing a final rule addressing the joint employer standard, two final rules adopting amendments to the representation election regulations, a proposed rule related to voter lists and military ballots and a proposed student assistant rule.

As Chairman, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act, and I have made every effort to verify the accuracy and completeness of the financial and performance data presented in this report. A more detailed discussion of the Agency's internal controls can be found starting on page 48 of this report.

John F. Ring  
Chairman



## BOARD MEMBERS

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**From Left to Right:**

Chairman John F. Ring

Board Member Lauren McFerran

Board Member William J. Emanuel

Board Member Marvin E. Kaplan

# MESSAGE FROM THE GENERAL COUNSEL

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## Introduction

It is my continued privilege to serve as the General Counsel (GC) of the National Labor Relations Board. As I enter my fourth year in this position, I am pleased to report on the Agency's many accomplishments during FY 2020 in pursuing and effectuating the Agency's mission of protecting the rights of employees to choose whether or not to bargain collectively with their employers and to engage in concerted activities in aid of these rights; of establishing reasonable collective bargaining rules for employers and unions; and of resolving labor disputes.

As General Counsel, I have a dual role in prosecuting cases under the National Labor Relations Act, (NLRA, the Act) in legal proceedings at the administrative, Board, and the federal district, appellate and Supreme Court levels as well as overseeing the operations of approximately 90 percent of the Agency. The General Counsel is responsible for prosecuting unfair labor practice (ULP) charges brought before the Agency, the processing of representation petitions filed with our Regional Offices, for enforcing the Board's orders, and for supervising the operations of our Regional and satellite offices throughout the nation as well as our staff at Headquarters who are responsible for case-handling, operational, administrative, financial, security, facilities, technology and personnel functions. It has been my goal, while ensuring the maintenance of quality casehandling, to improve the efficiency and effectiveness of the Agency's operations at all levels and the management of our resources in order to better serve the public.

The prompt resolution of labor disputes is an essential purpose of the Act and a key part of the Agency's mission. Expeditious case processing by the Agency is necessary to achieve the early resolution of labor disputes. Over the years, the Agency's case processing times have increased causing the delayed resolutions of disputes. One of my major objectives as the GC continues to be to reverse this trend and to ensure the processing of cases in a timely manner and to improve our service to the public while maintaining the quality of our investigations and prosecutions.

To that end, at the beginning of FY 2019, the Agency issued a Strategic Plan for FY 2019 through FY 2022 in which I established case processing objectives for the investigation, settlement or prosecution of ULP charges in our Regional Offices. The goal was, using FY 2018 case processing times as a baseline, to reduce average case processing time by 5 percent each year over four years, for a total reduction in case



processing time at the end of the fourth year of 20 percent. For FY 2020, the target was therefore a 10 percent reduction in case processing times. I am pleased to report that in year two of the Strategic Plan, the Regional Offices continue to far exceed expectations and have reduced the average case processing time from filing to disposition by 18 percent since FY 2018. The Regions overall reduced the time from filing to disposition from an average of 90.0 days in FY 2018 to an average of 73.8 days in FY 2020 and reduced the time from informal settlement to final disposition of an ULP case from 172.6 to 136.3 average days, a decrease of 21 percent.

The Regional Office settlement rate was 96 percent this past FY, resolving over 4,666 cases prior to issuing complaint and over 570 cases post-complaint. Additionally, compliance was achieved in over 179 cases in which Board orders issued.

Like the Regional Offices, Headquarters divisions also delivered impressive results in FY 2020. For example, the Division of Advice which provides guidance to the Agency's Regional Offices on significant legal and policy issues that arise in ULP cases and coordinates the litigation of injunction proceedings in federal court, closed 233 more cases in FY 2020 in its Regional Advice Branch than in FY 2019, a 75 percent increase in the number of cases processed. Despite this significant increase in cases, the average age of closed cases for the Regional Advice Branch increased only 8 percent from FY 2019 (from an average of 51 days to an average of 55 days). The average age of closed cases for the Injunction Litigation Branch for FY 2020 was 7.6 days, a 16 percent reduction from FY 2019.

In FY 2020 the Office of Appeals which reviews appeals by employers, unions, and individuals who believe their ULP charges have been wrongly dismissed by a Regional Office, processed 1,224 appeals, reducing the office's backlog by 60 percent. Appeals staff also reduced the average processing time of sustained appeals by 25 percent.

The Freedom of Information Act (FOIA) Branch which processes all FOIA requests made to the Agency reported that in FY 2020 it responded within 20 working days to 82 percent of FOIA requests and 100 percent of FOIA appeals. FOIA backlogs were reduced from 35 requests at the end of FY 2019 to 3 requests at the end of FY 2020, which is a decrease of 91 percent.

In addition to continuing to improve case processing and our service to the public, I have also continued to focus on the substantive legal issues to present to the Board to ensure the fair treatment of employees by their employers and unions. Faced with COVID-19 in FY 2020 our focus has necessarily also included learning to operate safely and effectively in the unique and varied circumstances presented by a pandemic. Throughout FY 2020, including the last six months of a fiscal year fraught with pandemic challenges, I am pleased to say we continued to strive to ensure that our decision making is fair to the interests of all parties coming before the Agency and that employees' rights and free choice are considered and protected.

As I reflect on the third year that I have served as General Counsel, I am pleased to present this report because of the Agency's outstanding achievements in processing improvements, case accomplishments

and increased efficiency of operations. These accomplishments are all the more impressive as we achieved them while working through the unprecedented challenge of a pandemic. This doesn't surprise me though. The dedication of the Agency's employees has shown me time and time again that no matter the obstacle, our employees will get the important work of this Agency done and done well. The collaborative and dedicated efforts of the Agency's employees at all levels and in all offices enabled our successes and our continued increased level of service to the public. These efforts continue to achieve the goals we established to ensure the effective and efficient pursuit of the mission of this Agency, the continued health of the Agency's operations, and the accomplishment of the substantive goals of the Agency to resolve labor disputes and protect employee free choice.

### **Operations Improvements**

As part of my goal to improve Agency operations, during FY 2020, my Office, with the assistance of the Division of Operations-Management and the Office of the Chief Information Officer (OCIO), instituted processes and procedures involving greater utilization of our technological capabilities to provide improved, more accurate and more secure communications with stakeholders. These included the issuance of GC memoranda concerning electronic filing of documents and electronic communications from the Agency to the public. For instance, GC 20-01 *Electronic Filing of Documents* was issued to comply with the Board's procedural amendments to Part 102 of its Rules and Regulations which include a provision governing electronic filing of documents before the Board. We made a determination that Section 102.5 (c) of the Rules and Regulations mandates the use of an E-filing system for the submission of affidavits, correspondence, position statements, documentary or other evidence in connection with ULP or representation (R) cases processed in Regional Offices. We also reasoned that electronic filing provides a streamlined procedure by which documents received by the Agency will be placed and stored in the appropriate files automatically. This helps to ensure both the integrity and accuracy of Regional Office case files and reduces the time and effort expended by Regional Office employees in scanning or otherwise ensuring that documents are properly placed in the appropriate case file.

In addition, I issued GC 20-03 *Guidance on Electronic Issuance of Deferral, Dismissal, Withdrawal and Appeals Letters* to establish a process for issuance of all deferral, dismissal, withdrawal and appeals letters electronically to parties who have provided their e-mail addresses. Parties are e-mailed a link to the electronically issued document(s) which constitutes formal service or delivery of the electronically issued documents. E-issuance has provided significant cost savings and efficiency to the Agency. Based on the success of E-issuance of the documents set forth in GC 20-03, in GC 20-05 *Guidance Electronic Issuance of Complaints and Compliance Specification*, we expanded E-issuance to include complaints and compliance specifications (including accompanying notices of hearing, and amendments to either complaints or compliance specifications) to parties who have provided their email addresses.

In addition, we encouraged our directors and managers to share their thoughts and ideas on process improvement with each other and the Division of Operations-Management and some of these process improvement and resource sharing suggestions were implemented. My Office supports and has approved recommendations concerning the sharing or centralization of certain work functions, where it

makes sense. For instance, during FY 2020, the Division of Operations-Management extended its pilot field Language Specialist Program into a regular program.

### **Casehandling**

In FY 2020, I continued to focus on employee protections, such as the preservation of employee free choice in representation matters, the fair and equitable treatment of employees by their employers and unions, employees' right to privacy and the many perplexing issues presented by COVID-19. A number of cases I previously briefed to the Board also issued this Fiscal Year and I am pleased to note several of my suggestions were adopted by the Board. This FY also brought forward substantial successes in our 10(j)-injunction program as well as notable settlements.

My Office issued memoranda to provide guidance to the public concerning recent Board rule changes involving election procedures and policies on blocking charges, the voluntary recognition bar and construction industry union recognition matters. In GC 20-07, *Guidance Memorandum on Representation Case Procedures Changes*, I explained the Board's 2019 modifications to its Rules and Regulations governing the processing of representation cases. In the Memo I discussed the most significant changes such as pre-election hearings will generally be scheduled 14 business days (rather than in 8 calendar days under the 2014 rules) from the notice of hearing and provided guidance to the Regions and all stakeholders concerning their application to representation case handling.

I also issued GC 20-11, *Guidance Memorandum on Representation Case Procedure Changes Regarding Blocking Charge Policy, Voluntary Recognition Bar, and Section 9(a) Recognition in the Construction Industry* which addressed the Board's changes to its blocking charge policy (elections no longer blocked by pending ULP charges, but the ballots are either counted or impounded, depending on the nature of the charge, until the charges are resolved) voluntary recognitions and contract bar (return to *Dana Corp.* 351 NLRB 434 (2007)) and proof of majority based recognition in the construction industry (overruling *Staunton Fuel*, 335 NLRB 717 (2001)). Concerning the changes to the blocking charge procedure, as the Board noted in its final rule, agreeing with a comment I, as well as others, made in their comments to the Board on this issue, "an adverse impact may occur to employees when they are forced to wait indefinitely to vote in a representation election." I believe the Board's new approach, providing that a blocking-charge request will no longer delay the conduct of an election best satisfies the goal of protecting employee free choice. The Board also agreed with a number of my proposed changes to the notice language to be used in voluntary recognition cases. Specifically, I suggested adding to a notice to employees notifying them that their employer has voluntarily recognized a union, information regarding how a contract bar operates during and after the window period, notification to employees that they may file a petition within the window period even if the employer and union have already reached a collective bargaining agreement, and notification that if they do not challenge the union's status by filing a petition and the parties subsequently reach a collective-bargaining agreement, an election cannot be held for the duration of the collective bargaining agreement up to 3 years. Finally, I suggested the notice include language which gives employees a balanced description of employee rights and an affirmation of the Board's neutrality. I am pleased to say the American

Federation of Labor and Congress of Industrial Organizations (AFL-CIO) also agreed with many of my notice language recommendations which, along with additional notice language suggestions by the AFL-CIO, were adopted by the Board in the final rule. I was also pleased that the Board determined to add electronic distribution of the notice to employees where the employer customarily communicates with its employees electronically which, in part, was based on my suggestion that a second method of distribution of the notice should be used by the employer. I issued GC 20-11 to provide guidance to all stakeholders concerning these important changes designed to effectuate the Agency's goal of protecting employees' statutory right of free choice on questions concerning representation.

It is not possible to discuss FY 2020 without discussing the COVID-19 pandemic. During FY 2020 we issued numerous memoranda related to COVID-19 including GC 20-04, *Case Summaries Pertaining to the Duty to Bargain in Emergency Situations* and GC 20-14 *Summaries of Advice Merit Determinations Related to Coronavirus Disease 2019*. GC 20-04, issued very early in the pandemic on March 27, 2020, was prompted by many questions regarding the rights and obligations of employers and labor organizations in light of responsive measures taken to contain the virus. The memorandum sets forth case summaries in which the Board considered the duty to bargain during emergencies. These cases included situations involving public as well as emergencies unique to an employer. My hope was to provide useful information to those considering such issues dealing with the unprecedented challenges of COVID-19.

In GC 20-14, issued six months later on September 18, 2020, I discussed a number of cases directly related to COVID-19 in which, through the Division of Advice, I found merit to the charge or otherwise involved critical positions Regional Offices were directed to take. Because these cases are or were in active litigation, we did not provide specific identifying information. In fact, it is considered unusual to share such case information publicly at that particular stage in the casehandling process, but I felt it was important to do so in the unique circumstances of the pandemic. In the memorandum, nine cases are discussed on topics of protected concerted activity, *Weingarten* rights, discriminatory layoffs, discriminatory recall, bargaining and refusal to provide information.

Less substantive but no less important, we also issued three memoranda with practical guidance and suggestions for the Agency's operations during the pandemic. These memoranda include GC 20-06, *Temporary Change in Board's Standard Notice Posting Remedy*, GC 20-10, *Suggested Manual Election Protocols* (during the COVID-19 pandemic), and GC 20-12, *Remote Unfair Labor Practice Hearings During COVID-19 pandemic*.

I have continued to rely on Section 10(j) as an important tool for effective enforcement of the Act and will continue to do so throughout my term as GC, believing that, in certain cases, temporary injunctive relief under Section 10(j) provides the only means of ensuring the protection of employees' Section 7 rights and the Board's remedial processes. During FY 2020, my Office received from its Injunction Litigation Branch, which falls under the Division of Advice, recommendations for nine cases to be sent to the Board for 10(j) authorization. My Office sent nine cases to the Board for 10(j) authorization, receiving authorization to proceed, at least in part, in eight of them (one case was withdrawn prior to

Board action due to settlement). Our success rate was 100 percent, which included three wins in district court and four settlements (one case remains pending in district court). A notable settlement occurred after 10(j) proceedings were authorized in a case from our Region 32, Oakland, CA office. Nevada Gold Mines LLC d/b/a Nevada Gold Mines (NGM) entered into a settlement agreement after authorization to seek injunctive relief against NGM was authorized by the Board. In the settlement agreement, NGM agreed to recognize and bargain with the International Union of Operating Engineers, Local No. 3, which had represented the unit of approximately 1,350 production and maintenance employees at the mines for over 50 years, apply the parties' extant collective-bargaining agreement, and rescind the unilateral changes it had made to several critical terms and conditions of employment, including pensions. In another notable case, our Buffalo, NY office, Region 3, secured a 10(j) injunction in U.S. district court against NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury. This case involved NCRNC's discharge of two union activists during an organizing campaign. The district court, recognizing the serious irreparable harm that will occur to the employees' statutory rights absent immediate relief, ordered NCRNC to reinstate the two employees and cease its illegal conduct pending issuance of the Board's final order.

### **Significant Settlements**

This past fiscal year generated significant settlements. For example, Cable News Network (CNN) agreed to pay \$76 million in backpay, the largest monetary remedy in the history of the NLRB. The backpay amount, which will benefit over 300 individuals, is larger than what the Agency collects on average in a typical year. In the past four Fiscal Years, the annual amounts in backpay, fees and dues collected has ranged from \$53 million to \$73 million. The dispute originated in 2003 when CNN terminated a contract with Team Video Services (TVS), a company that had been providing CNN video services in Washington, D.C., and New York City. After terminating the contract, CNN hired new employees to perform the same work without recognizing or bargaining with the two unions that had represented the TVS employees. CNN sought to operate as a nonunion workplace and conveyed to the workers that their prior employment with TVS and union affiliation disqualified them from employment. After a lengthy hearing in 2008, an administrative law judge (ALJ) found that CNN's actions violated the Act and that CNN was a successor to, and joint employer with, TVS. In 2014, the Board agreed and ordered CNN to bargain with the unions and provide backpay. Later, in 2017, a panel of the D.C. Circuit Court of Appeals, including Chief Judge Merrick Garland and then Judge Brett Kavanaugh, adopted the majority of the Board's findings, and enforced the Board's order that CNN cease and desist from refusing to recognize and bargain with the unions. However, the court remanded the Board's joint employer finding for further clarification, along with the issue of backpay for further consideration by the Board. Following remand, the parties tried to resolve their dispute with the assistance of Agency staff. Numerous Agency staff, including personnel in the Division of Operations-Management, Region 5, the Office of the General Counsel, and the Office of the Executive Secretary worked diligently with all concerned to reach this settlement. Over \$55 million has been distributed thus far with additional disbursements currently in process. This settlement demonstrates the Agency's continued



commitment to enforcing the law and ensuring employees who were treated unfairly obtain the monetary relief ordered by the Board.

### **Administration**

In FY 2020 we reaped the benefit of previous significant, overdue spending on our information technology to upgrade and in some cases replace some of our major internal systems that had been long neglected. But for those investments, I am doubtful the Agency would have functioned as well as it has, with the entire Agency working remotely through the pandemic. During the pandemic the Agency has fully utilized Skype, Zoom and email communication. In Headquarters and in the field, the staff of the GC continues to be well connected across such data, voice, video and wireless communication. Through Next Generation Case Management System (NxGen), as well as continued implementation of other web-based systems for employee real-time communication, performance evaluation, timekeeping, scheduling, awards, and related human capital functions, the Agency has reached high levels of efficiency in case processing and managing its administrative responsibilities. I am gratified with the success of our technological tools in FY 2020, particularly as relates to their performance during the pandemic.

Despite the challenges brought with the pandemic we also continued in our commitment to improve our internal training. In the last Fiscal Year, we provided various Agency-wide trainings as well as a virtual conference for our Regional Directors. We also held Zoom video litigation training for our field attorneys and similar video representation hearing training for employees who will serve as hearing officers. Finally, we also held virtual information and training sessions for the public concerning changes to the representation case rules. We continue to be committed to providing Agency employees with the training and tools they need to perform their job more effectively and to providing the public with the information it needs.

### **Financial Matters**

The Office of Chief Financial Officer (OCFO) effectively oversaw the expenditure of 99.83 percent of the Agency's FY 2020 funds. The Agency's total unobligated balance was approximately \$470,000, which includes \$400,000 in planned unallocated funds, which is intended to be held in reserve for any potential upward contract adjustments attributable to FY 2020 costs.

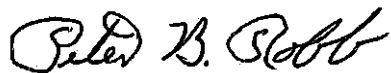
### **Interagency Cooperation and Outreach.**

My Office has been involved in outreach activities with the Equal Employment Opportunity Commission (EEOC) and we continue our important intergovernmental relationships with components of the Department of Labor (DOL), Department of Homeland Security (DHS), the Small Business Administration (SBA) and a variety of other government and private organizations concerned with labor law matters. In addition, through our dedicated Headquarters and Field Office personnel, we regularly conduct educational outreach efforts designed to inform employees, unions, small business and other Agency stakeholders of the rights and obligations deriving from our Act, and where and how they may file charges or petitions seeking to invoke the assistance of our Agency. Through our continued enhancement of electronic

capabilities, the Agency has made its services and resources available around the clock, so that employees and others may access information and case processing functions when most convenient to them.

### **Conclusion**

In closing the third fiscal year in which I've served as GC of the NLRB, I continue to be proud of the hard work of our dedicated staff and am exceedingly pleased with the excellent and, indeed, outstanding results our employees have achieved in meeting the strategic goals of the Agency. We have made great strides to position the Agency for continued health and success in the coming years. I look forward to continue building on the Agency's legacy of quality performance its mission to resolve labor and protect, provide equitable rules for collective bargaining and protect employee choice in the workplace. I look forward to reporting on our future initiatives and achievements in these areas.



Peter B. Robb  
General Counsel

# FY 2020 YEAR IN REVIEW

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## Agency Operations

### BOARD'S CONTINUED EFFORTS TO EXPEDITE CASE PROCESSING

Throughout FY 2020, the Board continued its focus on the more timely and efficient issuance of decisions in pending cases. This has been a commitment of the Board in recognition that long delays in the issuance of Board decisions undermines the purposes of the Act and mission of the Agency. As a result of these efforts, in FY 2020, the Board issued 374 decisions in contested cases, which was a significant increase from the 303 decisions issued in contested cases during FY 2019. To further improve upon the Board's case-processing efforts, on February 19, 2020, the Chairman issued a memorandum announcing the Board's intent to focus on the issuance of decisions in its oldest pending cases, defined as cases that, if not issued by the end of FY 2020, would have been pending before the Board for more than 18 months for C cases and more than 12 months for R cases. On that basis, 73 cases were identified as "oldest cases." The issuance of decisions in these oldest cases was tracked by the Executive Secretary's Office, and updates regarding progress toward this goal was reported regularly to the Board offices. As of the end of FY 2020, the Board issued decisions in 71 of the oldest cases and nearly completed all 73 cases. As a result of this effort, the median age of cases pending before the Board was reduced from 157 days at the end of FY 2019 to 85 days at the end of FY 2020, a 46 percent reduction in the median age of pending cases. In addition, these efforts significantly reduced the number of cases pending before the Board to its lowest level in over 40 years, with 124 cases pending at the end of FY 2020 compared to 227 pending before the Board at the end of FY 2019, reflecting a 45 percent reduction in the number of pending cases.

### BOARD RULEMAKING

The Board continued its ambitious rulemaking agenda. Below are the Board's FY 2020 rulemaking initiatives:

#### Joint Employer Standard

The Board issued a Notice of Proposed Rulemaking (NPRM) regarding the standard for determining joint employer status in September 2018. The Board received nearly 29,000 comments in response to this NPRM. The significant number of comments reflected the public's strong interest in the Board providing greater clarity in this important area of the law. The Board reviewed the comments received and issued its Final Rule on this topic on February 26, 2020. The Final Rule went into effect on April 27, 2020.

#### Election Protection

On August 12, 2019, the Board issued an NPRM proposing three amendments to the representation election regulations to better protect employees' statutory right of free choice on questions concerning representation. The amendments remove unnecessary barriers to the fair and expeditious resolution of such questions through the preferred means of a Board-conducted secret-ballot election under the NLRA. The NPRM proposed revisions to three of the Board's discretionary bars to the timely processing of

a validly supported election petition: the blocking charge policy; the immediate imposition of a voluntary recognition bar; and the contract bar created by the establishment of a Section 9(a) relationship in the construction industry based solely on contract recognition language.

The comment period for the NPRM closed on October 11, 2019. The Board reviewed the comments received and issued its Final Rule on April 1, 2020. The Final Rule, which was effective on July 31, 2020, included changes from the NPRM to address issues raised in the public comments.

#### Student Assistants

On September 23, 2019, the Board published a NPRM proposing to exclude from coverage under Section 2(3) of the NLRA students who perform services for financial compensation in connection with their studies at private colleges and universities. The basis for this proposed rule is the Board's current position, subject to public comment, that the relationship undergraduate and graduate students have with their school is predominately educational, rather than economic. The Board received over 13,000 comments in response to this NPRM. The comment period closed on February 28, 2020.

#### Representation Election Rules

On December 18, 2019, the Board issued a Final Rule revising the representation election regulations located at 29 CFR part 102, with a specific focus on amendments to the Board's representation case procedures adopted by the Board's final rule that was published on December 15, 2014. On May 31, 2020, the Board implemented most of the rule changes established by the Final Rule, with the exception of five provisions, which are under review per a subsequently issued U.S. District Court order.

#### Voter List and Military Ballots Notice of Proposed Rulemaking

On July 28, 2020, the Board published a NPRM proposing two amendments to its current rules and regulations governing the conduct of elections held under the NLRA.

The first proposed amendment would amend the Board's Rules and Regulations to eliminate the requirement that employers provide available personal email addresses and home and personal cellular telephone numbers of all eligible voters to the Regional Director and other parties during an election campaign. The Board believes, subject to comments, that elimination of this requirement will advance important employee privacy interests that the current rules do not sufficiently protect.

The second proposed amendment would provide for absentee ballots for employees who are on military leave. The Board believes, subject to comments, that it should seek to accommodate voters serving the United States in the Armed Forces in light of congressional policies facilitating their participation in federal elections and protecting their employment rights. The Board further believes, subject to comments, that a procedure for providing such voters with absentee ballots can be instituted without impeding the expeditious resolution of representation elections. The public comment period for this NPRM closed on October 13, 2020.

### Additional Rulemaking Considered

As announced in its Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions, the Board is also considering further revisions to its current representation-case procedures and potential rulemaking to address standards for access to an employer's private property.

### **Technology Advances**

In FY 2020, the OCIO made significant strides in advancing technologies in the areas of migration and redevelopment of legacy applications to cloud technologies. OCIO modernized the Judicial Case Management System (JCMS), implemented NxGen Case Management applications process enhancements, and decommissioned the on-premises datacenter. To support the mandatory and extended telework during the COVID-19 Pandemic, OCIO made security and Information Technology (IT) Infrastructure enhancements, and dramatically increased Federal Information Security Management Act (FISMA)/ National Institute of Standards and Technology (NIST) security related operational efficiencies.

The OCIO established a comprehensive roadmap to achieve the Office of Management and Budget (OMB) Memorandum M-16-19 initiatives for data center optimization. The OCIO established guidelines, metrics and milestones in the following areas:

- Organization and Communications
- Streamlining the Environment
- Enterprise Data Center Discovery
- Agency Data Center Optimization Plan Formulation
- Detailed Discovery
- Application and Server Migration
- System Decommissioning
- Data Center Closures

In the months from October 2019 thru July 2020, the OCIO team successfully executed on the planned migration to Microsoft Azure Cloud. OCIO completed 100 percent cloud adoption and the shutdown of on-premises data centers.

Major milestones in FY 2020:

1. Deployed the new JCMS system. The system was fully developed using cloud technologies and services, replacing the legacy system.
2. Refreshed NxGen product suite technology stacks, upgrading Siebel to IP20, enterprise reporting system to OBIEE 12c, and completed multiple User Interface (UI) upgrades for better user experience.



3. Implemented My Case Folder, a dedicated application which allows Agency users to easily access files associated with cases, add documents to a folder and share the folder with other NxGen users, enabling better collaboration.
4. Continued enhancement of search functionality in NxGen and the NLRB public facing website ([www.nlr.gov](http://www.nlr.gov)) to improve legal research - enhancing the search capabilities of NLRB customers and stakeholders.
5. Developed a user management process and secure SharePoint site to support online ALJ Hearings which allow parties on a case to share evidentiary information.
6. Redesigned the Agency public website and upgraded the Drupal content management system and associated mobile application using the United States Web Design System standard for accessible, mobile-friendly government websites. The website redesign also included improved search capability and metadata tagging.
7. Developed and launched a new mobile application, from the ground up, duplicating the new features of the redesigned public website.
8. Implemented SharePoint Process Automation – Forms Library Modernization to eliminate the manual approval process of forms used by Agency employees.
9. Redesigned the Agency Ethics office SharePoint site enabling Agency employees to access Ethics information effectively and enabling the Ethics Office to publish information to Agency employees in a timely manner.
10. Continued to modernize the Agency's Enterprise Data Warehouse to cost-effectively store and process data, reduce resource-heavy transformations, and support the new JCMS reporting system.
11. Developed a Production Statistics dashboard to list cases where a decision was issued and settled, with an automated delivery mechanism of quarterly and annual individual reports to Agency ALJs. The dashboard enabled judges to identify case workloads and resolve processing errors, if any, in a timely manner.
12. Increased IT Security Baseline Compliance by 60 percent. Developed an IT Information Assurance Security compliance program within the OCIO. Program sponsors and subject matter experts improved and implemented hardened baselines, increased monitoring, and automated remediation procedures across IT Infrastructure resources. The program resulted in the utilization of cross-functional security solutions and established the groundwork for the implementation of a zero-trust IT security posture.
13. Implemented an Agency Emergency Notification System working with the Security Branch which enables targeted geographical notifications based on a variety of emergencies and/or disasters.

## PUBLIC INFORMATION PROGRAM

The Agency's Public Information Program is one of the critical services provided to the American Public, including employers, unions, and employees. Under this program, in addition to the services provided by the Office of Congressional and Public Affairs (OCPA) in Headquarters, Board agents in the field offices provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2020, the Agency's Regional Offices received 38,819 public inquiries regarding workplace issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the rights and responsibilities under the Act, accepting charges, or referring parties to other federal or state agencies. 3,531 Charges and Petitions were filed through the Agency's website without assistance from Agency personnel.

The public may also contact the Agency through a toll-free telephone service (844-762-6572) designed to provide easy and cost-free access to information. Callers to this number will hear messages recorded in English and Spanish that provide a general description of the Agency's mission, contact information for other government agencies, and contact information for the Regional Offices in closest geographic proximity. In FY 2020, the toll-free telephone service received 23,278 calls. Board staff also monitors [publicinfo@nrlrb.gov](mailto:publicinfo@nrlrb.gov), an email account for general public inquiries.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, Board Members, General Counsels, Regional Directors, Congressional and Public Affairs staff, and Board agents participated in numerous speaking engagements at events sponsored by law schools, bar associations, chambers of commerce, worker advocacy groups, and various other employer, union, and human resources professional groups to educate them on the NLRA and the role of the NLRB in impartially enforcing the Act. In addition, Regional Offices publish newsletters and participate in televised or radio public talk shows.

As part of the Agency's outreach to communities with limited English proficiency, in addition to the bilingual toll-free telephone service for inquiries, the NLRB employs Language Specialists and contracts with service providers whose job is to provide interpretation and translation services in various languages to assist our field office casehandling. The public website contains Agency publications about the NLRA and processes, which are translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. The number of electronic document templates available in Spanish continues to increase and the database of translated representation case notices and ballots has expanded to include 31 languages. Finally, the Agency has teamed up with other federal agencies in conducting listening sessions among the Asian American and Pacific Islander community to educate them about the rights of workers and to listen to their concerns regarding treatment at their workplaces and confusion about the Agency's processes.

## FY 2020 STATISTICAL HIGHLIGHTS



The Board issued **374** decisions in contested cases:



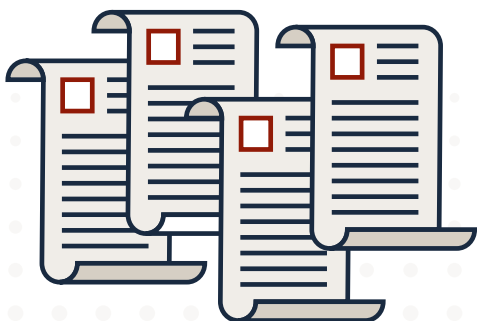
**90.7%**

of all initial elections were conducted within 56 days of filing of the petition.<sup>1</sup>

Initial elections in union representation cases were conducted in a median of

**28.4 days**

from the filing of the petition.<sup>2</sup>



Regional Offices issued **809 complaints.**

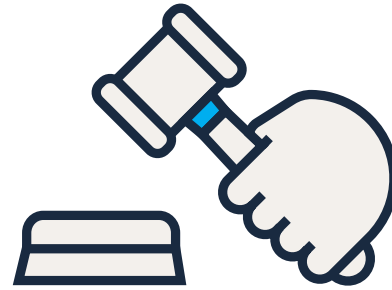
<sup>1</sup>The Agency exceeded its goal of 90% with 90.7%. However, due to the COVID-19 pandemic, it was lower than the outstanding FY 2019 performance of 98%.

<sup>2</sup>The Agency exceeded its goal of 42 days with 28.4 days. However, due to the COVID-19 pandemic, it was lower than the outstanding FY 2019 performance of 25 days.



**78.8%**

of meritorious ULP charges resolved within 365 days.



Regional Offices prevailed in

**83.4%**

of Board and ALJ decisions which were won, in whole or in part.

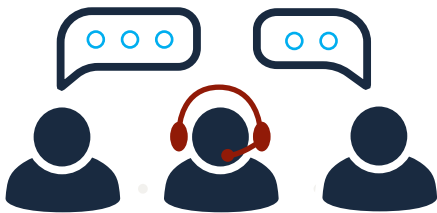
**\$39,389,405**

was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines

and

**978**

employees offered reinstatement.



The Agency received **38,819** inquiries through its Public Information Program, and **23,278** calls through its toll-free number.



The Division of Judges closed **62** hearings, issued **102** decisions, and achieved **338** settlements in cases on its trial docket.

PROTECTING DEMOCRACY IN  
THE WORKPLACE SINCE 1935



# 01

MANAGEMENT'S DISCUSSION  
AND ANALYSIS



## ABOUT THE NLRB

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### **The National Labor Relations Act (NLRA)**

- Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector.
- Serves the public interest by reducing interruptions in commerce caused by conflict between employers and employees.
- Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining and concerted activities to improve terms and conditions in the workplace.
- Addresses the rights and obligations of employees, labor unions, and private employers.

### **The National Labor Relations Board (NLRB)**

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA by conducting secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and by preventing and remedying statutorily defined ULPs by employers and unions.

The NLRB acts only on those charges brought before it and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, or other private parties.

In its 85-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story. Specific data on the following components of the Agency's work can be found on the NLRB's web site at: <https://www.nlr.gov>:

**Charges and Complaints** – Data related to charges of ULPs received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements.

**Petitions and Elections** – Data related to petitions for representation, decertification, unit amendment and clarification, and recession of union security agreements received by Regional Offices, elections held, and outcomes.

## MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.



**Decisions** – Data related to decisions by the Board and NLRB ALJs.

**Litigation** – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

**Remedies** – Data related to remedies obtained to resolve ULPs, including backpay and offers of reinstatement.

## Employee Rights Under The NLRA

The NLRA extends rights to many private-sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to support union representation in a workplace where none currently exists or to attempt to improve their wages and working conditions through other group action.

Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse to do any or all of these things. However, the union and employer, in a state where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

**Statutory Structure**

Agency leadership consists of six presidential appointees—five Board Members (including the Chairman) and the GC. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the Board, and the GC. The Agency's offices include its headquarters in Washington, D.C., a network of Field offices throughout the U.S., and two satellite Judges' offices in New York City and San Francisco. The NLRA assigns separate and independent responsibilities to the Board and the GC. The GC's role is chiefly prosecutorial and the Board's is adjudicative. A map depicting the Regional Offices can be found at: <https://www.nlrb.gov/about-nlrb/who-we-are/regional-offices>.

<sup>3</sup> Including Subregional and Resident Offices.

### THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body, deciding cases based on formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate and serve staggered five-year terms<sup>4</sup>. The President designates one of the Board Members as Chairman. Board Member John F. Ring was designated as Chairman on April 12, 2018.

The Agency currently has four Board Members, with one vacancy.

### THE GENERAL COUNSEL

Congress created the position of GC in its current form in the Taft-Hartley Act of 1947. The GC is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of ULP cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and human capital operations of the Agency. In performing delegated functions, and in some aspects statutorily assigned functions, the GC acts on behalf of the Board. With respect to the investigation and prosecution of ULP cases, the GC has sole prosecutorial authority under the statute, independent of the Board. Peter B. Robb, was nominated by the President for GC and appointed to a four-year term beginning on November 17, 2017.

Below is information about the terms of the current Presidential appointees of the NLRB.

Appointee	Sworn In	Term to Expire
John F. Ring, Chairman	4/16/2018	12/16/2022
Marvin E. Kaplan, Member	8/10/2017	8/27/2025
William J. Emanuel, Member	9/26/2017	8/27/2021
Lauren McFerran, Member	8/1/2020	12/16/2024
Peter B. Robb, General Counsel	11/17/2017	11/16/2021

<sup>4</sup> Even though Board Members have five-year terms, a new five-year term begins running immediately upon the expiration of the previous Member's term and the seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a lapse of time can occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member would serve only a portion of a five-year term.

# ORGANIZATION





# CASEHANDLING FUNCTIONS

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to prevent and remedy certain ULPs on the part of employers and unions so as to promote commerce and strengthen the Nation's economy.

The two mission-related goals of the NLRB are:

- Promptly and fairly resolve through investigation, settlement of prosecution, unfair labor practices under the NLRA.
- Promptly and fairly resolve all questions concerning representation of employees.

## Unfair Labor Practice Proceedings

The NLRA regulates the conduct of labor-management relations between employers and unions. The NLRB enforces the provisions of the Act through ULP proceedings, which are adjudicated and remedied through procedures under the NLRA.

The GC has sole responsibility—independent of the Board—to investigate charges of ULPs, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the GC in deciding the merits of ULP cases.

The GC investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (collectively known as field offices). If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the GC, issues and prosecutes a complaint against the charged party, unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an ALJ, who issues a decision. The decision may be appealed by any party to the Board through the filing of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the GC thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the GC, they are not self-enforcing. The statute provides that any party may seek review of the Board's decision in a United States Court of Appeals. In addition, if a party refuses to comply with a Board decision, the Board must petition for court

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and a results-oriented philosophy to best serve the needs of the American people.

enforcement of its order. In court proceedings to review or enforce Board decisions, the GC represents the Board and acts as its attorney. Also, the GC acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a federal district court for an injunction to temporarily prevent ULPs by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the alleged ULP, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the GC may request authorization from the Board to seek injunctive relief. The Board votes on the GC's request and, if a majority votes to authorize injunctive proceedings, the GC, through the Regional staff, files for injunctive relief with an appropriate federal district court. In addition, under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable cause to believe that a union has committed certain specified ULPs, such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

### **Representation Proceedings**

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial<sup>5</sup>. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer. Typically, the petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified or decertified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and conduct a secret-ballot election, if appropriate, addressing challenges and objections to the election subsequently, and thereafter determining whether certification should issue.

In the processing of representation cases, the Board and the GC have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the GC, process representation petitions and conduct elections on behalf of the Board based on a delegation of authority made in 1961. As a result, the GC and the Board have historically worked together in developing procedures for the conduct of representation proceedings. The Board has ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any challenges and objections to the conduct of an election. The Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

<sup>5</sup> Unlike ULP hearings where violations of the statute are litigated in an adversarial proceeding, representation case hearings are fact-finding proceedings regarding questions concerning representation.

**Compliance Proceedings**

To obtain compliance with the Board's orders and settlement agreements, the GC's staff must follow up to ensure that the results of the processes discussed above are enforced. NLRB staff deals with employees whose rights have been violated to calculate backpay, and works with respondents regarding notice postings, reinstatement of workers, disciplinary record expungement, withdrawal of unlawful rules or policies, and bargaining remedies. Since Board orders are not self-enforcing, noncompliance or disputes on findings may require additional hearings or actions in the courts.

**Administrative Functions**

Section 3(d) of the Act assigns the GC supervision over all attorneys employed by the Agency, with the exception of the ALJs, the Solicitor, the Executive Secretary and the attorneys who serve as counsel to the Board Members. The Board has also delegated to the GC general supervision over the administrative, financial and personnel functions of the Agency.

## CASEHANDLING HIGHLIGHTS

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The NLRB acts only on those cases brought before it and does not initiate cases. While charges must be filed with the Agency to begin an investigation, if merit is found to the charge allegations, the Regional Director has delegated authority from the GC to issue a complaint absent settlement.

All proceedings originate with the filing of charges or petitions by employees, labor unions, or private-sector employers engaged in interstate commerce. During FY 2020, the public filed 15,869 ULP charges of which 35.2 percent were found to have merit. Also, in FY 2020, the NLRB received 1,764 representation petitions, including 1,695 petitions to conduct secret-ballot elections in which workers in appropriate units select or reject unions to represent them in collective bargaining with their employers, as well as 18 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 2 petitions seeking amendment and 38 petitions seeking clarification of an existing bargaining unit, as well as 11 WH (wage and hour) cases.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees' free choice on union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The cases summarized on the following pages highlight this philosophy and reflect the NLRB's work in fulfilling its mission of protecting workplace democracy and the rights of employees, unions and employers under the NLRA, in order to promote commerce and strengthen the Nation's economy.

### **COVID-19 Related Developments**

FY 2020 was a challenging year for the country, including for businesses and the American workforce. The Board addressed COVID-19 issues in a number of situations.

#### **DANBURY AMBULANCE SERVICE, INC.**

01-CA-238987, et al., reported at 369 NLRB No. 68 (2020)

In light of the ongoing COVID-19 pandemic, the Board modified its standard notice-posting remedy and ordered the Respondent, if the facility involved in these proceedings is closed temporarily due to the pandemic, to post the notices within 14 days after the facility reopens and a substantial complement of employees have returned to work. The Board ordered that any pandemic-related delay in the physical posting will also apply to electronic distribution of the notice. The changes do not apply if the facility involved in these proceedings remains open and staffed by a substantial complement of employees despite the pandemic.

Chairman Ring and Members Kaplan and Emanuel participated.

**ATLAS PACIFIC ENGINEERING COMPANY**

27-RC-258742, unpublished decision issued 5/8/2020

The Board held that the Regional Director did not abuse her discretion in ordering a mail-ballot election based on “the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the Regional Office charged with conducting this election should remain on mandatory telework,” and noting that mandatory telework in the regional office is based on the Agency’s assessment of current COVID-19 pandemic conditions in the local area. Chairman Ring and Members Kaplan and Emanuel participated.

**WILLIAM BEAUMONT HOSPITAL**

07-CA-244615, reported at 370 NLRB No. 9 (2020)

In *William Beaumont Hospital*, the Board found that the Respondent failed to establish that the Deputy Chief ALJ abused his discretion in finding that good cause for a video hearing exists due to the COVID-19 pandemic, and that the Respondent did not show that a hearing held by videoconference would deny it due process. The Board further found that the Respondent may raise any nonspeculative concerns that arise during the video hearing to the trial judge in the first instance, without prejudice to its right to file exceptions with the Board to any adverse rulings.

Chairman Ring, and Members Kaplan, Emanuel, and McFerran participated. See also *XPO Cartage, Inc.*, 21-CA-150873, 370 NLRB No. 10 (2020) (Chairman Ring and Members Kaplan and Emanuel participated).

**MORRISON HEALTHCARE**

12-RC-257857, reported at 369 NLRB No. 76 (2020)

The Board held that remote hearings may be held in representation cases when “compelling circumstances” exist and clarified that the current COVID-19 pandemic constitutes compelling circumstances. The remote hearing must be conducted by videoconference where there is witness testimony; where there is no witness testimony, or if the parties agree, the hearing may be conducted telephonically.

Chairman Ring and Members Kaplan and Emanuel participated.

Union Dues Checkoff**VALLEY HOSPITAL MEDICAL CENTER, INC. D/B/A VALLEY HOSPITAL MEDICAL CENTER**

28-CA-213783, reported at 368 NLRB No. 139 (2019)

The Board overruled the 2015 changes governing dues checkoff obligations when a collective bargaining agreement ends, restoring precedent that had been in place since 1962. The Board held that an employer’s statutory obligation to check off union dues ends upon expiration of the collective-bargaining agreement containing the checkoff provision.

The majority found that dues checkoff provisions belong in the limited category of mandatory-bargaining subjects that are exclusively created by the contract and are enforceable through Section 8(a)(5) of the

NLRA only for the duration of the contractual obligation created by the parties. In the majority's view, there is no independent statutory obligation to check off and remit employees' union dues after the expiration of the collective-bargaining agreement even where the contract does not contain a union-security provision.

This decision overturned *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015), and returned Board precedent to the rule established under *Bethlehem Steel*, 136 NLRB 1500 (1962).

Chairman Ring and Members Kaplan and Emanuel participated, with Member McFerran dissenting.

### **BETTERROADS ASPHALT, LLC**

12-CA-185172, et al, reported at 369 NLRB No. 114 (2020)

The Board found that the Respondent violated Section 8(a)(1) of the NLRA when it failed to remit to the Union dues deducted from employees' pay. As a remedy, the Board ordered that the dues be returned to the employees. In doing so, the Board overruled *Talaco Communications, Inc.*, 321 NLRB 762 (1996), and its progeny to the extent those cases held that the dues should be remitted to the union. The Board also found that the Respondent violated Section 8(a)(5) and (1) by failing to make numerous payments without providing the Union notice and opportunity to bargain and by failing and refusing to furnish the Union with certain relevant information.

Chairman Ring and Members Kaplan and Emanuel participated.

### Workplace Rules

### **WAL-MART STORES, INC.**

13-CA-114222 and 32-CA-111715, reported at 368 NLRB No. 146 (2019)

The full Board adopted the ALJ's conclusion that the Respondent's maintenance of its dress codes requiring logos to be "small" and "non-distracting" violated Section 8(a)(1) as it applied to areas away from the selling floor; however, a Board majority (Chairman Ring and Members Kaplan and Emanuel; Member McFerran, dissenting) reversed the judge's conclusion that the Respondent's maintenance of its dress codes was unlawful as it applied to the selling floor. In doing so, the majority applied its test for examining facially neutral employer policies set forth in *The Boeing Company*, 365 NLRB No. 154 (2017). The majority explained that limitations on the display of union insignia short of outright prohibitions will vary in the extent to which they serve legitimate employer interests and the degree to which they interfere with Section 7 rights; thus, they will "warrant individualized scrutiny in each case" as Boeing Category 2 rules.

Applying *Boeing* to the maintenance of the rules on the selling floor, the majority found that the policies—when reasonably interpreted—would potentially interfere with employees' Section 7 right to display some union insignia; nonetheless, the adverse effect is relatively minor and outweighed by the Respondent's legitimate justifications for maintaining the policies—to enhance the customer shopping experience and protect its merchandise from theft or vandalism.

Chairman Ring and Members Kaplan and Emanuel participated, with Member McFerran dissenting.



### Workplace Investigations

#### **APOGEE RETAIL LLC D/B/A UNIQUE THRIFT STORE**

27-CA-191574 and 27-CA-198058, reported at 368 NLRB No. 144 (2019)

The Board held that work rules requiring confidentiality during the course of workplace investigations are presumptively lawful. This case overturned a 2015 decision—*Banner Estrella Medical Center*, 362 NLRB 1108 (2015), enf. denied on other grounds 851 F.3d 35 (D.C. Cir. 2017)—that had required employers to prove, on a case-by-case basis, that the integrity of an investigation would be compromised without confidentiality.

The Board concluded that the framework set forth in *Banner Estrella* improperly placed the burden on the employer to determine whether its interests in preserving the integrity of an investigation outweighed employee Section 7 rights under the NLRA, contrary to both Supreme Court and Board precedent. The Board also noted that the new standard better aligned with other federal guidance, including Equal Employment Opportunity Commission enforcement guidance.

In the decision, the Board applied the test for facially neutral workplace rules established in *The Boeing Company*, 365 NLRB No. 154 (2017), and determined that investigative confidentiality rules limited to the duration of the investigation are generally lawful. Because the rules at issue in this case did not limit confidentiality to the duration of the investigation, the majority remanded this case for further consideration.

Chairman Ring and Members Kaplan and Emanuel participated, with Member McFerran dissenting.

### Pre-Disciplinary Bargaining Obligation with Newly Certified Union

#### **800 RIVER ROAD OPERATING COMPANY, LLC D/B/A CARE ONE AT NEW MILFORD**

22-CA-204545, reported at 369 NLRB No. 109 (2020)

The Board overruled a 2016 decision that changed an employer's duty to bargain over discipline with a newly certified union prior to reaching a first collective-bargaining agreement and reinstated 80 years of precedent holding that employers have no statutory obligation to bargain before imposing discretionary discipline that is materially consistent with the employer's established policy or practice.

The Board's decision overturned *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (Aug. 26, 2016), which imposed a new obligation on employers upon commencement of a collective-bargaining relationship. *Total Security Management* required an employer, with limited exceptions, to provide a union with notice and opportunity to bargain about discretionary elements of an existing disciplinary policy before imposing "serious discipline," such as suspension, demotion or discharge. The Board's decision in *800 River Road* explains how the pre-discipline bargaining obligation created in 2016 conflicted with prior Supreme Court and Board precedent, misconstrued the Supreme Court's unilateral-change doctrine with respect to what constitutes a material change in working conditions, and imposed a complicated and burdensome bargaining scheme that was irreconcilable with the general body of law governing statutory bargaining practices.

Chairman Ring and Members Kaplan and Emanuel participated.

Offensive Conduct in the Course of Section 7 Activity**GENERAL MOTORS LLC**

14-CA-197985 and 14-CA-208242, reported at 369 NLRB No. 127 (2020)

In this case, the Board modified the standard for determining whether employees have been lawfully disciplined or discharged after making abusive or offensive statements—including profane, racist, or sexist remarks—in the course of activity otherwise protected under the NLRA.

With the decision, cases involving offensive or abusive conduct in the course of otherwise-protected activity will now be decided under the familiar *Wright Line* standard, which has long been used by the Board with court approval in mixed-motive cases. Under *Wright Line*, the GC must first prove that the employee's protected activity was a motivating factor in the discipline. If that burden is met, the employer must then prove it would have taken the same action even in the absence of the protected activity, for example, by showing consistent discipline of other employees who engaged in similar abusive or offensive conduct.

The standard announced today replaces a variety of setting-specific standards—one for encounters with management (*Atlantic Steel*), another for exchanges between employees and postings on social media (a “totality of the circumstances” test), and a third for offensive statements and conduct on the picket line (*Clear Pine Mouldings*). While these tests were based on the view that employees should be permitted some leeway for impulsive behavior when engaging in activities protected under the Act, they incorrectly assumed that the abusive behavior and the protected activity were analytically inseparable and often resulted in reinstatement of employees discharged for deeply offensive conduct. These decisions were out of step with most workplace norms and were difficult to reconcile with antidiscrimination law.

Chairman Ring and Members Kaplan and Emanuel participated.

Use of Employer Email for Protected Activity**CAESARS ENTERTAINMENT D/B/A/ RIO ALL-SUITES HOTEL AND CASINO**

28-CA-060841, reported at 368 NLRB No. 143 (2019)

In this case, the Board reestablished the right of an employer to restrict employee use of its email system if it does so on a nondiscriminatory basis.

The Board last considered the issue presented here in *Purple Communications, Inc.*, 361 NLRB 1050 (2014). In *Purple Communications*, the Board held that employees who have been given access to their employer's email system for work-related purposes have a presumptive right to use that system, on nonworking time, for communications protected by Section 7 of the NLRA. Here, overruling *Purple Communications*, the Board held that employees do not have a statutory right to use employers' email and other information-technology (IT) resources to engage in non-work-related communications. Rather, employers have the right to control the use of their equipment, including their email and other IT systems, and they may lawfully exercise that right to restrict the uses to which those systems are put, provided that in doing

so, they do not discriminate against union or other protected concerted communications. To this extent, the Board effectively reinstated the holding of *Register Guard*, 351 NLRB 1110 (2007). Recognizing that employees must have adequate avenues to engage in communications protected by Section 7 of the NLRA, the Board's decision creates an exception for circumstances where the use of employer-provided email is the only reasonable means for employees to communicate with one another on non-working time during the workday.

Chairman Ring and Members Kaplan and Emanuel participated, with Member McFerran dissenting in part.

#### **T-MOBILE USA, INC.**

14-CA-155249, et al., reported at 369 NLRB No. 90 (2020)

The Board found that, in response to an employee attempting to use her work email to send a message to her 595 coworkers encouraging them to join the Union, the Respondent did not violate Section 8(a)(1) of the NLRA by announcing new workplace rules and telling the employee that employees could not send certain emails to other employees' work email addresses. The lawfulness of the Respondent's conduct was dependent on whether the employee engaged in protected activity under the limited exception to *Caesars Entertainment* by attempting to use her work email to send her message to her coworkers about joining the Union. Because the record contained no evidence that the Respondent's employees did not have access to other reasonable means of communication, and no party contended that the Respondent's email system furnished the only reasonable means for the employees to communicate with one another, the Board found that the employee did not engage in protected activity when she attempted to use her work email to send her message to her coworkers. Further, the Board reversed the ALJ and found that the new workplace rules announced by the Respondent were not overbroad in violation of Section 8(a)(1) of the Act. The Board reasoned that the rules were lawful because the Respondent explicitly announced them in response to the employee's violation of several of its policies and all of the employees reasonably knew that the Respondent promulgated its rules—the language of which prohibited the very type of impermissible conduct the employee engaged in—because of the employee's improper use of its email system and to prevent similar infractions in the future.

Chairman Ring and Members Kaplan and Emanuel participated.

#### Union Solicitation

#### **WYNN LAS VEGAS, LLC**

28-CA-155984 and 28-CA-157203, reported at 369 NLRB No. 91 (2020)

The Board found that an employee engaged in union solicitation by encouraging a coworker to vote for the Union in a then upcoming representation election while the coworker was on working time. In so doing, the Board overruled *Wal-Mart Stores*, 340 NLRB 637 (2003), and *ConAgra Foods, Inc.*, 361 NLRB 944 (2014), and found that, in determining whether a statement amounts to solicitation of union support, neither the presentation of an authorization card for signature at the time nor the duration of the conversation are determinative. The Board further clarified the

definition of solicitation to encompass the act of encouraging employees to vote for or against union representation. Applying the clarified definition, the Board adopted the ALJ's conclusion that the Respondent did not violate Section 8(a)(3) and (1) of the NLRA in issuing the employee a written warning because she violated the Respondent's lawful solicitation and distribution policy (Solicitation policy). The Board also dismissed the allegation that the Respondent overbroadly applied its Solicitation policy to restrict the employee's Section 7 activity in violation of Section 8(a)(1), noting that the judge did not analyze this allegation in his decision. Additionally, the Board adopted the judge's conclusions that the Respondent did not violate Section 8(a)(1) by: (1) unlawfully interrogating employees when it interviewed them about the employee's solicitation of her coworker; (2) creating the impression of surveillance of the employee's union activity; (3) orally promulgating a discriminatory directive that its employees could not promote the union while they were on duty; and (4) threatening its employees with unspecified reprisals because they engaged in union and other concerted activities. The Board modified the ALJ's rationale for these findings. Finally, the Board dismissed the allegation that the Respondent's application of the Solicitation policy to the employee violated Section 8(a)(3) and (1) because it was selectively and disparately applied.

Chairman Ring and Members Kaplan and Emanuel participated.

#### Gissel Bargaining Order

#### **RAV TRUCK & TRAILER REPAIRS**

02-CA-220395, reported at 369 NLRB No. 36 (2020)

The Board adopted the ALJ's conclusions that the Respondent, a single employer, violated Section 8(a)(3) and (1) of the NLRA by: discharging an employee for signing a union authorization card the day prior; laying off an employee for signing a union authorization card a week prior; and, pursuant to the Supreme Court's decision in *Textile Workers v. Darlington*, 380 U.S. 263 (1965), closing RAV Truck and Trailer Repairs, Inc. with a purpose of chilling union activity at its other facility, Concrete Express of NY, LLC, and where it reasonably could have been foreseen that this partial closure would have a chilling effect.

In adopting the ALJ's conclusion of a *Darlington* violation, the Board additionally relied upon the unfair labor practices found against Respondent Concrete Express in *Concrete Express of NY, LLC*, Case Nos. 02-CA-220381 et al. (Feb. 28, 2020), as evidence of the Respondent's anti-union motive. The Board adopted the judge's *Gissel* bargaining remedy and broad cease-and-desist order, noting that, although the judge did not provide sufficient justification for the broad order as required by *Hickmott Foods*, 242 NLRB 1357 (1979), the order was warranted given the widespread and egregious nature of the Respondent's conduct and the Respondent's demonstrated proclivity to violate the Act.

Chairman Ring and Members Kaplan and Emanuel participated.

Representation Issues – Merger of Bargaining Units**NBC UNIVERSAL MEDIA LLC**

02-UC-000625, reported at 369 NLRB No. 134 (2020)

The Board reaffirmed and reinstated the standard set forth in Board decisions such as *American Can Co.*, 109 NLRB 1284 (1954), and *Hygrade Food Products Corp.*, 85 NLRB 841 (1949), and held that, to demonstrate that a merger of units has occurred, the alleging party must show an “unequivocal manifestation of an intent” to merge the units. The Board found that requiring an unequivocal manifestation of intent to merge brings clarity to this area of law, better balances employee rights and labor stability, and will afford far greater clarity and predictability with respect to the litigation of this issue. The Board overruled any prior cases to the extent that they conflict with this standard. The Board also determined that it was appropriate to apply the new standard retroactively. Applying that standard to this case, the Board found that the evidence failed to establish that the parties unequivocally intended to merge the separately certified and recognized units into a single nationwide unit. Accordingly, the Board reversed the Regional Director’s finding that the Petitioner represents a single, merged unit.

Chairman Ring and Members Kaplan and Emanuel participated.

Representation Issues – Dual Marked Ballots**PROVIDENCE HEALTH & SERVICES**

19-RC-231425, reported at 369 NLRB No. 78 (2020)

The Board held that where a ballot includes markings in more than one square or box, it is void, overruling inconsistent Board precedent, including *Thiele Industries*, 325 NLRB 1122 (1998). Because the revised tally of ballots showed an equal number of votes for and against representation, the Board vacated the Regional Director’s certification of representative and issued a certification of results. The Board also determined that it was appropriate to apply the new standard retroactively. Finally, the Board directed that the instructions that appear on the actual ballots used in an election and in the sample ballot included in the notice of election, be changed to make clear that a dual marked ballot will be voided. The Board noted that the new ballot language would be applicable only prospectively and implemented as soon as practicable, but that the fact that an election was conducted with ballots using the “now-defunct ‘spoiled’ language” would not be grounds for filing objections to an election.

Arbitral Deferral Standard**UNITED PARCEL SERVICE, INC.**

06-CA-143062, reported at 369 NLRB 1 (2019)

The Board returned to its traditional standard for post-arbitral deferral. The post-arbitral deferral standard is used by the Board to decide whether to defer to an arbitrator’s prior resolution of a grievance concerning an employee’s discipline or discharge that has also been alleged to violate the NLRA.

This decision overruled *Babcock & Wilcox Construction Co., Inc.*, 361 NLRB (2014), and represented a return to the post-arbitral deferral standards set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984). In addition, the decision restored policies for pre-arbitral deferral established in *United Technologies Corp.*, 268 NLRB 557 (1984), and for deferral to pre-arbitral settlement agreements set forth in *Alpha Beta Co.*, 273 NLRB 1546 (1985).

Under the restored traditional standard, the Board will continue to safeguard the exercise of Section 7 rights—particularly by ensuring that arbitral awards are not clearly repugnant to the Act—while better promoting the strong federal policy in favor of arbitration as the parties' agreed-upon mechanism for resolving employment disputes.

Chairman Ring and Members Kaplan and Emanuel participated.

#### Board Jurisdiction

#### **BETHANY COLLEGE**

14-CA-201546 and 14-CA-201584, reported at 369 NLRB No. 98

The Board held that it has no jurisdiction over the faculty at *bona fide* religious institutions of higher education. In so doing, the Board overruled the prior jurisdictional standard set forth in *Pacific Lutheran University*, 361 NLRB 1404 (2014), a test that had been criticized by the United States Court of Appeals for the District of Columbia Circuit as incompatible with Supreme Court precedent. In place of the *Pacific Lutheran* standard, the Board adopted the jurisdictional test announced by the District of Columbia Circuit in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002).

Under the *Great Falls* test, the Board “must decline to exercise jurisdiction” over faculty at an institution that (a) “holds itself out to students, faculty, and community as providing a religious educational environment”; (b) is “organized as a nonprofit”; and (c) is “affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion.”

The Board concluded that the *Pacific Lutheran* test was fatally flawed, as it required consideration of whether faculty members at religiously affiliated institutions of higher learning are performing a specific religious function. To make such an assessment, the Board would have to engage in an inquiry, impermissibly intrusive into an area safeguarded by the Religion Clauses of the First Amendment, “into what does and what does not constitute a religious function.” By adopting the bright-line *Great Falls* test, the Board “will leave the determination of what constitutes religious activity versus secular activity precisely where it has always belonged: with the religiously affiliated institutions themselves, as well as their affiliated churches and, where applicable, the relevant religious community.”

Chairman Ring and Members Kaplan and Emanuel participated.



**KIPP ACADEMY CHARTER SCHOOL**

02-RD-191760, reported at 369 NLRB No. 48 (2020)

The Board considered whether it should exercise its discretion to decline jurisdiction over charter schools as a class under Section 14(c)(1) of the Act, and, therefore, modify or overrule *Hyde Leadership Charter School—Brooklyn*, 364 NLRB No. 88 (2016), and *Pennsylvania Virtual Charter School*, 364 NLRB No. 87 (2016). Upon review, the Board determined not to exercise its discretion to decline jurisdiction over charter schools as a class under Section 14(c)(1) in this case and affirmed the Regional Director's Decision and Direction of Election in which he found that the employer was not exempt from the Act's jurisdiction as a political subdivision under Section 2(2) of the Act.

Chairman Ring and Members Kaplan and Emanuel participated.

## PERFORMANCE HIGHLIGHTS

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The Board and the GC share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives from the Board and the GC worked together in developing the comprehensive Strategic Plan (FYs 2019-2022) and the Performance and Accountability Report.

The NLRB's Strategic Plan states the Agency's strategic goals, objectives, initiatives, performance measures, and management strategies. There are two mission-related goals, and two support goals. The majority of the support goals are management strategy based and will be discussed at length in the Performance Section of this report.

The NLRB's performance measurement system has been highly regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline". The Agency does not rely on outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data. All the NLRB's mission-related offices have moved fully into the NxGen system, which provides for real-time review of all case file materials and consistent data reporting.

Data regarding mission-related goals are compiled using the Agency's NxGen Case Management system. This enterprise-wide electronic case management system is used by all divisions throughout Headquarters and the Regions and has data integrity reports which help isolate and correct data errors. The Division of Operations-Management oversees the Regional offices which compile 75 percent of the case-related statistics. Each quarter, Regions are required to run various data integrity reports in NxGen and report their findings to the Division of Operations-Management for review. For more information on the program evaluation please see page 82.

The NLRB's mission-related goals represent the core functions of the Agency in its enforcement of the NLRA. Goal 1 focuses on individual segments of the casehandling process such as the average number of days from filing to disposition and average number of days from Board order Issued to Closing. Goal 2 focuses on the overall time it takes to process an entire case. The goals are outcome-based and aligned with the mission of the Agency.

The Performance Measures for Strategic Goal 1 address the timeliness of case processing at different stages for the resolution of meritorious ULP charges. On an annual basis, there are typically more than six times as many ULP cases than representation cases. Both types of cases often involve complicated issues for Regions to address.

The Performance Measure for Strategic Goal 2 focuses on the time taken to resolve a representation case, from beginning to end, including time spent on the case by Field and Headquarters Offices. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees' support union representation.

**Goal 1, Initiative 1 – Performance Measures:**

*Measure 1: Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.*

Year	Annual Goal	Actual Performance
FY 2018	Baseline	106 days
FY 2019	101 days	74 days
FY 2020	95 days	70.5 days
FY 2021	90 days	
FY 2022	85 days	

*Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by ALJ or issuance of ALJ decision.*

Year	Annual Goal	Actual Performance
FY 2018	Baseline	242 days
FY 2019	230 days	264 days
FY 2020	218 days	283 days
FY 2021	206 days	
FY 2022	194 days	

*Measure 3: Realize a 5% annual decrease in the average time between issuance of an ALJ's decision and a Board order.*

Year	Annual Goal	Actual Performance
FY 2018	Baseline	585 days
FY 2019	556 days	513 days
FY 2020	527 days	544 days
FY 2021	497 days	
FY 2022	468 days	

*Measure 4: Realize a 5% annual decrease in the average time between issuance of Board order and the closing of the case.*

Year	Annual Goal	Actual Performance
FY 2018	Baseline	648 days
FY 2019	616 days	541 days
FY 2020	583 days	578.5 days
FY 2021	556 days	
FY 2022	518 days	

**Goal 2, Initiative 1 – Performance Measure:**

*Measure 1: The percentage of representation cases resolved within 100 days of filing the election petition.*

Year	Annual Goal	Actual Performance
FY 2018	85.8%	88.8%
FY 2019	85.8%	90.7%
FY 2020	85.8%	84.2%
FY 2021	85.9%	
FY 2022	85.9%	

# FINANCIAL AND SYSTEMS HIGHLIGHTS

## COVID-19 Activity

The Agency did not receive a supplemental appropriation for COVID-19. In FY 2020, the NLRB received an annual appropriation amount of \$274.2 million and used \$716,821 or 0.26 percent of the annual appropriation on personal protective equipment supplies, information technology support, cleaning services and emergency paid sick leave during FY 2020.

## Operational/Performance Highlights

The OCFO, comprised of the Budget, Acquisitions and Finance Branches, reports directly to the Chairman and GC. This structure integrates and enhances Agency financial management. Specifically, the OCFO focuses on effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

The OCFO continuously seeks to infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process.

The FMFIA requires Federal agencies to establish and maintain a system of internal control. The NLRB is required to comply with FMFIA and OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.

Annually, NLRB evaluates its internal controls over financial reporting in accordance with OMB Circular No. A-123. To accomplish this, NLRB performs following five phases: 1) Planning, 2) Documentation, 3) Testing, 4) Evaluation, and 5) Reporting.

In order for NLRB to comply with the requirements of Appendix A to OMB Circular No. A-123, NLRB assessed key financial business cycles to determine if there were inadequate or failed internal controls, processes, personnel, and systems. The assessments focused on financial risks and include the following significant financial business cycles: 1) Financial Reporting, 2) Budgetary Execution, 3) Procurement, and 4) Cash and Treasury Related Activities. NLRB also assessed entity-level controls to obtain enterprise-wide holistic view of internal controls.

As NLRB's internal controls program evolves, the scope of the review may expand to other areas.

Below are some highlights from FY 2020 OCFO activities:

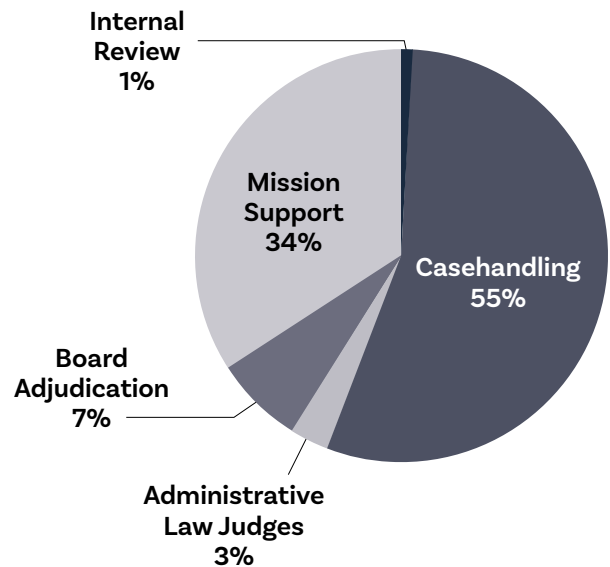
## Budget

The FY 2020 Budget provides \$274.2 million for the NLRB to fund the Agency's statutory mission of resolving labor disputes through investigation, settlement, litigation, adjudication, education, and compliance. The NLRB has five Program Activities that define the major mission functions for budgetary reporting. In FY 2020, the Agency allocated \$273.8 million or 99.8 percent of its enacted appropriation to support these program activities.

The budget provided:

- \$150.8 million to support Casehandling
- \$93.3 million for Mission Support
- \$20.3 million for Board Adjudication
- \$8.2 million for Administrative Law Judges
- \$1.2 million for Internal Review

The NLRB FY 2020 annual staff compensation (salaries and benefits) accounts for approximately 76 percent of the budget or \$209 million; 12 percent or \$32 million is required for rent, security, and other facility and property expenses for the NLRB offices in Headquarters and across the country; and the remaining 12 percent or \$32.8 million is allocated to costs and activities that include, but are not limited to: information technology, court reporting, case-related travel, witness fees, interpreters, legal research systems, case management systems, training, compliance with government-wide statutory and regulatory mandates, and mission support offices.



The Budget Office continues to coordinate outreach efforts with Program Areas to address unfunded requirements. During FY 2020, the Agency was able to reassess its funding requirements as a result of the pandemic and invest about \$12 million in several high priority requirements including workforce performance awards, training, facilities, and technology enhancements.

## Finance

In FY 2020, the Finance Branch continues to provide excellent customer service to our internal and external customers. The Finance Branch successfully submitted the monthly Governmentwide Treasury Account Symbol (GTAS) and Central Accounting Reporting System (CARS) reporting to the U.S. Department of Treasury, Bureau of the Fiscal Service in a timely manner. Additionally, the Finance Branch was also able to close five audit recommendations from the Backpay and Financial Statement audits.

During FY 2020, the Finance Branch worked closely with the Division of Operations Management to successfully increase the accuracy of backpay disbursement request submissions from Regional Offices with respect to payments for discriminatees and have reduced the backlog 62 percent. The Agency also transitioned from the United States Postal Service's Centralized Account Processing System (CAPS) to the Enterprise Payment System (EPS) for postal payments (advances.)

## Charge Card Program

The NLRB's Purchase and Travel Card Programs are running at full capacity within the GSA SmartPay 3 Program. Both Programs benefit from:



- Safety and Transparency – Provides secure solutions for efficient payment transactions
- Electronic Access to Data – Provides agencies/organizations with immediate access to complete transaction level data, helping to mitigate fraud, waste, and abuse
- Refunds – Agencies/Organizations earn refunds based on a single rate which considers both volume of spend and speed of pay
- Worldwide Acceptance – Provides access to merchants around the globe
- Tax Advantage – The SmartPay 3 travel card program

The NLRB tirelessly resolves system issues that Cardholder's face within the program in order to maintain efficiencies and the overall effectiveness of the tools to purchase and monitor transactional data provided by Citibank.

## Systems

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's Interior Business Center (IBC) and has no plans to operate its own financial systems. NLRB is responsible for overseeing IBC and ensuring that financial systems and internal controls are in place to fulfill legislated and regulatory financial management requirements. IBC provides the following systems:

- Oracle Federal Financials (OFF) – Integrated system of record for all financial transactions
- Federal Payroll and Personnel System (FPPS) – Personnel system of record, which interfaces with the Oracle system
- E2Solutions – eTravel system provided by Carlson Wagonlit (CWTSato), the NLRB's Travel Management Service, which also interfaces with the Oracle system
- IPP – A Web-based system that provides one integrated, secure system to simplify the management of vendor invoices. It is offered at no charge to federal agencies and their vendors. A few benefits of IPP are as follows:
  - » IPP can help federal agencies avoid Prompt Payment penalties by supporting more efficient invoice processing while automating invoice collection, validation, and approval workflows.
  - » Vendors can manage their receivables more easily using one system to transact with multiple agencies.
  - » IPP saves federal agencies and vendors time and money by automating formerly paper-based processes, and it is offered at no charge.
  - » IPP improves financial management by promoting standard processes to manage government invoices with increased controls.

- » IPP is supported by the U.S. Department of the Treasury, which oversees all upgrades and enhancements.

#### **ORACLE BUSINESS INTELLIGENCE ENTERPRISE EDITION (OBIEE)**

The NLRB's Shared Service provider, IBC, is currently upgrading and transitioning clients from Oracle's Discoverer reporting tool to Oracle Business Intelligence 12c. The transition will be completed on November 15, 2020. The OBIEE reporting solution is a group of foundational reports across the Oracle modules that NLRB can customize to meet Agency-specific needs. OBIEE features a Common Enterprise Information Model for centralized metadata management, common query request generation, and data access. This product provides the information to enable NLRB to drive innovation, optimize operations, and deliver more relevant and timely information to decision makers.

#### **Analysis of Financial Statements**

The NLRB prepares annual financial statements in accordance with U.S. generally accepted accounting principles (GAAP) for federal government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance. The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report.

**Balance Sheet** – The NLRB assets were \$64.2 million as of September 30, 2020. The Fund Balance with the U.S. Department of the Treasury (FBWT) of \$53.1 million represents the NLRB's largest asset at 82.7 percent. The FBWT is an asset of a reporting entity and a liability of the General Fund of the U.S. Government. The FBWT is the undisbursed balances from appropriated funds for the past five years. It consists of appropriated and deposited funds that are available to pay current liabilities and finance authorized purchase commitments.

The NLRB's Property, Plant, and Equipment (PP&E) of \$10.4 million represents the NLRB's second largest asset at 16.2 percent which is primarily related to internal use software and leasehold improvements. PP&E decreased \$886 thousand or 8 percent from the prior year due to the retirement of assets and related depreciation and amortization from existing PP&E.

The NLRB liabilities were \$32.5 million as of September 30, 2020. Liabilities consist of amounts owed to vendors, governmental trading partners, and Agency employees. Unfunded annual leave of \$16.1 million accounted for 50 percent of NLRB's liabilities. The amount increased by \$3.6 million or 29 percent from prior year due to the projected leave balances affected by the impact of the COVID-19 pandemic. Employees used less leave in FY 2020 compared to the prior year. Employer Contributions and Payroll Taxes Payable of \$10.2 million increased \$1.9 million or 23 percent due to an increase in the accrual calculation and the deferral of payroll tax obligation in light of the COVID-19 pandemic. Accounts Payable for intragovernmental activities of \$821 thousand decreased \$1.2 million or 58 percent primarily due to interagency agreements (IAAs), the timing of IPACs, billings and accruals. FECA liabilities decreased \$223

thousand or 56 percent due to a decrease in the number of employees who retired or separated from the Agency in FY 2020.

**Statement of Net Cost** – The NLRB's appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. In FY 2020, net cost of operations was \$288.6 million; 90 percent was used to resolve ULP charges and 10 percent was used for representation case activities. In addition, \$16,104 in earned revenue was from a reimbursable IAA with Millennium Challenge Corporation.

**Statement of Changes in Net Position** – The NLRB's net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2019 to FY 2020, net position decreased \$3.0 million or 9 percent; primarily due to decreases in prior year cost capitalization for internal use software and leasehold improvements, cumulative amounts carried from prior years and cancelled year funds offset; which is offset by an increase in expended appropriations used during the Fiscal Year related to an increase in vendor contract services.

**Statement of Budgetary Resources** – The Statement of Budgetary Resources shows the budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays and reconciles obligations to total outlays. For FY 2020, the NLRB's total budgetary resources were \$287.5 million which included appropriations of \$274.2 million, unobligated balance from prior year of \$13.2 million, and spending authority from offsetting collections of \$16,104. In FY 2020, obligations were \$275.9 million and total outlays were \$272.0 million. In FY 2020, the apportioned unexpired balance at the end of the year was \$470 thousand which resulted in a decrease of \$5.2 million or 92 percent from prior year. In FY 2020, NLRB obligated all the funds as planned with the intention to leave the unobligated balance at approximately \$400 thousand; thus, achieving an obligation rate of 99.8 percent.

### Limitations of Principal Financial Statements

The principal financial statements are prepared to report the financial position, financial condition, and results of operations, pursuant to the requirements of 31 U.S.C. § 3515(b). The statements are prepared from records of Federal entities in accordance with Federal generally accepted accounting principles (GAAP) and the formats prescribed by OMB. Reports used to monitor, and control budgetary resources are prepared from the same records. Users of the statements are advised that the statements are for a component of the U.S. Government.

# COMPLIANCE WITH LAWS AND MANAGEMENT ASSURANCES

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## **Antideficiency Act (ADA)**

The Antideficiency Act prohibits federal agencies from:

- making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law;
- accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by Agency regulations.

There were no known violations of the Anti-Deficiency Act during FY 2020 at the NLRB.

## **Debt Collection Improvement Act (DCIA)**

The Debt Collection Improvement Act of 1996, also known as the DCIA, is a United States' (U.S.) legal act, regulating the collection of bad debts owed to the U.S. government. It dictates the whole debt recovery procedure and collection tools used for collection of non-tax U.S. federal debts. Non-tax debts are considered all types of loans funded by the federal government, e.g. federal education loans, the U.S. Department of Housing and Urban Development loan amounts (the so-called HUD debts), Small Business Administration loans (or SBA loans), unpaid child support sums, etc. The main function of the Improvement Act of 1996 is to maximize recovery of default amounts and late payments referring to federal non-tax bad debts. The DCIA acts together with the Treasury Financial Management Service (FMS) and controls US non-tax delinquent amounts, which have remained unpaid more than 180 days. After this period, such debts are to be transferred to the U.S. Department of the Treasury (Treasury).

## **Digital Accountability and Transparency Act (DATA ACT)**

The DATA Act expands the Federal Funding Accountability and Transparency Act (FFATA) of 2006 to increase accountability and transparency in federal spending, making federal expenditure information more accessible to the public. The goal of the DATA Act is to make federal spending more accessible, searchable, and reliable so taxpayers have the opportunity to understand the impact of federal funding for federal programs/entities.

As required by the OMB Memorandum M-15-12, issued on May 8, 2015, the NLRB drafted a DATA Act of 2014 Implementation Plan in order to increase transparency of federal spending as required the DATA Act and FFATA Act.

The Acquisition Management Branch (AMB) inputs contract and IAAs directly into the Federal Procurement Data System – Next Generation (FPDS-NG). AMB has drafted and implemented the Independent Verification and Validation Policy to identify inaccurate data within FPDS-NG to improve data accuracy and integrity.

The NLRB's service provider, IBC, has identified 47 of the required reportable data elements that will be provided for us to report from existing systems.

### **OPEN Government Data Act (Public Law 115-435)**

The NLRB named the Associate Chief Financial Officer (CFO), Acquisitions, as the Chief Data Officer. As the Chief Data Officer the Associate CFO, Acquisitions will establish policies and procedures in conjunction with key representatives of the Agency to manage data governance.

### **Federal Information Security Management Act (FISMA)**

The Federal Information Security Management Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, requires Federal agencies to ensure adequate security protections for federal information systems and information. Under this act, federal agencies must submit annual FISMA reports to OMB.

NLRB complies with M-20-04, FY 2019-2020 Guidance on Federal Information Security and Privacy Management Requirements, by submitting Q2, Q4, annual FISMA and Senior Agency Official for Privacy report to OMB as required.

### **Government Charge Card Abuse Prevention Act**

On October 17, 2014 the President signed an Executive Order (EO) directing the federal government to establish and maintain safeguards and internal controls for the charge card program. The NLRB evaluated the charge card program as directed by the guidance provided in OMB Circular no. A-123 Appendix B, OMB Memorandum M-12-12 *Promoting Efficient Spending to Support Agency Operations*, and OMB Memorandum M-13-21 *Implementation of the Government Charge Card Abuse Prevention Act of 2012*. The effectiveness of the Agency's purchase card and travel card program was assessed through enhanced monitoring procedures to detect fraud, waste and abuse. The NLRB is currently utilizing CitiBank online tools to do enhanced monitoring and is in the process of configuring and implementing the Visa Intellink System for fraud, waste and abuse monitoring.

### **Improper Payments Elimination and Recovery Improvement Act (IPERIA)**

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of

erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. The FY 2019 risk assessment indicated that no improper payments were found as a result of testing. Furthermore, the assessment stated that the NLRB has effective procedures and controls in place for its payment and disbursement processes. A detailed report of the NLRB's improper payments activities is presented in the Other Information section on page 130.

### **Prompt Payment Act**

The Prompt Payment Act was enacted in 1982 to ensure the federal government makes timely payments. Bills are to be paid within 30 days after receipt and acceptance of material and/or services - or - after receipt of a proper invoice whichever is later. When payments are not made timely, interest is paid. The Agency made late payments resulting in interest penalties of \$152 in FY 2020.

### **Federal Financial Management Improvement Act (FFMIA)**

The purpose of the Federal Financial Management Improvement Act of 1996 (FFMIA) is to advance federal financial management by ensuring that federal financial management systems provide accurate, reliable, and timely financial management information to the government's managers.

### **Federal Managers' Financial Integrity Act (FMFIA)**

The Federal Managers' Financial Integrity Act requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. The Annual Statement of Assurance and Management Control Over Financial Application Controls and Financial Reporting submitted by the NLRB's service provider follows this section.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations.
- Reliability of financial reporting.
- Compliance with applicable laws and regulations.

In assessing whether these objectives are being achieved, the NLRB used the following standards in accordance with OMB Circular no. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* (revised July 15, 2016; Appendix A revised June 6, 2018).



Control Environment	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards and sets a positive and supportive attitude toward internal controls through conscientious management.
Risk Assessment	Identification and analysis of risks that could impede the achievement of Agency goals and objectives.
Control Activities	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results.
Information and Communications	Ensures the Agency's control environment, risks, control activities, and performance results are communicated throughout the Agency.
Monitoring	Assessing quality of performance over time to ensure that internal control processes are appropriate and effective.

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 50 designated managers on an Agency-wide basis. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed, used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and previous management reviews. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.

Based on the internal controls program, reviews, and consideration of other information, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and efficient operations, reliable financial reporting, and compliance with laws and regulations.

The Annual Statement of Assurance provided on page 53 is required by the FMFIA and OMB Circular no. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*.

## **FMFIA SECTION 2, MANAGEMENT CONTROL**

Section 2 of the FMFIA requires federal agencies to report, based on annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls.

The reviews that took place in FY 2020 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA.

#### **FMFIA SECTION 4, FINANCIAL MANAGEMENT SYSTEMS**

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2020, in accordance with the FMFIA and OMB Circular no. A-123 Appendix D, *Compliance with the Federal Financial Management Improvement Act of 1996*. The NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Treasury. The Agency also reviews the Statement on Standards for Attestation Engagements no. 18 (SSAE-18) for all systems operated by IBC to ensure that independent auditors have also certified that the necessary controls are in place, so the NLRB can rely on those systems.



**UNITED STATES GOVERNMENT**  
**NATIONAL LABOR RELATIONS**  
**BOARD WASHINGTON, DC**

October 26, 2020

**ANNUAL STATEMENT OF ASSURANCE**

Management is responsible for establishing and maintaining effective internal controls and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The National Labor Relations Board (NLRB) assessed the effectiveness of internal control over reporting, the efficiency of operations, and compliance with applicable laws and regulations in accordance with Office of Management and Budget (OMB) Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control. Based on the preliminary results of this evaluation, the NLRB can provide reasonable assurance over the effectiveness and efficiency of its internal controls and operations. Additionally, the NLRB has complied with the applicable laws and regulations as of September 30, 2020. Internal controls that were tested at the NLRB are operating effectively to provide reasonable assurance that the related control objectives were met during the specified period, and no material weaknesses were identified in the design or operation of the internal controls.

In accordance with the requirements of OMB Circular No. A-123, Appendix A, Management of Reporting and Data Integrity Risk, the NLRB assessed the effectiveness of internal control over financial reporting, which includes internal control related to the preparation of the annual financial statements, safeguarding of assets, and compliance with applicable laws and regulations governing the use of budget authority and other applicable laws and regulations that could have a direct and material effect on the financial statements. The result of this evaluation provides reasonable assurance that the NLRB's internal control over financial reporting was operating effectively as of September 30, 2020.

The NLRB also conducted reviews of financial management systems. Based on the results of these reviews, the NLRB can provide reasonable assurance that the financial management systems comply with the applicable provisions of the FMFIA as of September 30, 2020.

Additionally, the NLRB has submitted all of the quarterly Fiscal Year 2020 procurement DATA Act submissions to the U.S. Department of the Treasury as required by the DATA Act.

A handwritten signature in black ink, appearing to read "John F. Ring".

John F. Ring  
Chairman

A handwritten signature in black ink, appearing to read "Peter B. Robb".

Peter B. Robb  
General Counsel



PROTECTING DEMOCRACY IN  
THE WORKPLACE SINCE 1935



PERFORMANCE

## PROGRAM PERFORMANCE

### **Performance Goals and Objectives**

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two mission-related goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA as efficiently as possible and in a manner that gives full effect to the rights afforded to all parties under the Act. The two support goals further enable the Agency to accomplish its mission. Please see Appendix D for the list of performance measures for the support goals, as well as the management strategies for all the Agency goals.

The Board and the GC share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives of the Board and the GC worked together in developing one comprehensive Strategic Plan and Performance and Accountability Report.



# MEASURING PERFORMANCE

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One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. The Agency has two mission-related goals that emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling and two support goals that give a broader picture of how the Agency achieves its mission.

As to Agency success in bringing effective resolution to labor disputes in a timely manner, it should be noted that it is difficult for an agency, such as the NLRB, to measure "outcomes" in the sense intended by the authors of the Government Performance and Results Act (GPRA) and the Government Performance and Results Modernization Act (GPRAMA). In the representation case area, for instance, the Agency does not control or seek to influence the results of elections but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure that the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees freely exercising their statutory rights as set out in the NLRA.

The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. While it is difficult to quantify by the number of ULPs, the Agency can quantify our commitment to resolve all disputes that are brought before us, and to provide a remedy and ensure that labor peace is maintained or restored. Noting that the Agency cannot *sua sponte*<sup>6</sup> investigate the actions of an employer or labor union without a charge being filed, the NLRB established two performance measures. The timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case, are the focus of those performance measures.

The tables and narratives in this section show the proposed annual targets for performance measures and management strategies for the four-year period covered by the current Strategic Plan (FYs 2019-2022). The actual results achieved for the performance measures and management strategies for FYs 2015-2019 can be found in Appendix C. Several of the goals below originated in FY 2019, so there is no historical data prior to 2019.

<sup>6</sup>A Latin phrase describing an act of authority taken without formal prompting from another party.

**Strategic Goal 1 (Mission):**

Promptly and fairly resolve through investigation, settlement or prosecution, unfair labor practices under the National Labor Relations Act.

**Objective:**

1. Achieve established performance measures for the resolution of meritorious unfair labor practice charges.

**Initiatives:**

1. Achieve a collective 20% increase in timeliness of case processing under established performance measures for the resolution of all meritorious unfair labor practice charges.
2. Achieve enhanced performance for the resolution of all unfair labor practice charges.
3. Ensure that all matters before the Agency are handled in a fair and consistent manner.

**Resolution of meritorious unfair labor practice charges**

After an individual, employer, or union files a ULP charge, the charge is investigated, and a Regional Director determines whether the charge has merit. Once a Regional Director has determined a ULP charge has merit, absent settlement, a complaint issues and the case is scheduled for a hearing before an ALJ. Settlement efforts continue throughout the course of the litigation. The vast majority of settlements are achieved before trial.

Once the ALJ issues a decision, the decision is not final until adopted by the Board. The parties, including the GC, can appeal the ALJ's decision to the Board. The Board issues a final order resolving the ULP case, which includes consideration of any appeals that may be filed regarding the ALJ's decision. Ordinarily, the Centralized Compliance Unit (CCU), a group within the Division of Operations-Management, will attempt to secure compliance during the 30-day period following the Board's order. If compliance cannot be obtained, the CCU may refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which typically proceeds to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board or a reviewing court, or in extreme cases, in contempt proceedings.

Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including reinstatement and the payment of backpay, to make whole those injured by the ULP.

In sum, a ULP case is considered resolved and is closed when it has been completely processed, such that the charge allegations have been investigated, and, where appropriate, remedied and there is no further action to be taken by the Agency. Where a Board order or approved settlement agreement sets forth remedial action, cases are most often (98 percent of FY 2020 closures in such cases) closed on compliance with the applicable order or settlement. Where exigent circumstances, such as interceding business closure, make it impossible or impracticable to obtain full compliance, the case will be closed on partial compliance (1 percent of FY 2020 closures) or, rarely, despite non-compliance (1 percent of 2020 closures).

### Goal 1, Initiative 1 – Performance Measures:

**Measure 1:** Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.

GOAL NO. 1, Initiative 1, Measure 1				
Decrease in the average time required to resolve meritorious unfair labor practice charge				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	101 days	95 days	90 days	85 days
ACTUAL	74 days	70.5 days		

The Strategic Plan for FY 2019 through FY 2022 set a target of a 20 percent reduction over four years starting in FY 2019 in average time to resolve meritorious unfair labor practice charges, using FY 2018 numbers as the baseline from which the targets were calculated. To meet this 20 percent reduction target, the Agency uses a measure of 5 percent annual reduction as a target each year for four years. Therefore, the FY 2019 target reduction was 5 percent and the FY 2020 target was 10 percent from the FY 2018 baseline. In FY 2019, the NLRB realized a 30.2\* percent decrease from FY 2018 and exceeded the 5 percent target by 25.2 percent. In FY 2020, the NLRB realized a 33.5 percent decrease from FY 2018, a 4.7 percent decrease from FY 2019 and exceeded the 10 percent target by 23.5 percent.

\*This number was incorrectly reported in FY 2019 as 22 percent.

**Measure 2:** Realize a 5% annual decrease in the average time between issuance of complaint and settlement by ALJ or issuance of ALJ decision.

<b>GOAL NO. 1, Initiative 1, Measure 2</b> Decrease in the average time between issuance of complaint and settlement by ALJ or issuance of a decision				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	230 days	218 days	206 days	194 days
ACTUAL	264 days	283 days		

For FY 2020, the average number of days between issuance of complaint and issuance of an ALJ decision for meritorious unfair labor practice charges went up slightly (+7.2 percent) from FY 2019, and as a result, the goal for this measure was not met. This is due primarily to the impact of the COVID-19 pandemic, which resulted in the cancellation of all unfair labor practice hearings for a period of time, and subsequent delays in scheduling virtual hearings. This impacted the average number of days between issuance of a complaint and issuance of an ALJ's decision regarding the complaint.

**Measure 3:** Realize a 5% annual decrease in the average time between issuance of ALJ decision and Board order.

<b>GOAL NO. 1, Initiative 1, Measure 3</b> Decrease in the average time between issuance of an ALJ decision and a Board order				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	556 days	527 days	497 days	468 days
ACTUAL	513 days	544 days		

For FY 2020, the average time between issuance of an ALJ decision and a Board order in meritorious unfair labor practice cases went up slightly (+6 percent) from FY 2019, and the goal for this measure was not met. This is due primarily to the Board's initiative during FY 2020 to issue decisions in its oldest pending cases by the end of the fiscal year. The Board had great success in achieving this goal, and as a result, reduced the average age of cases pending before the Board from 157 days at the end of FY 2019 to only 85 days at the end of FY 2020, a 46% reduction in the age of pending cases. The issuance of decisions in a large number of older cases during FY 2020, however, resulted in an increase in the average number of days between issuance of an ALJ decision and a Board order for this measure for FY 2020, which explains the increase in this measure.

**Measure 4:** Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

GOAL NO. 1, Initiative 1, Measure 4				
Decrease in the average time between issuance of a Board order and the closing of the case				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	616 days	583 days	556 days	518 days
ACTUAL	541 days	578.5 days		

The Strategic Plan for FY 2019 through FY 2022 set a target of a 20 percent reduction over four years starting in FY 2019 in average time between issuance of a Board order and the closing of a case, using FY 2018 numbers as the baseline from which the targets were calculated. To meet this 20 percent reduction target, the Agency uses a measure of a 5 percent annual reduction as a target each year for four years. Therefore, the FY 2019 target reduction was 5 percent and the FY 2020 target was 10 percent from the FY 2018 baseline. In FY 2019, the NLRB realized a 16.5\* percent decrease from FY 2018 and exceeded the 5 percent target by 11.5 percent. In FY 2020, the NLRB realized a 10.7 percent decrease from FY 2018, a 6.9 percent increase from FY 2019 and exceeded the 10 percent target by 0.7 percent.

\*This number was incorrectly reported in FY 2019 as 17.2 percent.

### Goal 1, Initiative 2 – Performance Measures:

#### Resolution of all unfair labor practice charges

After an individual, employer, or union files a ULP charge, the charge is investigated, and a Regional Director determines whether the charge has merit. and decides whether to issue a complaint. If a charge is found to have no merit, which occurs in about two-thirds of the cases, it is dismissed if the charging party does not withdraw it. A dismissal can be appealed to the GC. Once a Regional Director has determined a ULP charge has merit, absent settlement, a complaint issues and the case is scheduled for a hearing before an ALJ. Settlement efforts continue throughout the course of the litigation. The vast majority of settlements are achieved before trial.

Once the ALJ issues a decision, the decision is not final until adopted by the Board. The parties, including the GC, can appeal the ALJ's decision to the Board. The Board issues a final order resolving the ULP case, which includes consideration of any appeals that may be filed regarding the ALJ's decision. Ordinarily, the CCU, a group within the Division of Operations-Management, will attempt to secure compliance during the 30-day period following the Board's order. If compliance cannot be obtained, the CCU may refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which typically proceeds to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board or a reviewing court, or in extreme cases, in contempt proceedings.

Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including reinstatement and the payment of backpay, to make whole those injured by the ULP.

In sum, a ULP case is considered resolved and is closed when it has been completely processed, such that the charge allegations have been investigated, and, where appropriate, remedied and there is no further action to be taken by the Agency. Where a Board order or approved settlement agreement sets forth remedial action, cases are most often (98 percent of FY 2020 closures in such cases) closed on compliance with the applicable order or settlement. Where exigent circumstances, such as interceding business closure, make it impossible or impracticable to obtain full compliance, the case will be closed on partial compliance (1 percent of FY 2020 closures) or, rarely, despite non-compliance (1 percent of 2020 closures).

**Measure 1:** *Realize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement or issuance of complaint.*

GOAL NO. 1, Initiative 2, Measure 1				
Decrease in the average time required to resolve unfair labor practice charge				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	86 days	81 days	77 days	72 days
ACTUAL	74 days	73.9 days		

The Strategic Plan for FY 2019 through FY 2022 set a target of a 20 percent reduction over four years starting in FY 2019 in average time to resolve unfair labor practice charges, using FY 2018 numbers as the baseline from which the targets were calculated. To meet this 20 percent reduction target, the Agency uses a measure of a 5 percent annual reduction as a target each year for four years. Therefore, the FY 2019 target reduction was 5 percent and the FY 2020 target was 10 percent from the FY 2018 baseline. In FY 2019, the NLRB realized a 17.8\* percent decrease from FY 2018 and exceeded the 5 percent target by 12.8 percent. In FY 2020, the NLRB realized a 17.9 percent decrease from FY 2018, a 0.1 percent decrease from FY 2019 and exceeded the 10 percent target by 7.9 percent.

*\*This number was incorrectly reported in FY 2019 as 17.5 percent.*



**Measure 2:** Realize a 5% annual decrease in the average time between issuance of complaint and settlement by ALJ or issuance of ALJ decision.

GOAL NO. 1, Initiative 2, Measure 2				
Decrease in the average time between issuance of complaint and settlement by ALJ or issuance of a decision				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	230 days	218 days	206 days	94 days
ACTUAL	149 days	162 days		

For FY 2020, the average number of days between issuance of complaint and issuance of an ALJ decision for unfair labor practice charges went up slightly (+8.7 percent) from FY 2019, and as a result, the goal for this measure was not met. This is due primarily to the impact of the COVID-19 pandemic, which resulted in the cancellation of all unfair labor practice hearings for a period of time, and subsequent delays in scheduling virtual hearings. This impacted the average number of days between issuance of a complaint and issuance of an ALJ's decision regarding the complaint.

**Measure 3:** Realize a 5% annual decrease in the average time between issuance of ALJ decision and Board order.

GOAL NO. 1, Initiative 2, Measure 3				
Decrease in the average time between issuance of an ALJ decision and a Board order				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	556 days	527 days	497 days	468 days
ACTUAL	496 days	505 days		

For FY 2020, the average time between issuance of an ALJ decision and a Board order in unfair labor practice cases went up slightly (1.8 percent) from FY 2019, and the goal for this measure was not met. This is due primarily to the Board's initiative during FY 2020 to issue decisions in its oldest pending cases by the end of the fiscal year. The Board had great success in achieving this goal, and as a result, reduced the average age of cases pending before the Board from 157 days at the end of FY 2019 to only 85 days at the end of FY 2020, a 46% reduction in the age of pending cases. The issuance of decisions in a large number of older cases during FY 2020, however, resulted in an increase in the average number of days between issuance of an ALJ decision and a Board order for this measure for FY 2020, which explains the increase in this measure.

**Measure 4:** Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

GOAL NO. 1, Initiative 2, Measure 4				
Decrease in the average time between issuance of a Board order and the closing of the case				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	616 days	583 days	551 days	518 days
ACTUAL	540 days	556 days		

The Strategic Plan for FY 2019 through FY 2022 set a target of a 20 percent reduction over four years starting in FY 2019, in average time between issuance of a Board order and the closing of a case, using FY 2018 numbers as the baseline from which the targets were calculated. To meet this 20 percent reduction target, the Agency uses a measure of a 5 percent annual reduction as a target each year for four years. Therefore, the FY 2019 target reduction was 5 percent and the FY 2020 target was 10 percent from the FY 2018 baseline. In FY 2019, the NLRB realized a 16.7\* percent decrease from FY 2018 and exceeded the 5 percent target by 11.7 percent. In FY 2020, the NLRB realized a 14.2 percent decrease from FY 2018, a 3.0 percent increase from FY 2019 and exceeded the 10 percent target by 4.2%.

\*This number was incorrectly reported in FY 2019 as 17.2 percent.

### Goal 1, Initiative 3 – Performance Measures:

**Measure 1:** Ensure that Regional case processing procedures evolve with the Agency’s strategic goals and technological advancements.

- Migrated 100 percent on-premise workloads to Microsoft Azure Cloud services, providing high availability, scalability, redundancy, and increased performance
- Replaced legacy NxGen E-Service platform with My Account Portal and integration with login.gov, enhanced e-filing and customer notification.
- Refreshed NxGen product suite technology stacks and adopted latest Azure Cloud services, provided increased security and improved case processing procedures.
- Developed and implemented the Translation Information Management System (TIMS) which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency, enhancing case processing.
- Developed My Case Folders, a dedicated application which allows users easily access files associated with the case, add case documents and share with other NxGen users.

- A new and a more robust Private Solr architecture has been introduced and integrated with NxGen to enhance the enterprise case search capability and analytics.

**Measure 2:** *Conduct annual quality reviews of Regional unfair labor practice case files and institute modifications to case processing as appropriate.*

The quality review process is broken down into the three phases below. The reviewer looks at the quality of case work to ensure Regions are follow currently guidance and Board law.

#### **PHASE 1 – INVESTIGATION AND DETERMINATION**

Number of cases reviewed: TEN (10). Cases selected will include one 8(a)(1) case, two 8(a)(3) cases, one 8(a)(5) case, and two CB cases. At least one case will involve a potential 10(j) situation. The remainder will be left to the reviewer's discretion.

#### **PHASE 2 – IMPLEMENTATION**

Number of cases reviewed: SEVEN (7). Cases selected will include two cases in which the Region issued a long form dismissal and one case in each of the following categories: complaint, non-Board settlement, informal Board settlement, litigated ULP trial, and formal compliance.

#### **PHASE 3 – R CASE REVIEW**

Number of cases reviewed: THREE (3). One case in each of the following categories: pre-election hearing, post-election hearing, large election (typically <100 employees). In each of these matters, the review will cover the entire file.

### **Strategic Goal 2 (Mission):**

Promptly and fairly investigate and resolve all questions concerning representation of employees.

#### **Objectives:**

1. Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

#### **Initiatives:**

1. Achieve established performance measures for the resolution of representation cases.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

## Goal 2, Initiative 1 – Performance Measures

**Measure 1:** *The percentage of representation cases resolved within 100 days of filing the election petition.*

This measure focuses on the time taken to resolve a representation case, including time spent on both the GC and the Board sides of the Agency.

An employer, labor organization, employee, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wishes to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election, as opposed to a Regional Director directing an election, if appropriate. This measure reflects the percentage of representation cases closed within 100 days. A case is closed when the question as to whether or not a labor organization will represent employees has been finally resolved.

Representation cases are resolved and closed in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons, for example: the employer does not meet the Agency’s jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons, such as lack of sufficient support among the bargaining unit.
- The majority of cases are resolved upon issuance of either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases, there are post-election challenges or objections to the election. The case is not closed until the challenges and/or objections have been resolved.

In FY 2020, the NLRB ended the year by closing 84.2 percent of all representation cases within 100 days from the filing of the petition due to the challenges posed by the COVID-19 pandemic.

GOAL NO. 2, Initiative 1, Measure 1				
Percentage of Representation Cases Resolved Within 100 Days				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	85.8%	85.8%	85.9%	85.9%
ACTUAL	90.7%	84.2%		

Counting of days: The 100 days is calculated from the date the petition is formally docketed.

## Goal 2, Initiative 2 – Performance Measures:

**Measure 1:** *Ensure that Regional case processing procedures evolve with the Agency’s strategic goals and technological advancements.*

- Migrated 100 percent on-premise workloads to Microsoft Azure Cloud services, providing high availability, scalability, redundancy, and increased performance
- Replaced legacy NxGen E-Service platform with My Account Portal and integration with login.gov, enhanced e-filing and customer notification.
- Refreshed NxGen product suite technology stacks and adopted latest Azure Cloud services, provided increased security and improved case processing procedures.
- Developed and implemented the Translation Information Management System (TIMS) which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency, enhancing case processing.
- Developed My Case Folders, a dedicated application which allows users easily access files associated with the case, add case documents and share with other NxGen users.
- A new and a more robust Private Solr architecture has been introduced and integrated with NxGen to enhance the enterprise case search capability and analytics.

**Measure 2:** *Conduct annual quality reviews of Regional representation case files and institute modifications to case processing as appropriate.*

The quality review process is broken down into the three phases below. The reviewer looks at the quality of case work to ensure Regions are follow currently guidance and Board law.

### PHASE 1 – INVESTIGATION AND DETERMINATION

Number of cases reviewed: TEN (10). Cases selected will include one 8(a)(1) case, two 8(a)(3) cases, one 8(a)(5) case, and two CB cases. At least one case will involve a potential 10(j) situation. The remainder will be left to the reviewer’s discretion.

### PHASE 2 – IMPLEMENTATION

Number of cases reviewed: SEVEN (7). Cases selected will include two cases in which the Region issued a long form dismissal and one case in each of the following categories: complaint, non-Board settlement, informal Board settlement, litigated ULP trial, and formal compliance.

### PHASE 3 – R CASE REVIEW

Number of cases reviewed: THREE (3). One case in each of the following categories: pre-election hearing, post-election hearing, large election (typically <100 employees). In each of these matters, the review will cover the entire file.

**Strategic Goal 3 (Support):**

Achieve Organizational Excellence and Productivity in the Public Interest

**Objectives:**

1. Recruit, develop, and retain a highly motivated, productive, talented, and diverse workforce to accomplish our mission.
2. Promote a culture of professionalism, mutual respect, and organizational pride.

**Initiatives:**

1. Invest in and value all employees through professional development, workplace flexibilities, fair treatment, and recognition of performance in the public interest.
2. Develop and implement recruitment strategies to ensure a highly qualified, productive and diverse workforce.
3. Improve employee satisfaction and employee engagement.
4. Ensure that employees understand the Agency's mission and how they contribute to its accomplishments.
5. Cultivate and promote Agency programs that encourage collaboration, flexibility, diversity and mutual respect to enable individuals to contribute to their full potential.

Strategic Goal 3 is a management strategy-based goal that is comprised of two objectives with their own set of initiatives. Each initiative has a set of measures that were created in order to identify the management actions that need to be taken to achieve the goal. For the full outline of the goal please see Appendix D on page 194.

Organizational Excellence ensures the ongoing efforts to engage and motivate employees will increase the commitment to the Agency mission. These efforts will also attract qualified and diverse applicants to improve the quality and productivity of the Agency. The continuous commitment of assessing the organizational excellence enables the Agency to proactively enhance the organization's overall service and commitment to customers and employees. Accomplishments in FY 2020 include:

**EMPLOYEE DEVELOPMENT**

- During FY 2020, the Office of Human Resources (OHR) transitioned all Agency employees to USA Performance, the automated performance management system.



- » The Agency's Performance Management Program continued to provide training and coaching with robust tools and resources to make certain the essential points of the Agency's Performance Management System met the key activities for the 4 appraisal cycles.
- The Office of Employee Development (OED) continues to offer a wide array of online and blended media training offerings to enhance employee development at the Agency. During FY 2020, there were 9,860 individual courses completed in Skillport, 786 course enrollments through West LegalEdcenter, and monthly training on the Agency's internal case management system NxGen through the Training Tuesday program.
  - » Additionally, OED offered monthly live training sessions via webinar on general skills and leadership topics. In FY 2020, OED expanded its online training offerings to include an online simulation for Trial Training and conducted a virtual teambuilding event for the Board-side staff and a virtual conference for Regional Directors.
- OED continued to offer Individual Development Plan (IDP) tools via an online form available to all employees.
  - » The IDP tool includes self-assessments, goal planning worksheets, and an IDP form that employees can use to plan for and track their development activities.
- OED aligned the Agency's Leadership Development Program (LDP) with the supervisory and managerial training frameworks provided by OPM and with the Senior Executive Service (SES) Executive Core Qualifications. The LDP provides development resources for aspiring supervisors, new and current managers and supervisors, aspiring executives, and existing executives.
  - » The LDP guide and offerings are made available on the Agency's intranet site. OED has also completed a Training Needs Assessment to identify Agency-wide development needs in critical job fields and has developed a competency model framework to chart career progression and inform gap analysis.
- OHR continues to hire in accordance with federal guidelines and follows procedures to attract a diverse workforce that includes Veterans.
- In 4th quarter of FY 2020, the Office of Equal Employment Opportunity (OEEO) launched annual mandatory training for Agency managers and supervisors to meet training requirements from the Office of Special Counsel (OSC). In addition, the OEEO director briefed newly appointed Regional Directors and Deputy General Counsels (DGCs) on the Agency's Equal Employment Opportunity (EEO) program and on federal sector EEO regulations regarding whistleblower protections, prohibited personnel practices and prohibitions against retaliation.

### WORKFORCE MANAGEMENT

- OED began working with the Human Capital Planning Office (HCPO) to develop an Agency-wide succession plan during the 4th quarter of FY 2020.
- OHR partnered with the OEEO on a self-identifying process for employees to anonymously identify their race, national origin, and disability through Employee Express.

- OHR continued to validate that employees have performance plans through its new USA Performance reporting system.
  - » The process is used for all NLRB employees to include all bargaining unit, non-bargaining unit, and Professional Association employees. All employees were issued a performance plan at the beginning of the reporting period.
  - » Performance appraisals were issued in March and June for NLRB Union staff members and July for non-union employees.
- OHR seamlessly transitioned the New Employee Orientation (NEO) to a 100 percent virtual and interactive presentation using Skype technology, due to COVID-19.
  - » This included coordinating with the OCIO for new employees to obtain computer and log-in information and with the Security Branch to receive government credentials.
  - » Additionally, the OHR added the NLRB's Office of Equal Employment Opportunity (OEEO) to the NEO.
- OEEO continued to provide resources and serve as a consultant for Agency managers to field questions on ways to handle sensitive EEO issues.
  - » OEEO identified appropriate resources for diversity and inclusion training, and presented it to the OEEO staff, all Agency EEO counselors and Special Emphasis Program Coordinators at Headquarters and in all field offices.
  - » OEEO collaborated with the OED to develop and present training Agency-wide training on unconscious bias.
- During FY 2020, the Security Branch reduced the number of backlogged reinvestigations to 284 from 331.

## MOTIVATION

- HCPO completed enhancements to its SharePoint website. The enhancements promote information sharing on a variety of employee engagement topics and include an interactive ideation portal and a toolkit to facilitate communication with the HCPO. It is expected that not only will communication improve between the HCPO and the workforce, but communication and engagement will also improve between employees and managers as a result of these new tools, which should help strengthen overall Agency performance and employee engagement.
- The HCPO developed a *Your Voice Matters!* ideation portal on its SharePoint site where employees can access and contribute to driving greater employee engagement by submitting new ideas/suggestions and also by suggesting solutions to existing organizational problems/barriers.
  - » The HCPO reviews the site daily and helps adjudicate submitted ideas/suggestions into action. Additionally, after an idea/suggestion is implemented, a listing of implemented actions are/were

posted to the site so that employees are made aware of how they helped managers and supervisors boost employee engagement and address real-time organizational challenges.

- Additionally, the HCPO completed and made accessible a collection of Federal Employee Viewpoint Survey (FEVS) accomplishments so that employees could know about what actions leadership have implemented in response to their feedback to the FEVS. These measures enhance transparency, which should motivate employees to participate in the FEVS at a much higher rate.
- The HCPO issued a memorandum to all employees signed by the Chairman and GC on the value of the FEVS and soliciting employee participation in the 2020 FEVS. The HCPO also published FAQs to the Employee Viewpoint Survey (EVS) Page on its SharePoint site, which addressed commonly asked questions regarding the 2020 FEVS.

**Strategic Goal 4 (Support):**

Manage Agency resources efficiently and in a manner that instills public trust.

**Objectives:**

1. Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.
2. Evaluate and improve the Agency's Outreach Program
3. Conduct all internal and external Agency business in an ethical and timely manner.

**Initiative:**

1. Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.
2. Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing within the Agency.
3. Effective management of fiscal resources.
4. Right-sizing and closing Field Offices and Headquarters office space by up to 30% over the next five years in accordance with General Services Administration (GSA) guidelines.
5. Enhance Agency's Outreach Program.
6. Promote an ethical culture within the NLRB through leadership, communications, awareness, resources, and oversight.
7. Respond to internal audits in a timely manner.
8. Respond to external audits in a timely manner.
9. Respond to FOIA and other public inquiries in a timely manner.

Strategic Goal 4 consists of management strategies that are comprised of three objectives. Each set of objectives has its own set of initiatives. Each initiative has a set of measures that were created in order to identify the management actions that need to be taken to achieve the goal. For the full outline of the goal please see Appendix D on page 194.

Federal Employees are charged with managing programs and federal funds in an efficient and effective manner. As stewards of these federal funds, the Agency is making every effort to instill public trust.

Accomplishments in FY 2020 include:

**INFORMATION AND TECHNOLOGY:**

The Agency uses an electronic filing program (E-file) to allow constituents to electronically file documents with the Agency. In FY 2020:

Number of E-Filings Received	14,320
Number of Documents Received	24,869
Number of Board and ALJ Decisions E-Served	483
Total Number of parties E-Served Decisions	30,694
Number of E-Deliveries of Case Documents	58,520

Providing accessible information to the public is an important part of the NLRB's mission:

Number of NLRB Document Types Available for Public Access	560
Total Number of Case Documents Available for Public Access	1,619,011

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public and <https://www.nlr.gov/reports> for updates metrics for FY 2020 Charges & Complaints, Petitions & Elections, Decisions, Litigation, Remedies, Recent Filings and Tally of Ballots.

In FY 2020 the following new enhancements were developed for the Agency's public website:

- **MyNLRB** – Allows stakeholders to personalize their website experience with targeted regional news and case information and access to their saved searches.
- **Advanced Data Search** – Provides stakeholders the ability to create, save and download ad-hoc searches for case and election data.
- **Spanish Translations** – Provides Spanish translations of approximately 40-50 pages of the public website with the ability for users to switch back and forth between Spanish and English.
- **Interactive Map** – Provides Unfair Labor Practice (C) and Representation (R) case data via an interactive map interface.

To streamline Agency processing, the Administrative Systems Team focused on Business Process Automation using SharePoint as the platform. The Administrative System's team is in the process of automating over 200 of the Agency's processes/forms using SharePoint, InfoPath, and/or PowerApps/Automate, web services, and Microsoft Azure components. The business analysts continue to collect requirements and document

the process flows, while the developers work to complete the automation of the process. Following are the processes that were either completed, updated with enhancements or are ongoing in FY 2020:

- Case Records Unit Weekly Statistics
- Form 4197 – Employee Exiting
- Professional Liability Insurance Form
- Facilities Request Form
- Retirement Estimate Annuity Form
- Employee Suggestion Form
- Memento of Recognition
- Shred Service Verification Form
- Travel Card Request
- Travel Training Form
- Transportation Reimbursement
- Payroll Ticketing System
- Ethics Skip Counsel
- Ethics Legally Protected Information
- Ethics Inquiry

The Administrative Systems Team also completed the following:

- Completed the development of an EEO Case Tracking System to automate their case processing end-to-end and provide a better mechanism for monthly and yearly reporting.
- Completed the development of a case tracking system for the Reasonable Accommodation process.
  - » The Reasonable Accommodation process provides a means in which to request and track accommodations for NLRB employees and applicants for employment to ensure that qualified individuals with disabilities enjoy equal access with respect to the: (a) application process; (b) to enable an individual with a disability to perform essential job functions; and (c) to provide equal access to the benefits and privileges of employment; unless to do so would cause undue hardship to the NLRB; and to handle requests as quickly as possible, and in as confidential manner.
- Continued development to automate a case tracking system for the Special Counsel Labor Relations Branch which will track grievances, integrate with the EEO case tracking system, and other general inquiries from management.



- Completed the development and deployment of the automation of the GC memorandum process. GC memos are authored in Microsoft Word and upon final approval, a workflow process converts the document to pdf and transfers it to both the Agency Intranet and Agency public website.
- Completed the development and deployment of a reporting dashboard for the Acquisitions Management Branch (AMB) using Microsoft PowerBI for the entire purchase card dataset. Data is ingested from multiple sources (CitiBank, Oracle Federal Financials, and Excel).
- Due to COVID-19, OCIO implemented a process within SharePoint for creating secure sites for the ALJs and their bailiffs to manage their Hearings and Cases with external parties. Documents and evidentiary information are made available to parties on a case to ensure Hearings can occur remotely.

#### **FINANCIAL MANAGEMENT:**

- Provided a response to address Questions for the Records received from the Chair and Ranking Members of the Subcommittee on DOL, Health and Human Services (HHS), and Education and Related Agencies.
- Developed monthly Status of Funds Reports and conducted Quarterly Reviews to examine overall spending and the budgetary impacts due to the COVID-19 pandemic.
- Routinely monitored and performed reviews of unliquidated obligations to properly report obligation balances and commitments.
- During FY 2020 the OCFO addressed and closed out thirteen audit recommendations from previous year's audits.
- The OCFO submitted all quarterly and annual reporting requirements to Congress, OMB, and Department of Treasury.
- In response to the OMB Directive M-19-13, strategic sourcing/category management initiatives, the Agency collects data on those initiatives and reports out annually on progress towards increasing the utilization of the initiatives.

Small Business Goal Status*						
Category	Gov-Wide Goal	2020	2019	2018	2017	2016
Small Business	23%	58.79%	68.78%	65%	41.70%	36.51%
Women Owned Small Business	5%	1.30%	9.83%	5%	7.47%	11.19%
Small Disadvantaged Business	5%	52.18%	58.48%	52%	28.33%	8.02%
Service-Disabled Veteran Owned Small Business	3%	0.96%	0.75%	1.62%	2.42%	0.31%
HUBZone	3%	41.56%	38.57%	23.33%	3.43%	2.13%

\*In FY 2020 the NLRB was below two out of the five government wide goals because of de-obligations and spending being put in areas that were either for an existing contract or the requirement exceeded small business capabilities. Due to COVID-19 pandemic, requirements were diverted to existing contracts to promptly support the Agency's immediate needs.

#### OFFICE SPACE MANAGEMENT

- In accordance with GSA guidelines, 18 field offices have been identified to undergo a space reduction as part of the five-year project plan to reduce the NLRB footprint.

#### AGENCY OUTREACH

The Agency furthered its outreach to unrepresented employees, unions, and small business owners in the following ways:

- Met with local consulates of various countries to educate consular officials about the NLRB's protections and processes and delegation from the Korean Federation of Trade.
- Led discussions for high school and middle school classes concerning the development of the NLRA, workers' statutory rights, and Board processes.
- Maintained webpages for each individual regional office that contain news articles relevant to that region. To ensure that these pages remain fresh, news articles are tagged by the Agency's Office of Public Affairs and automatically loaded on the Region's webpage.
- Maintained an internal SharePoint database through which the Agency outreach coordinators post and share outreach materials and participate in a discussion board sharing ideas and leads for outreach.
- Maintained an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

- The Regional Offices conducted outreach that focuses on protected concerted activity vs. union activity. This includes outreach to law firms, labor organizations, trade groups, law school and graduate school groups, and professional societies.

To better educate workers and employers the NLRB:

- Presented to Staten Island District Attorney's Economic Crimes Bureau - Exchange information about what each respective agency does - the NY agency is a task force to prosecute wage crimes, which oftentimes overlaps with our cases, e.g., PCA wage complaints.
- Maintained Memorandum of Understanding (MOUs) with Immigrant and Employee Rights Section of the Civil Rights Division of the Department of Justice (DOJ); Occupational Safety and Health Administration; United States Postal Service; Wage and Hour Division, DOL; Mine Safety and Health Administration, DOL; Illinois Labor Relations Commission.

#### **ETHICS:**

The Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency's GC and Chairman, the Ethics Staff:

- Distributed the 2019 Annual Ethics Briefing through the Agency's Learning Management System, which included a recorded message from the Chairman and the GC, to all Agency supervisors and managers. By making this briefing available to supervisors and managers, the Ethics Staff ensures that all management employees are in a position to identify potential ethics issues and avoid situations that distract from the mission of the Agency. All supervisors and managers (non-filers) completed this training requirement by Q1 FY 2020.
- Continued to assist the Board and GC in evaluating ethics recusal obligations and to involve management in the recusal process.
- Renewed annual MOU with the Office of Human Resources to ensure that all newly hired employees and all newly promoted supervisors receive required ethics notifications in compliance with the Executive Branch Ethics Program Amendments, 81 Federal Register 76,271.
- Assisted the GC's Office with updates to casehandling policy to include the development of a conflicts of interest worksheet to assist Board Agents with identifying potential conflicts of interest before beginning an investigation.
- Developed a protocol for the review and approval of internal NLRB solicitations that benefit coworkers and their families who are victims of the COVID-19 pandemic.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY 2020, the Ethics Staff:

- Provided technical requirements to OCIO staff in order to redesign the Ethics SharePoint page to enhance search capabilities and to develop various webforms designed to help the Ethics Office gain efficiencies in case processing.
- Distributed Agency-wide a variety of information which highlighted the limitations the Hatch Act places on federal employee partisan political activity. These messages included: a link to a brief online overview of the Hatch Act; OSC guidance covering how to determine whether an organization is a partisan political group and whether certain activities that an organization engages in would be considered political activity under the Hatch Act; an OSC announcement explaining that face masks which display a partisan political slogan or image may not be worn in the workplace and while on duty; a brief reminder covering how to avoid Hatch Act violations while using Agency email; and an OSC press release explaining the role of the Hatch Act.
- Revised and reissued a memo to all Agency employees concerning participation in protests and demonstrations.
- Provided general ethics reminder to all employees via email to emphasize that ethics staff is available to answer any government or legal ethics question during the COVID-19 pandemic. The importance of maintaining confidentiality while teleworking with others in the employee's household was also emphasized.

Measure:	Goal	2019	2020	2021	2022
Percentage of inquiries resolved within 5 business days	85%	88.9%	92%		
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%		

- During FY 2020, the Ethics Office received 633 inquiries. 587 (92 percent) were resolved within 5 business days.
- All financial disclosure reports filed in FY 2020 were reviewed within 60 days.
- In mid-January, Ethics staff began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2019. In all cases, the review of each report was completed within 60 days of receipt and filers were notified of any real or potential conflicts.

During FY 2020, the Agency completed its review of:

- 30 Annual Confidential Financial Disclosure Reports (OGE 450)

- 2 New Entrant Confidential Financial Disclosure Report (OGE 450)
- 82 Annual Public Financial Disclosure Reports (OGE 278e)
- 11 New Entrant Public Financial Disclosure Reports (OGE 278e)
- 117 Monthly Transaction Reports (OGE 278T)
- 4 Termination Reports (OGE 278)

During FY 2020, the Ethics staff continued to use technology to help filers complete filing requirements under the Ethics in Government Act (EIGA).

Ethics staff supported filers through:

- One-on-one assistance with online filing systems.
- Job Aids and checklists to help filers accurately report their financial holdings.
- Monthly reminders which emphasize the importance of reviewing brokerage statements for transactions which are reportable under the STOCK Act.

#### **INTERNAL AND EXTERNAL AUDIT RESPONSES:**

- Responses to internal and external auditors have been prepared and all deadlines were successfully met in 2020.

#### **FREEDOM OF INFORMATION ACT (FOIA):**

From October 1, 2019 to September 30, 2020, the Agency:

- Received 1,327 FOIA requests in FY 2020 and responded to 1,393 (FY 2020 + prior year backlog/pending). 1,137 of those requests were responded to within 1-20 days. Thus, 82 percent of the FOIA requests were processed within the 20-day statutory time period.
- Sought 3 extensions of time to process a request beyond the 20-day period for FOIA requests received. Thus, the Agency statutory extensions for less than 1 percent (0.23 percent) of its cases received.
- The Agency received 17 FOIA appeals and responded to 18 (FY 2020 + prior year backlog/pending) FOIA appeals. The average amount of days to process these appeals was 13 working days. The lowest number of working days to process these appeals was 2. The highest number of working days to process these appeals was 20. Thus, 100 percent of the FOIA appeals were processed within the 20-day statutory time period.
- Did not seek an extension of time for the FOIA appeals received in FY 2020.

# FACTORS AFFECTING AGENCY PERFORMANCE

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Various factors can affect Agency performance as a whole, in addition to each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include case intake, settlements, Board Member vacancies, the potential effect of case precedent and statutory changes, nationwide work-related activities by external entities, technological advances, and economic fluctuations.

## Case Intake

The Agency's FY 2020 case intake totals 17,633 and includes 15,869 ULP cases and 1,764 representation cases. NLRB Board agents effectively and efficiently process all cases that are brought to the Agency by the general public. Comprehensive and complex matters that come before the Agency are often attributable to external factors, such as: ongoing nationwide efforts to improve the wages and working conditions of workers in the retail and fast food industries; the increased prevalence and evolving tools and usage by employees of technology and social media in and outside of the workplace to discuss terms and conditions of employment with one another, and the related handbook provisions and workplace rules generated therefrom; expanded use of mandatory arbitration clauses in employment matters; bankruptcies; jurisdiction over enterprises; increased understanding of statutory application in non-union workplaces; and difficult questions concerning single, joint, and successor employer relationships, and supervisory status, as well as defining employees covered under the NLRA.

## Settlements

The initial processing and disposition of new case filings in the Regional Offices drives the intake for other stages of the casehandling pipeline. Over the past few years, more than 90 percent of those cases in which merit is found are settled without formal litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control. When the process becomes formal and litigation takes over, Agency costs increase.

## Board Member Terms

The staggering of Board Member terms and the filling of a vacant seat by an individual who will not be a Board Member for a full-term impairs Board productivity, as successive Board Members often have to get up to speed on the same case matter. Currently, the Board is not at full composition since one vacancy caused by the expiration of a Board Member's term has not been filled.

**Potential Effect Of Statutory Changes**

As a general matter, changes in the law can affect NLRB operations and could have consequences on the Agency's case load. Statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with corresponding increases in investigations and proceedings conducted by Agency personnel. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court.



# RELIABILITY OF PERFORMANCE DATA

## Program Evaluation

The NLRB uses various governance mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. Both the Board and GC regularly track the status of all of their respective cases to determine performance against yearly targets that support the Agency's strategic goals and measures.

On the Board-side of the Agency, a group of senior management officials, including, among others, the Deputy Chief Counsels of each of the Board Members and the Executive Secretary, periodically review the status of cases, prioritize cases, and develop lists of cases that the Board Members jointly focus on in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic case management system that captures all case events and milestones in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss case priorities and the overall processing of cases.

In FY 2020, the Division of Judges closed 62 hearings, issued 102 decisions and achieved 338 settlements. The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. In FY 2020, the United States Courts of Appeals ruled on Board decisions in 51 enforcement and review cases. Of those cases, 86.3 percent were enforced or affirmed in whole or in part.

The GC's Office has long had an evaluation program in place to assess the performance of its Headquarters and Regional operations. The Division of Operations-Management regularly reviews case decisions to determine the quality of litigation. Other NLRB offices, such as the Office of Appeals, Division of Advice, Division of Legal Counsel and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

With respect to the Regional Offices, the Quality Review Program of the GC's Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the GC's policies are implemented appropriately. Those reviews assess, among other things, the quality and completeness of the investigative file, the implementation of the GC's initiatives and priorities, and compliance with Agency decisions. Personnel from the Division of Operations-Management also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess the quality of litigation, Operations-Management reviews all ALJ and Board decisions that constitute a significant prosecutorial loss. The Regional Offices' performance with regard to quality,

timeliness, and effectiveness in implementing the GC's priorities is also incorporated into the Regional Directors' annual performance appraisals.

The Office of the GC regularly monitors Regional Office activities, including the settlement and litigation success rates of ULP cases. In FY 2020, Regional Offices settled 96.3 percent of meritorious ULP cases and won 86.3 percent of ULP and Compliance matters in whole or in part. A total of over \$39 million was recovered in backpay, fines, dues and fees and over 970 employees were offered reinstatement. As to monitoring representation cases, in FY 2020, 90.7 percent of all initial elections were conducted within 56 days of filing<sup>7</sup>.

In addition to the evaluation of Regional Office activities, the Office of the GC monitors the litigation success rate before district courts with regard to injunction litigation. In FY 2020, the Injunction Litigation Branch received 48 cases from Regional Offices to consider whether to seek discretionary injunctive relief under Section 10(j) of the Act. The Board authorized the Injunction Litigation Branch to proceed with 10(j) actions in 8 cases in FY 2020, and Regional Offices filed 10(j) petitions in 8 cases. The "success rate," i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 100 percent. The Office of the GC continues to focus its attention on "nip-in-the-bud cases," where a nascent organizing campaign is being unlawfully squelched, and on first outreach bargaining and successor cases, where the relationship between the employer and the union is most fragile.

As previously mentioned, while there are a few outcome-based performance measures associated with the two support goals, the majority of them are management strategy driven. The Agency collects quarterly performance metrics and strategies on the two Agency support goals, as well as utilizing NxGen reports for the mission-related goals. The metrics and strategies are tracked and monitored throughout the year. The compiled data is then presented in this document.

The data reported by OCIO comes from NxGen. The FOIA Branch maintains their case data in FOIAonline, which is a FOIA tracking and processing web tool. FOIAonline also generates annual, quarterly, and other workload reports to effectively monitor all aspects of FOIA case handling. The Ethics Office uses an electronic spreadsheet to track when an employee reaches out to the Office with an ethics inquiry. The Office logs the question and collects several pieces of data about the inquiry, including the date that the inquiry was made and the date that guidance was provided. The spreadsheet calculates the number of days between the two dates in order to track inquiry response times.

<sup>7</sup>The Agency exceeded its goal of 90% with 90.7%. However, due to the COVID-19 pandemic, it was lower than the outstanding FY 2019 performance of 98%.



PROTECTING DEMOCRACY IN  
THE WORKPLACE SINCE 1935



FINANCIAL

## A MESSAGE FROM THE CHIEF FINANCIAL OFFICER

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**November 13, 2020**

I am pleased to present the NLRB's consolidated financial statements for the Fiscal Year 2020 Performance and Accountability Report. For the seventeenth consecutive year an independent auditor has rendered an unmodified or "clean" audit opinion on the NLRB's financial statements. The auditors did not identify any material weaknesses or significant deficiencies in financial reporting during this audit cycle.

The Office of the Chief Financial Officer is responsible for improving efficiency and effectiveness in financial operations. The OCFO ensures reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

In FY 2020, NLRB's year-end closing was earlier than ever before, leaving approximately \$470,000 in unobligated funds, which represents 99.8 percent of the total appropriated funds. This was a concerted effort between the Program Areas, the Budget Branch, Finance Branch, Acquisition Branch, and the new Internal Controls team. To all of them, thank you for a job well done.

The FY 2020 was a challenging year for everyone due to the COVID-19 pandemic. Nevertheless, the OCFO staff faced the challenge and provided excellent support to our customers through telework. All agency requirements were met, and we were able to close the FY 2020 earlier than in previous years.

During FY 2020, the OCFO continued its focus on process improvement and internal controls and conducted the first OMB Circular No. A-123 Internal Control review. In addition to the OMB Circular No. A-123 reviews,

the OCFO updated its FY20 FMFIA Survey to include questions regarding the seventeen principles within the five components of Internal Controls, from the U.S. Government Accountability Office (GAO) Standards for Internal Controls in the Federal Government (the “Green Book”). In the past, NLRB performed a self-evaluation of its internal controls.

During FY 2020 the OCFO addressed and closed out the following thirteen audit recommendations from previous year’s audits:

- Audit of FY 2014 Financial Statements (OIG-F-19-15-01): Recommended that the OCFO establish, document, and implement policies for performing open obligation reviews on a quarterly basis, including documented quality control procedures and approvals over the reviews.
- Audit of FY 2014 Financial Statements (OIG-F-19-15-01): Recommended that the OCFO review, implement, and monitor control activities related to the training and appointment of cardholders.
- Travel Cards Audit (OIG-AMR-75-15-02): Recommended that the OCFO develop and implement procedures to identify infrequent travelers and reduce the credit limits for those travel cardholders.
- Travel Cards Audit (OIG-AMR-75-15-02): Recommended that the OCFO develop and implement procedures to monitor training completion by travel cardholders to ensure that travel cardholders meet the training requirements.
- DATA Act Implementation (OIG-AMR-83-18-01): Recommended that the OCFO develop and implement internal controls to ensure that: a. Parent identifications are uniform in the data reported to Federal Procurement Data System (FPDS) and the Oracle Financials system; b. Procurement awards are reported to FPDS as required by Section 4.606 of the FAR; and c. File C contains all of the financial data for the procurement awards that are reported in File D1 prior to submitting the files to the DATA Act broker.
- DATA Act Implementation (OIG-AMR-83-18-01): Recommended that the OCFO develop and implement internal controls to identify and correct data errors in the Oracle Financials system and in FPDS-Next Generation.
- Audit of the FY 2018 Financial Statements (OIG-F-23-19-01): Recommended that the OCFO reconcile the BMS balance to OFF and the U.S. Department of the Treasury (Treasury) balances and ensure that the balances are completed, documented, and reviewed by management at a minimum on a quarterly basis.
- Audit of the FY 2018 Financial Statements (OIG-F-23-19-01): Recommended that the OCFO ensure reconciliations contain evidence of all appropriate reviews and approvals
- Internal Control over Backpay Disbursements (OIG-AMR-82-19-03): Recommended that the OCFO conduct periodic reviews of backpay disbursements to ensure that are scanned for known fraud indicators.



- Internal Control over Backpay Disbursements (OIG-AMR-82-19-03): Recommended that the OCFO create and implement a process to reconcile the backpay deposit fund account to the financial system and Backpay Management System (BMS).
- Internal Control over Backpay Disbursements (OIG-AMR-82-19-03): Recommended that the OCFO develop, document, and implement procedures for performing finance scans on all backpay reimbursements.
- Backpay Accounting (OIG-AMR-88-20-03): Recommended that the OCFO determine if any funds can be recovered from the miscellaneous receipts and: a. If funds can be recovered, make appropriate accounting entries and disburse the funds; or b. If funds cannot be recovered, obtain a decision from the General Counsel on whether to seek authority to use appropriated funds to make the discriminatees whole.
- Backpay Accounting (OIG-AMR-88-20-03): Recommended that the Finance Branch develop and implement a documented process to reconcile BMS to Oracle and Oracle to the Treasury deposit account.

Despite closing out thirteen recommendations during FY 2020, the OCFO still has a lot of work ahead to resolve the remaining recommendations issued by the Inspector General.

I wish to acknowledge and thank the OCFO staff for their dedication to the NLRB's mission and their diligent efforts in working to resolve open audit items, maintaining an unmodified opinion on our financial statements, and working through the OMB Circular No. A-123 reviews. Their demonstrated knowledge of the NLRB programs and processes and their constant effort to provide excellent customer service were outstanding.

The NLRB is committed to making improvements in financial management, internal controls, and in the production of timely, accurate, reliable, and transparent financial information.



Isabel Luengo McConnell  
Chief Financial Officer



**UNITED STATES GOVERNMENT**  
***National Labor Relations Board***  
**Office of Inspector General**



## **Memorandum**

November 13, 2020

To: John F. Ring  
Chairman

Peter B. Robb  
General Counsel

From: David P. Berry  
Inspector General

A handwritten signature in dark ink, appearing to read "D. Berry", is written over the printed name of David P. Berry.

Subject: Audit of the National Labor Relations Board Fiscal Year 2020 Financial Statements  
(OIG-F-25-21-01)

This memorandum transmits the audit report on the National Labor Relations Board (NLRB) Fiscal Year 2020 Financial Statements.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget annual audited financial statements. We contracted with Castro & Company, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 19-03, *Audit Requirements for Federal Financial Statements*, issued by the Office of Management and Budget.

In connection with the contract, we reviewed Castro & Company's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. Castro & Company is responsible for the attached auditor's report dated November 13, 2020, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the audit.



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## **Independent Auditor's Report on the Financial Statements**

Inspector General  
National Labor Relations Board

We have audited the accompanying balance sheets of the National Labor Relations Board (NLRB) as of September 30, 2020 and 2019 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended, and the related notes to the financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the agency's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### ***Opinion on the Financial Statements***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the NLRB as of September 30, 2020 and 2019, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended in accordance with accounting principles generally accepted in the United States of America.

***Required Supplementary and Other Information***

U.S. generally accepted accounting principles require that the information in the *Required Supplementary Information*, including *Management's Discussion and Analysis*, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the basic financial statements. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The information presented in the Messages from the Chairman, General Counsel, and Chief Financial Officer, list of Board Members, Other Accompanying Information, and Appendices is presented for purposes of additional analysis and are not required as part of the basic financial statements. Such information has not been subjected to auditing procedures applied by us in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

***Other Reporting Required by Government Auditing Standards***

In accordance with U.S. *Government Auditing Standards* and OMB Bulletin No. 19-03, we have also issued our reports dated November 13, 2020, on our consideration of NLRB's internal control over financial reporting and the results of our tests of its compliance with certain provisions of laws, regulations, and other matters that are required to be reported under *Government Auditing Standards*. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with U.S. *Government Auditing Standards* and OMB Bulletin 19-03 in considering the NLRB's internal control and compliance and should be read in conjunction with this report in considering the results of our audit.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, U.S. Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

*Castro & Company, LLC*

Alexandria, VA  
November 13, 2020



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**Independent Auditor's Report on Internal Control over Financial Reporting Based on an  
 Audit of Financial Statements Performed in Accordance with  
*Government Auditing Standards***

Inspector General  
 National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB), which comprise the balance sheets as of September 30, 2020 and 2019, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended, and the related notes to the financial statements, and have issued our report thereon dated November 13, 2020. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*.

**Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements as of and for the year ended September 30, 2020, we considered NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of NLRB's internal control, determining whether controls had been placed in operation, assessing control risk, and performing tests of NLRB's controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not to express an opinion on the effectiveness of NLRB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of NLRB's internal control over financial reporting. We limited our internal control testing to those controls necessary to achieve the objectives described in the OMB Bulletin No. 19-03. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purposes described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in

Independent Auditor's Report on Internal Control  
Page 2

internal control that we consider to be material weaknesses or significant deficiencies. However, material weakness or significant deficiencies may exist that have not been identified.

We noted less significant matters involving internal control and its operations which we have reported to NLRB management in a separate letter dated November 13, 2020.

**Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and the result of that testing, and not to provide an opinion on the effectiveness of NLRB's internal control. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering NLRB's internal control. Accordingly, this communication is not suitable for any other purpose.

This report is intended solely for the information and use of the management and NLRB Office of Inspector General, OMB, the Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

*Castro & Company, LLC*

Alexandria, VA  
November 13, 2020



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## **Independent Auditor's Report on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards***

Inspector General  
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB), which comprise the balance sheets as of September 30, 2020 and 2019, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended, and the related notes to the financial statements, and have issued our report thereon dated November 13, 2020. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*.

The management of NLRB is responsible for complying with laws and regulations applicable to NLRB. We performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 19-03, including the requirements referred to in the Federal Managers' Financial Integrity Act of 1982. We limited our tests of compliance to these provisions, and we did not test compliance with all laws and regulations applicable to NLRB.

### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the NLRB's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests of compliance disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* or OMB Bulletin No. 19-03.

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of compliance and the results of that testing, and not to provide an opinion on the NLRB's compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the NLRB's compliance. Accordingly, this communication is not suitable for any other purpose.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

*Castro & Company, LLC*

Alexandria, VA  
November 13, 2020



# PRINCIPAL FINANCIAL STATEMENTS

## Auditor's Reports and Principal Financial Statements

### PRINCIPAL STATEMENTS

#### National Labor Relations Board

#### Balance Sheets

As of September 30, 2020 and 2019

(in dollars)

	2020	2019
<b>Assets</b>		
Intragovernmental:		
Fund Balance with Treasury (Note 3)	\$ 53,065,763	\$ 51,973,066
Advances and Prepayments (Note 4)	28,050	49,554
Total Intragovernmental Assets	53,093,813	52,022,620
Assets with the Public		
Accounts Receivable, net (Note 5)	665,283	625,898
General Property, Plant, and Equipment (Note 6)	10,430,498	11,316,933
Advances and Prepayments (Note 4)	25,658	31,004
Total Assets (Note 2)	\$ 64,215,252	\$ 63,996,455
<b>Liabilities</b>		
Intragovernmental:		
Accounts Payable	\$ 821,290	\$ 1,973,223
Employer Contributions and Payroll Taxes Payable	2,245,912	1,717,598
FECA Liabilities (Note 7)	176,461	399,534
Total Intragovernmental	3,243,663	4,090,355
Liabilities with the Public		
Accounts Payable	2,834,718	3,829,180
Fed Employee Benefits - FECA Actuarial Liability (Note 7)	2,354,777	2,273,821
Unfunded Annual Leave (Note 7)	16,114,022	12,495,788
Employer Contributions and Payroll Taxes Payable	7,939,147	6,530,974
Total Liabilities	\$ 32,486,327	\$ 29,220,118
Commitments and Contingencies (Note 15)		
<b>Net Position</b>		
Unexpended Appropriations	39,359,424	38,099,936
Cumulative Results of Operations	(7,630,499)	(3,323,599)
Total Net Position	\$ 31,728,925	\$ 34,776,337
Total Liabilities and Net Position	\$ 64,215,252	\$ 63,996,455

The accompanying notes are an integral part of these financial statements.



### National Labor Relations Board Statements of Net Cost

For the Years Ended September 30, 2020 and 2019  
(in dollars)

	2020	2019
<b>Program Costs</b>		
Resolve Unfair Labor Practices		
Net Cost	\$ 259,754,376	\$ 245,273,507
Resolve Representation Cases		
Net Cost	28,893,669	27,768,358
Total Program Costs	288,648,045	273,041,865
Less: Earned Revenue	(16,104)	0
<b>Net Cost of Operations</b>	<b>\$ 288,631,941</b>	<b>\$ 273,041,865</b>

The accompanying notes are an integral part of the financial statements.

**National Labor Relations Board**  
**Statements of Changes in Net Position**

For the Years Ended September 30, 2020 and 2019

(in dollars)

	2020	2019
<b>Unexpended Appropriations:</b>		
Beginning Balance (Note 1P)	\$ 38,099,866	\$ 30,504,674
Budgetary Financing Sources:		
Appropriations Received	274,224,000	274,224,000
Other Adjustments	(1,180,449)	(2,418,984)
Appropriations Used	(271,783,993)	(264,209,754)
Total Budgetary Financing Sources	1,259,558	7,595,262
Total Unexpended Appropriations	39,359,424	38,099,936
<b>Cumulative Results of Operations:</b>		
Beginning Balances (Note 1P)	\$ (3,323,529)	\$ (9,371,004)
Budgetary Financing Sources:		
Appropriations Used	271,783,993	264,209,754
Other Financing Sources (Non-Exchange):		
Imputed Financing	12,540,978	14,879,516
Total Financing Sources	284,324,971	279,089,270
Net Cost of Operations	(288,631,941)	(273,041,865)
Net Change	(4,306,970)	6,047,405
Cumulative Results of Operations	(7,630,499)	(3,323,599)
Net Position	\$ 31,728,925	\$ 34,776,337

The accompanying notes are an integral part of the financial statements.

**National Labor Relations Board**  
**Statements of Budgetary Resources**

For the Years Ended September 30, 2020 and 2019  
(in dollars)

	2020	2019
<b>Budgetary Resources</b>		
Unobligated balance from prior year budget authority, net (discretionary and mandatory)	\$ 13,234,243	\$ 6,523,120
Appropriations (discretionary and mandatory)	274,224,000	274,224,000
Spending Authority from offsetting collections (discretionary and mandatory)	16,104	0
<b>Total Budgetary Resources (Note 11)</b>	<b>\$ 287,474,347</b>	<b>\$ 280,747,120</b>
<b>Status of Budgetary Resources</b>		
New Obligations and upward adjustments (total)	\$ 275,943,382	\$ 269,317,032
Unobligated balance, end of year:		
Apportioned, unexpired accounts	469,844	5,699,240
Unexpired unobligated balance, end of year	469,844	5,699,240
Expired unobligated balance, end of year	11,061,121	5,730,848
Unobligated balance, end of year (total)	11,530,965	11,430,088
<b>Total Budgetary Resources</b>	<b>\$ 287,474,347</b>	<b>\$ 280,747,120</b>
<b>Outlays, Net</b>		
<b>Outlays, net (total) (discretionary and mandatory)</b>	<b>\$ 271,950,855</b>	<b>\$ 263,280,846</b>

The accompanying notes are an integral part of the financial statements.

# NOTES TO PRINCIPAL STATEMENTS

## Note 1. Summary of Significant Accounting Policies

### A. REPORTING ENTITY

The National Labor Relations Board (NLRB) is an independent federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service; but other government entities, railroads, and airlines are not within the NLRB's jurisdiction. The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The GC investigates and prosecutes ULP charges before Administrative Law Judges (ALJ), whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

### B. BASIS OF ACCOUNTING AND PRESENTATION

The accompanying financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the books and records of NLRB in accordance with U.S. generally accepted accounting principles (GAAP) and the accounting standards issued by the Federal Accounting Standards Advisory Board (FASAB) in the format prescribed by the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements*, as amended. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the Federal government.

NLRB's financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity, whose liabilities not covered by budgetary resources cannot be liquidated without the enactment of an appropriation, and that the payment of all liabilities other than for contracts can be abrogated by the Federal Government acting in its capacity as a sovereign entity.

NLRB is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of

Certified Public Accountants (AICPA) as the entity to establish GAAP for the Federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the United States Standard General Ledger (USSGL) at the transaction level. NLRB uses the Department of Interior's financial management system and that system is FFMIA compliant. Thus, NLRB's financial management system complied with the requirements of FFMIA and produced records in accordance with USSGL at the transaction level.

NLRB's financial statements reflect both accrual and budgetary basis of accounting. Under the accrual method of accounting, revenues are recognized when earned and expenses are recognized as incurred, without regard to receipt or payment of cash. Budgetary accounting is essential for compliance with legal constraints and controls over the use of federal funds. Budgetary accounting principles are designed to recognize the obligation of funds according to legal requirements.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the Agency's net position. Agency assets include both entity assets; those which are available for use by the Agency and non-entity assets; those which are managed by the Agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). A note disclosure is required to provide information about its fiduciary activities. Fiduciary cash and other assets are not assets of the Federal Government.

The Statement of Net Cost presents the gross costs of programs, reported by program and for the Agency.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, as amended.

The information as presented on the Statement of Net Cost is based on the programs below:

**ULP Cases** are initiated by individuals or organizations through the filing of a charge with the NLRB.

Unless a settlement is reached, the NLRB Regional Office will issue and prosecute a complaint against the party being charged if it believes that the charge has merit. A complaint that is not settled or withdrawn is tried before an ALJ, who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases based on the formal trial record according to the law and the body of case law that has been developed by the Board and the federal courts.

**Representation Cases** are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent,

a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA.

All cases are assigned unique tracking numbers, with the letter "C" designating Unfair Labor Practices cases, and the letter "R" designating Representation cases. The percentage of new cases filed for each type of case drives the program breakout for financial reporting purposes. See chart below with the calculations for FY 2020 and FY 2019, through September 30.

	2020 Percentage	2019 Percentage
C Cases (Unfair Labor Practices)	90%	90%
R Cases (Representation)	10%	10%
Total	100%	100%

### C. BUDGETARY BASIS OF ACCOUNTING

NLRB's programs and activities are funded through annual appropriations. Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the U.S. Department of the Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end expire. At the end of the fifth year following the year of execution, all amounts not expended are canceled and returned to Treasury. Additionally, all revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time an obligation is incurred. Only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

### D. CLASSIFIED ACTIVITIES

Accounting standards require all reporting entities to disclose that accounting standards allow certain presentations and disclosures to be modified, if needed, to prevent the disclosure of classified information.

### E. FINANCING SOURCES

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses, primarily salaries and benefits, space occupancy, travel, and contractual service costs.

For accounting purposes, appropriations are recognized as financing sources, and as appropriations used at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

#### **F. FUND BALANCE WITH THE TREASURY**

FBWT is an asset of a reporting entity and a liability of the General Fund. The NLRB does not maintain cash in commercial bank accounts. The U.S. Department of Treasury processes cash receipts and disbursements. Funds with the Treasury consist of appropriated and deposited funds that are available to pay current liabilities and finance authorized purchase commitments.

In addition, funds held with Treasury also include escrow funds that are not appropriated but are fiduciary in nature. The fiduciary funds are not recognized on the Balance Sheet.

#### **G. ACCOUNTS RECEIVABLE, NET**

Accounts Receivable typically consists of payroll-related debts due to the NLRB from Agency employees and debts due to the NLRB from third party sources for invitational travel. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year-end.

#### **H. GENERAL PROPERTY, PLANT AND EQUIPMENT**

General property, plant and equipment consist primarily of telephone systems, bulk purchases, computer hardware and software, and leasehold improvements.

*Personal Property.* Personal property costing \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Bulk purchases of large quantities of property that would otherwise fall under the individual capitalization threshold are capitalized if the total purchase is \$100,000 or more. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is three to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

*Real Property.* Real property consists of leasehold improvements on GSA leased space which cost \$100,000 or more. Leasehold improvements are recorded as construction in progress until the Agency has beneficial occupancy of the space, and then the costs are moved to the Leasehold Improvements account for amortization over the remaining life of the lease.

*Internal Use Software.* Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the development cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The standard useful life for IUS has been established as



three years, in order to most accurately match expenses with the time period in which the benefits are received from the software. The NLRB uses the straight-line method of amortization.

The NXGen project was a multiple year undertaking in which a large portion of the system was rolled out in prior years. This IUS project continues to include adjustments to the asset. IUS additionally supports systems such as e-Gov, E-filing, and provides the public with web-based access to NLRB data.

*Internal Use Software in Development.* Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account and amortized accordingly, as described above.

## **I. NON-ENTITY ASSETS**

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act (FOIA) requests that must be transferred to the Treasury at the end of each fiscal year.

## **J. LIABILITIES**

Liabilities represent amounts that are likely to be paid by the NLRB as the result of a transactions or events that has already occurred; however, no liabilities are paid by the NLRB without an appropriation. Liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity. Intragovernmental liabilities arise from transactions with other Federal entities.

### *Accounts Payable*

Accounts payable represent amounts due to Federal and Nonfederal entities for good and services received by NLRB that have not been paid at the end of the accounting period. Intragovernmental accounts payable represent payable transactions with other Federal entities. Nonfederal accounts payable represent transactions with Nonfederal entities.

### *Accrued Payroll*

Accrued payroll consists of salaries, wages, and other compensation earned by the employees but not disburse as of September 30, 2020 and 2019, respectively. The liability is estimated for reporting purposes based on historical pay information.

## **K. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES**

Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity. Liabilities not covered by budgetary resources include, unfunded leave, Federal Employees' Compensation Act (FECA) and unemployment compensation.

*Unfunded Leave*

A liability for annual and other vested compensatory leave is accrued as earned and reduced when taken. The value of employees' unused annual leave at the end of each fiscal quarter is accrued as a liability. At the end of each fiscal quarter, the balance in the accrued annual leave account is adjusted to reflect current pay rate and leave balances. To the extent the current or prior year appropriations are not available to fund annual leave earned but not taken, funding will be obtained from future financing sources. Sick leave and other types of non-vested leave are expensed when used, and in accordance with Federal requirements, no accruals are recorded for unused sick leave.

*Unfunded Federal Employees' Compensation Act*

The FECA was established by Public Law 103-3 which provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by the U.S. DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the actual claim amount; as funds are appropriated for this purpose. There is generally a two to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

Due to the small number of claimants, the NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 84.0 and 86.5 years for male and female, respectively.

*Unfunded Unemployment*

NLRB's unemployment programs provide unemployment benefits to eligible workers who become unemployed through no fault of their own and meet certain other eligibility requirements. The Unemployment Compensation for Federal Employee program provides benefits for eligible, unemployed, former civilian Federal employees. NLRB's liability for unemployment includes and costs incurred but unbilled as of the quarter end, as calculated by DOL, and not funded by current appropriations.

**L. CONTINGENCIES**

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;

2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

#### **M. UNEXPENDED APPROPRIATIONS**

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

#### **N. LIFE INSURANCE AND RETIREMENT PLANS**

##### *Federal Employees' Group Life Insurance (FGLI) Program*

Most NLRB employees are entitled to participate in the FGLI Program. Participating employees can obtain basic life term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

##### *Retirement Programs*

The NLRB employees participate in either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees' Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most of the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to seven percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan (TSP). The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. The maximum amount of base pay that an employee participating in FERS may contribute is \$19,500 in calendar year (CY) 2020 to this plan. Employees belonging to CSRS may also contribute up to \$19,500 of their salary in CY 2020 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2020 is \$6,500. For CY 2020, the regular and catch-up contributions may not exceed \$26,000. The sum of the employees' and the NLRB's contributions is transferred to the Federal Retirement Thrift Investment Board. For FERS employees, the Agency also contributes the employer's share of Medicare.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employee government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with SFFAS Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government, included in the NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits (FEHB) and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS Number 4, Managerial Cost Accounting Concepts and Standards for the Federal government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

As of year-end September 30, 2020, the NLRB, utilizing OPM provided cost factors, recognized \$2,490,860 of pension expenses, \$10,025,397 of post-retirement health benefits expenses, and \$24,721 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$12,540,978 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2019, the NLRB recognized \$5,415,804 of pension expenses, \$9,439,315 of post-retirement health benefits expenses, and \$24,397 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$14,879,516 as an imputed financing source from OPM.

## O. OPERATING LEASES

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA) and commercial copier leases. NLRB leases all buildings through GSA. The NLRB pays GSA a standard level user charge for the annual leases, which approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, and it does not record GSA-owned properties as assets. The real property leases are for NLRB's headquarters and Regional Offices, and the personal property leases are for fleet vehicles and copiers.

## P. NET POSITION

Net position is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations are funds appropriated by Congress to NLRB that remain available for expenditure. Cumulative results of operations represent the net differences between financing sources and expenses since NLRB's inception. The FY 2020 beginning unexpended appropriations of \$38,099,866 did not agree with the FY 2019 ending unexpended appropriations of \$38,099,936. In addition, the FY 2020 beginning cumulative results of operations of \$3,323,529 did not agree with the FY 2019 ending cumulative results of operations of \$3,323,599. This was due to a \$70 disbursement in transit from a canceled year that did not properly close in the accounting system at the end of FY 2019. NLRB did not correct the beginning balances, as NLRB deemed the \$70 difference as immaterial.

## Q. USE OF MANAGEMENT ESTIMATES

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions, and exercise judgement that affects the reported amount of assets, liabilities, net position, and disclosure of contingent assets and liabilities as of the date of the financial statements, as well as reported amounts of financing sources, expenses, and obligations incurred during the reporting period. The assumptions made and estimates used by NLRB to prepare the financial statements are based upon the facts that exist when the financial statements are prepared, and on various other assumptions that are believed to be reasonable under the circumstances. Changes in estimates are reflected in the period in which they become known. Actual results may differ from those estimates. The notes to the financial statements include information to assist the reader in understanding the effect of changes in assumptions on the related information.

## R. TAX STATUS

The NLRB, as an independent Board of the Executive Branch is a federal agency, and is not subject to federal, state, or local income taxes, and accordingly, no provision for income tax is recorded.

## S. SUBSEQUENT EVENTS

Subsequent events and transactions occurring after fiscal year-end through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditor's opinion also represents the date that the financial statements were available to be issued.

## Note 2. Non-Entity Assets

Non-Entity assets represent miscellaneous receipts collected and related accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of non-entity assets as of September 30, 2020 and September 30, 2019, is as follows:

(in dollars)	2020	2019
<b>Non-Entity Assets</b>		
Fund Balance with Treasury	\$ 0	\$ 0
Accounts Receivable	0	0
<b>Total Non-Entity Assets</b>	<b>0</b>	<b>0</b>
Entity Assets	64,215,252	63,996,455
<b>Total Assets</b>	<b>\$ 64,215,252</b>	<b>\$ 63,996,455</b>

Additionally, NLRB received a remainder interest in Florida real estate valued at approximately \$46,000 as part of a ULP case settlement. This asset is not included in the table above.

### Note 3. Fund Balance with Treasury

Treasury performs cash management activities for all federal agencies. NLRB's Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Status of Fund Balance with Treasury as of September 30, 2020 and September 30, 2019 consists of the following:

Fund Balance with Treasury		
(in dollars)	2020	2019
<b>Status of Fund Balance with Treasury</b>		
Unobligated Balance		
Available	\$ 469,844	\$ 5,699,240
Unavailable	11,061,121	5,730,848
Obligated Balance Not Yet Disbursed	41,534,798	40,542,978
Non-budgetary Fund Balance with Treasury	0	0
<b>Total</b>	<b>\$ 53,065,763</b>	<b>\$ 51,973,066</b>

The status of the fund balance may be classified as unobligated available, unobligated unavailable or obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in the current year of operations. Unavailable unobligated balances are not available to fund new obligations because they are expired. The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts (non-entity).



**Note 4. Advances****INTRAGOVERNMENTAL**

As of September 30, 2020, and 2019, NLRB reported advances to the Department of Transportation for the employee transit subsidy program totaling \$28,050 and \$49,554 respectively.

**PUBLIC**

As of September 30, 2020, and 2019, NLRB reported advances for postage meter funding totaling \$25,658 and \$31,004 respectively.

**Note 5. Accounts Receivable, Net**

The intragovernmental accounts receivable is zero as of September 30, 2020 and 2019 respectively.

<i>(in dollars)</i>	2020	2019
With the public		
Accounts receivable	\$ 769,981	\$ 733,023
Allowance for doubtful accounts	(104,698)	(107,125)
Accounts receivable, net	\$ 665,283	\$ 625,898

### Note 6. General Property, Plant and Equipment

General property, plant, and equipment consists of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

(in dollars)	Asset Cost	2020	
		Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 2,033,178	\$ 2,009,367	\$ 23,811
Leasehold Improvements	6,935,780	3,202,487	3,733,293
Internal Use Software	42,063,312	38,356,231	3,707,081
IUS in Development	2,966,313	0	2,966,313
<b>Total Property, Plant and Equipment</b>	<b>\$ 53,998,583</b>	<b>\$ 43,568,085</b>	<b>\$ 10,430,498</b>

((in dollars)	Asset Cost	2019	
		Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 2,771,610	\$ 2,733,400	\$ 38,210
Leasehold Improvements	6,935,780	2,508,908	4,426,872
Internal Use Software	40,402,408	36,317,389	4,085,019
IUS in Development	2,766,832	0	2,766,832
<b>Total Property, Plant and Equipment</b>	<b>\$ 52,876,630</b>	<b>\$ 41,559,697</b>	<b>\$ 11,316,933</b>

### Note 7. Liabilities Not Covered by Budgetary Resources

Liabilities are classified as liabilities covered by budgetary resources, liabilities not covered by budgetary resources, and liabilities not requiring budgetary resources. NLRB's liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of liabilities not covered by budgetary resources as of September 30, 2020 and September 30, 2019, is as follows:

(in dollars)	2020	2019
<b>Liabilities Not Covered by Budgetary Resources</b>		
Intragovernmental		
FECA - Unfunded	\$ 176,461	\$ 399,534
Total Intragovernmental	176,461	399,534
<b>Liabilities with the Public</b>		
Estimated Future FECA	2,354,777	2,273,821
Accrued Annual Leave	16,114,022	12,495,788
Total Liabilities Not Covered by Budgetary Resources	18,645,260	15,169,143
Total Liabilities Covered by Budgetary Resources	13,841,067	14,050,975
Total Liabilities	\$ 32,486,327	\$ 29,220,118

### Note 8. Intragovernmental Costs and Exchange Revenue

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB has the authority to provide administrative law judges' services to other federal entities. There is no exchange revenue with the public.

(in dollars)	2020	2019
<b>Resolve Unfair Labor Practices</b>		
Intragovernmental Costs	\$ 79,240,403	\$ 79,460,104
Costs with the Public	180,513,973	165,813,403
Total Net Cost – Resolve Unfair Labor Practices	259,754,376	245,273,507
<b>Resolve Representation Cases</b>		
Intragovernmental Costs	8,814,272	8,995,984
Costs with the Public	20,079,397	18,772,374
Total Net Cost – Resolve Representation Cases	28,893,669	27,768,358
Less: Earned Revenue	(16,104)	0
Net Cost of Operations	\$ 288,631,941	\$ 273,041,865

## Note 9. Operating Leases

**GSA Real Property.** NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements with GSA will vary according to whether the underlying assets are owned by GSA or rented by GSA from the private sector. The NLRB has occupancy agreements with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the occupancy agreements are 120 to 180-day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally owned leases are included in years FY 2021 through FY 2025.

Rental expenses for operating leases for the period ended September 30, 2020 were \$23,745,987 for Agency lease space and \$2,593,288 for Agency building security. For FY 2019, the operating lease costs were \$23,014,818 and the Agency building security portion was \$2,546,797.

Future Space Lease Payments	
Fiscal Year	GSA Real Property Cost (in dollars)
2021	\$ 24,316,834
2022	25,046,339
2023	25,797,729
2024	26,571,661
2025	27,368,811
After 5 Years	28,189,875
<b>Total</b>	<b>\$ 157,291,249</b>

**GSA Fleet.** The future fleet payments reflect the expense for 14 vehicles used for official NLRB business throughout the United States. Expenses for the fleet vehicles for the period ended September 30, 2020 were \$45,814; for FY 2019 the costs were \$64,361.

Future Fleet Lease Payments	
Fiscal Year	GSA Fleet Cost (in dollars)
2021	\$ 50,000
2022	51,500
2023	53,045
2024	54,636
2025	56,275
After 5 Years	57,964
<b>Total</b>	<b>\$ 323,420</b>

**Commercial Copiers.** The commercial copier rental expense reflects lease contracts for copy machines located at the NLRB Headquarters and Field Offices. For FY 2020 the commercial copier yearly contract is \$154,288; for FY 2019 the cost was \$381,724.

Future Copier Lease Payments	
Fiscal Year	Copier Lease Cost (in dollars)
2021	\$ 154,288
2022	154,288
2023	154,288
2024	180,000
2025	185,400
After 5 Years	\$ 190,962
<b>Total</b>	<b>\$1,019,226</b>

**Digital Mailing System.** The digital mailing system expense reflects lease contracts for 51 mailing systems and postage meters located at the NLRB Headquarters and Field Offices. For FY 2020 the digital mailing system yearly contract is \$63,615; for 2019 the cost was \$62,368.

Future Digital Mailing Lease Payments	
Fiscal Year	Digital Mailing Lease Cost (in dollars)
2021	65,524
2022	67,490
2023	69,515
2024	71,600
2025	73,748
After 5 Years	75,961
<b>Total</b>	<b>\$ 423,838</b>



### Note 10. Inter-Entity Costs

Goods and services are received from other federal entities at no cost or at a cost less than the full cost to the providing federal entity. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed are recognized as imputed cost in the Statement of Net Cost and are offset by imputed revenue in the Statement of Changes in Net Position. Such imputed costs and revenues relate to employee benefits. However, unreimbursed costs of goods and services other than those identified are not included the financial statements.

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2020 and 2019 consisted of:

(in dollars)	2020	2019
Office of Personnel Management:		
Pension Expenses	\$ 2,490,860	\$ 5,415,804
Federal Employees Health Benefits	10,025,397	9,439,315
Federal Employees Group Life Insurance Program	24,721	24,397
Total Imputed Financing Costs	\$ 12,540,978	\$ 14,879,516

### Note 11. Statement of Budgetary Resources

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal government. The total Budgetary Resources of \$287,474,347 as of September 30, 2020 and \$280,747,120 as of September 30, 2019, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. NLRB received \$274,224,000 in appropriations as of September 30, 2020 and September 30, 2019. The NLRB's apportioned unobligated balance available at September 30, 2020 was \$469,844 and at September 30, 2019 was \$5,699,240.

### Note 12. Undelivered Orders at the End of the Period

Undelivered orders are purchase orders issued by the NLRB during the FY 2020 and the five expiring fiscal years, which have not had delivery of the required product or service as of September 30, 2020 and 2019, respectively. It is anticipated that these undelivered items will be provided in future periods and will require resources obligated during the respective fiscal years.

Undelivered Orders as of September 30, 2020 and 2019		
(in dollars)	2020	2019
<b>Intragovernmental</b>		
Paid	\$ 0	\$ 0
Unpaid	5,008,814	4,611,056
Total Intragovernmental	5,008,814	4,611,056
<b>Public</b>		
Paid	53,708	80,558
Unpaid	22,691,564	21,819,303
Total Public	22,745,272	21,899,861
<b>Total</b>	<b>\$ 27,754,086</b>	<b>\$ 26,510,917</b>

### Note 13. Fiduciary Activities

The NLRB Escrow Accounts are fiduciary deposit funds presented in accordance with SFFAS 31, Accounting for Fiduciary Activities, and OMB Circular A-136, *Financial Reporting Requirements*. The Escrow Accounts, Restraining Order Cases (420X6152) and Backpay Cases (402X6154) are authorized by Title 31 United States Code, Section 3513 and Title 29 United States Code, Section 151-169. The Escrow Account, Restraining Order Cases (420X6152) was established to separate cases related to protective restraining orders.

The NLRB investigates and adjudicates disputes between private sector employees, employers, and unions. Part of the NLRB's mission is to determine if the employer (or sometimes the union), herein referred to as respondent, engaged in unfair labor practices, which resulted in a loss of employment or wages for the affected employees (discriminatees). In some cases, the respondent is ordered to pay monetary amounts to the discriminatees. These payments can be paid by respondent directly to the

discriminatees or they can pay the NLRB, which disburses the funds to the discriminatees. NLRB is authorized to collect funds on behalf of discriminatees.

The fiduciary funds collected by NLRB are held in escrow and represent funds that were collected as part of the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB collects the funds, and then distributes them to employees, unions, pension funds, or other discriminatees in the settlement. The NLRB has the option to invest funds in Federal government securities, if the funds will remain in escrow for a lengthy period. During FY 2020, fiduciary funds were not invested.

NLRB executed a MOU with the Treasury that established agreed upon policies and procedures for investing monies in, and redeeming investments held by, the fiduciary fund account in Treasury. NLRB manages these funds in a fiduciary capacity and does not have ownership rights against its contributions and investments; the assets and activities summarized in the schedule below are not presented in the financial statements.

NLRB's fiduciary activities are disclosed in this note.

Schedule of Fiduciary Activity As of September 30, 2020 and 2019						
(in dollars)	2020			2019		
Fiduciary Funds	Fund 420X6152	Fund 420X6154	Total Funds	Fund 420X6152	Fund 420X6154	Total Funds
Fiduciary net assets, beginning of year	\$ 0	\$ 7,389,554	\$ 7,389,554	\$ 0	\$ 7,429,889	\$ 7,429,889
Fiduciary revenues	2,000	78,449,609	78,451,609	0	2,755,845	2,755,845
Disbursements to and on the behalf of beneficiaries	0	(54,675,384)	(54,675,384)	0	(2,796,180)	(2,796,180)
Increase (Decrease) in fiduciary net assets	2,000	23,774,225	23,776,225	0	(40,335)	(40,335)
Fiduciary net assets, end of year	\$2,000	\$31,163,779	\$31,165,779	\$0	\$7,389,554	\$7,389,554

Fiduciary Net Assets As of September 30, 2020 and 2019						
(in dollars)	2020			2019		
Fiduciary Funds	Fund 420X6152	Fund 420X6154	Total Funds	Fund 420X6152	Fund 420X6154	Total Funds
Fund Balance with Treasury	2,000	31,163,779	31,165,779	0	7,389,554	7,389,554
Total Fiduciary net assets	\$ 2,000	\$ 31,163,779	\$ 31,165,779	\$0	\$ 7,389,554	\$ 7,389,554

#### Note 14. Reconciliation of Net Cost to Net Outlays

SFFAS No. 53, *Budget and Accrual Reconciliation*, amended SFFAS 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting* and 24, *Selected Standards for the Consolidated Financial Report of the United States Government*, and rescinded SFFAS 22, *Change in Certain Requirements for Reconciling Obligations and Net Cost of Operations*. SFFAS No. 53 provided for the budget and accrual reconciliation (BAR) to replace the statement of financing. The BAR explains the relationship between NLRB's net outlays on a budgetary basis and the net cost of operations during the reporting period. The reconciliation starts with the net cost of operations as reported on the Statement of Net Cost and will be adjusted by components of net cost that are not part of net outlays. Common components include depreciation and gains and losses on disposition of assets and changes in assets and liabilities (e.g. accounts receivable, accounts payable, salaries and benefits) not affecting budget outlays. Net cost of operations is also adjusted by budget outlays that are not part of net operating cost. Components of budget outlays that are not part of net operating cost include acquisition of capital assets, inventory, and other assets. Other reconciling differences, when applicable, include timing differences.

Reconciliation of Net Cost to Net Outlays As of September 30, 2020			
(in dollars)	Intragovernmental	With the public	Total 2020
Net Cost	\$88,038,571	\$200,593,370	\$288,631,941
Components of Net Cost That Are Not Part of Net Outlays:			
Other		(2,428)	(2,428)
Increase/(decrease) in assets:			
Accounts receivable		(665,283)	(665,283)
Other assets	28,050	25,658	53,708
(Increase)/decrease in liabilities:			
Accounts payable	(821,290)	(1,217,689)	(2,038,979)
Salaries and benefits	(2,245,912)	(7,939,147)	(10,185,059)
Other liabilities	(223,074)	(3,699,190)	(3,922,264)
Total Components of Net Cost That Are Not Part of Net Outlays	(3,262,226)	(13,498,079)	(16,760,305)
Components of Net Outlays That Are Not Part of Net Cost:			
Acquisition of capital assets		80,558	80,558
Total Components of Net Outlays That Are Not Part of Net Cost		80,558	80,558
Other Temporary Timing Differences		(1,339)	(1,339)
Net Outlays	\$84,776,345	\$187,174,510	\$271,950,855
Related Amounts on the Statement of Budgetary Resources			
Outlays, net			271,950,855
Distributed offsetting receipts			0
Agency Outlays, Net			\$271,950,855

Reconciliation of Net Cost to Net Outlays As of September 30, 2019			
(in dollars)	Intragovernmental	With the public	Total 2019
Net Cost	\$88,456,088	\$184,585,777	\$273,041,865
Components of Net Cost That Are Not Part of Net Outlays:			
Other	(87,083)	(196,401)	(283,484)
Increase/(decrease) in assets:			
Accounts receivable		(625,898)	(625,898)
Other assets	49,554	31,004	80,558
(Increase)/decrease in liabilities:			
Accounts payable	(1,973,223)	(3,829,180)	(5,802,403)
Salaries and benefits	(1,717,598)	(275,270)	(1,992,868)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)	399,534	(1,565,260)	(1,165,726)
Other financing sources:			
Federal employee retirement benefit costs paid by OPM and imputed to the agency			
Total Components of Net Cost That Are Not Part of Net Outlays	(3,328,816)	(6,461,005)	(9,789,821)
Components of Net Outlays That Are Not Part of Net Cost:			
Acquisition of capital assets		25,843	25,843
Total Components of Net Outlays That Are Not Part of Net Cost		25,843	25,843
Other Temporary Timing Differences		2,959	2,959
Net Outlays	\$85,127,272	\$178,153,574	\$263,280,846
Related Amounts on the Statement of Budgetary Resources			
Outlays, net			263,280,846
Distributed offsetting receipts			0
Agency Outlays, Net			\$263,280,846

**Note 15. Commitments and Contingencies**

In addition to future commitments discussed in Note 9, Operating Leases, NLRB is committed under obligations at year end for goods and services which have been received and not yet paid or for goods and services which have been ordered but not yet received. These are unpaid delivered orders.

NLRB was not party to any legal actions that were likely to result in a material liability. Accordingly, no provision for loss is included in the financial statements.

**Note 16. COVID-19 Activity**

In FY 2020, NLRB received an annual appropriation of \$274,224,000 to carry out the functions vested in it by the Labor Management Relations Act of 1947. NLRB did not receive a supplemental appropriation related to the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020. NLRB's cost to prevent, prepare for, and respond to the COVID-19 pandemic was \$716,821 or 0.26 percent of NLRB's annual appropriation.





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OTHER INFORMATION



**UNITED STATES GOVERNMENT**  
***National Labor Relations Board***  
**Office of Inspector General**

**Memorandum**

October 13, 2020

To: Board and General Counsel

From: David Berry  
Inspector General

A handwritten signature in black ink, appearing to read "D. Berry", is placed next to the printed name and title.

Subject: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General (OIG) is required by section 3516 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the National Labor Relations Board (NLRB or Agency) and briefly assess its progress in addressing those challenges. This memorandum fulfills that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge and observations of the NLRB's operations.

For the purpose of this report, an item can be noted as a management or performance challenge even though it is not a deficiency or within the control of the Agency. The challenges noted below are not OIG findings or matters that necessarily involve mismanagement or any type of failure on the part of the NLRB's leaders or managers. In our view, a challenge is just that, a task or endeavor that is made difficult by the circumstances, and not all of them are unique to the NLRB. In our prior year's memorandum, we identified five management and performance challenges.

**CHALLENGES**

***Manage the Agency***

This year is obviously an extraordinary situation due to the pandemic. The rapid, almost instantaneous, switch to an entirely remote work force was unprecedented. Despite the enormity of the situation, the NLRB appears to have continued to meet its statutory mission to enforce the National Labor Relations Act through the investigation and resolution of unfair labor complaints and determining representation matters. In Fiscal Year (FY) 2021, we anticipate that the NLRB will continue to face unforeseen challenges once it begins the process of bringing employees back to its offices and implements processes to address more frequent in-person contacts with its own employees, representatives, parties, and witnesses.

### ***Manage the Agency's Financial Resources***

In July 2012, the Board created the Office of the Chief Financial Officer (OCFO), implementing a recommendation from the FY 2010 audit of the financial statements. The OCFO now oversees the budget, procurement, and finance functions.

In the audits of the financial statements for 5 of the 6 prior fiscal years, the audits reported findings related to significant deficiencies and/or material weaknesses involving financial management. Over those years, the audits have also noted issues related to OCFO staffing. We have also observed that since the creation of the OCFO, there have been four Chief Financial Officers, three appointed and one acting. These staffing issues contribute to the difficulties regarding this challenge. Also, for FY 2019, the NLRB had a lapse in appropriated funds of approximately \$5.7 million. Our audit of the lapse in funds found that it was caused by an overestimation in payroll expenses and a failure to properly track the obligations of the appropriation over the fiscal year. In FY 2020, the OCFO closed a number of the pending audit recommendations from the prior financial statement audits and reported that as of October 1, 2020, the lapse in FY 2020 funding was \$434,000. Notwithstanding those efforts, additional work remains on several open recommendations and the financial management of the Agency continues to be a significant management challenge.

### ***Manage the NLRB's Human Capital and Maintain the Agency's Institutional Knowledge***

These two challenges are interrelated. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include, but are not limited to, the loss of key personnel through retirements.

In our audit work we have, over an extended period of time, observed the loss of institutional knowledge in management practices as new personnel take over key positions. In some circumstances when information about historical practices is available, the context regarding why the practice was developed has been lost with the personnel changes. The most recent example of this challenge was observed during the audit of the lapse in the FY 2019 appropriation.

### ***Manage the Agency's Information Technology Security***

The FY 2016 Federal Information Security Modernization Act review was the start of the change from reviewing what the Agency was doing to assessing the maturity of the Agency's information technology (IT) security processes. For the past several years, the OCIO has made steady progress in improving the Agency's IT security processes and maturity. For this year's review, the OCIO will meet at least the "managed and measurable" level across the five IT security functions and obtain an overall maturity level assessment of "effective." This steady improvement over an extended period of time represents a significant effort on the part of the OCIO security staff and should be commended. Nevertheless, threats to the NLRB's information systems will not abate in the future or as older systems evolve and new systems are developed. We expect that the OCIO will continue to face challenges as it works to maintain its IT security maturity level.

***Implement Audit Recommendations***

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 48 open audit recommendations. Since then time, we added 22 recommendations and we closed 29. Currently, there are a total of 41 open recommendations. As with the prior fiscal year, the oldest open recommendations are from audit reports issued in FY 2015. A recommendation is not closed until we verify that the implementing action appropriately addressed the issue that necessitated the recommendation.

# SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

## I. Summary of Financial Statement Audit

Audit Opinion: Unmodified					
Restatement: No					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
	0	0	0	0	0

## II. Summary of Management Assurances

### Effectiveness Of Internal Control Over Operations (FMFIA §2)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

### Compliance With Financial Systems Requirements (FMFIA §4)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

# PAYMENT INTEGRITY INFORMATION ACT REPORTING

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Pursuant to the Improper Payments Information Act (IPIA) of 2002 (Public Law No. 107-300), dated November 26, 2002, and amended on July 22, 2010 by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law No. 111-204), and again in calendar year of 2012 with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Public Law No. 112-248); under the Office of Management and Budget's (OMB) Circular no. A-123; Appendix C guidance, all agencies under the Executive Branch of the United States are required to comply with IPERIA.

IPERIA requires agencies to review all programs and activities that they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs.

For FY 2020, \$271,946,722 in disbursements were made, of which payroll, benefits, and travel accounted for \$207,873,619. Additionally, the NLRB made payments of \$64,073,103 to vendors and government agencies which represents approximately 24% of the total disbursements.

The Agency's latest IPERIA assessment (FY 2019) and review performed by an independent consultant concluded that the NLRB program and activities are at a low risk for improper payments.

During FY 2019, the Agency performed an independent review that evaluated the procedures in the NLRB Agency's payment and disbursement processes. It also tested and assessed the design and effectiveness of controls. Given these controls, the IPERIA assessment found no improper payment in the testing and found the estimated improper payments to be within the thresholds defined by IPERIA. Thus Improper payments for the NLRB's programs did not exceed \$10 million and 1.5% of the program total expenditures or \$100 million of the total program expenditures. The Agency estimates the improper payments rate to be at most 1.5% and the improper payment amount to be no more than \$4,078,201. Therefore, the NLRB has effective procedures and controls in place for its payment and disbursement processes. The NLRB has reasonable assurance that controls over financial and non-financial operations are sufficient. No additional reporting requirements are necessary.

## **Do Not Pay (DNP) Initiative**

The mission of the U.S. Department of the Treasury's DNP team is to "protect the integrity of the government's payment process by assisting agencies in mitigating and eliminating improper payments in a cost-effective manner while safeguarding the privacy of individuals." The NLRB echoes that sentiment and has made eliminating improper payments one of the Agency's financial management priorities. The DNP portal is a multifaceted system that embraces resources from several agency subsystems i.e.



Social Security Administration's Death Master File, GSA's System for Award Management (SAM) Exclusion Records as well as the U.S. Department of the Treasury's Offset Program (TOP). DNP uses this network of systems in order to disseminate to agencies whom should or should not receive public funds in order to reduce or prevent the likelihood of improper payments.

In FY 2020, the DNP portal vetted 8,827 payments for authenticity and validity. The number of payments made amounted to \$78,470,440.31 in disbursements that passed through DNP's network of red flag indicating systems. As a result, DNP identified five payments totaling \$399.14 that required further review because of a death record match of the total amount of payments made and matched for FY 2020. Five cases totaling \$399.14 were not adjudicated. DNP did not identify any payments which matched a vendor name on the Excluded Parties List (EPL). DNP also identified 1 payment that was matched (AIS-Obit) however, the payee was listed as deceased when that was not the case. DNP further identified 142 payments that were unmatchable totaling \$14,371.90.

September 2019 - August 2020*						
	Number (#) of payments reviewed for improper payments	Dollars (\$) of payments reviewed for improper payments	Number (#) of payments stopped	Dollars (\$) of payments stopped	Number (#) of improper payments reviewed and not stopped	Dollars (\$) of improper payments reviewed and not stopped
Reviews with DMF Public	8,827	\$78,470,440.31	N/A	N/A	N/A	\$0
Reviews with SAM Exclusions Public	8,827	\$78,470,440.31	N/A	N/A	N/A	\$0

\*September 2019's information was not available at the time the PAR was published last year. It was available after the PAR's publication. Therefore, the information must be included in this year's PAR.

- Payments reviewed for improper payments includes the total number of payments disbursed by the Agency through the Payments, Claims and Enhanced Reconciliation (PACER) payment system minus any payments that were excluded from matching due to (1) a missing or unmatchable TIN (DMF only) or (2) a missing name.
- Payments stopped is currently not applicable since the DNP matching and adjudication process is based on post payment results.
- Improper payments reviewed and not stopped includes the total number of matches identified by the DNP Initiative that were adjudicated as proper by the Agency.

## FRAUD REDUCTION REPORT

During FY 2020, NLRB OCFO drafted a Fraud Risk Management document that identified Fraud Risks related to payments and the controls currently being performed. OCFO plans to expand on and finalize the Fraud Risk Management document and test related controls during FY 2021. In addition, OCFO is exploring annual fraud training for all OCFO staff.

## REAL PROPERTY

The GSA, the nation's largest public real estate organization, provides workspace for more than 1.2 million federal workers through its Public Buildings Service. Approximately half of federal employees are housed in buildings owned by the federal government and half are located in separate leased properties, including buildings, land, antenna sites, etc. across the country. GSA charges rent to over 100 federal agencies, which is deposited into the federal buildings fund and used to operate the government's buildings and pay rent to private companies for lease space.

The GSA serves as the real estate agent for the NLRB by providing office space in federal and leased space. GSA is the organization that makes the appropriate and final determination for NLRB office locations. Federal building occupancy is the preferred choice. GSA determines which space is the most cost effective for the government. GSA lease actions starts +/- 18 months prior to lease expiration. The lease is signed between the lessor and GSA. The Agency signs an occupancy agreement (OA) with GSA.

This link take you to the GSA's website: <https://www.gsa.gov/tools-overview/buildings-real-estate-etools/inventory-of-gsa-owned-and-leased-properties>. The chart below provides information on NLRB locations.

NLRB Location	Address	Current Building Type	GSA Location Code	GSA Occupancy Agreement (OA) Number	Current Rentable Square Footage	OA Term Start Date	OA Term Expiration Date
Headquarters	1015 Half Street, SE Washington, DC 20570-0001	Leased	DC0719	ADC07116	152,872	6/30/2015	6/29/2025
R-1 Boston	Thomas P. O'Neill Federal Building 10 Causeway Street - 6th Floor Boston, MA 02222-1072	Federal	MA0153	AMA00119	18,333	10/1/2016	9/30/2026
SR-34 Hartford	A. A. Ribicoff Federal Bldg & Courthouse 450 Main St 4th Floor Hartford, CT 06103-3503	Federal	CT0054	ACT01875	14,602	9/27/2020	5/31/2030

R-2 New York	Jacob K. Javits Federal Building 26 Federal Plaza, Room 3614 New York, NY 10278-0104	Federal	NY0282	ANY02166 & ANY02687	21,622	10/1/2011	9/30/2021
R-3 Buffalo	Niagara Center Building 130 S. Elmwood Avenue, Suite 630 Buffalo, NY 14202-2387	Leased	NY7340	ANY07196	10,296	9/20/2015	9/19/2025
RO-3 Albany	Leo W. O'Brien Federal Building 11A Clinton Ave, Room 342 Albany, NY 12207-2366	Federal	NY0300	ANY02196	3,993	3/1/2019	2/28/2029
R-4 Philadelphia	100 Penn Square East, Suite 403 Philadelphia, PA 19107-3323	Leased	PA0549	APA04935	12,525	10/16/2018	10/15/2028
R-5 Baltimore	Bank of America Center- Tower II 100 South Charles Street, Suite 600 Baltimore, MD 21202-2700	Leased	MD0395	AMD05219	20,050	6/14/2012	6/13/2022
RO-5 Washington, DC	1015 Half Street, SE - Suite 6020 Washington, DC 20570-0001	Leased	DC0719	ADC07116	Incl. w/ Headquarters	6/30/2015	6/29/2025
R-6 Pittsburgh	William S. Moorhead Federal Building 1000 Liberty Avenue, Room 904 Pittsburgh, PA 15222-4	Federal	PA0233	APA01602	18,365	12/15/2018	12/14/2028
R-7 Detroit	P. V. McNamara Federal Building 477 Michigan Avenue, Room 05-200 Detroit, MI 48226-2569	Federal	MI0131MC	AMI05260	12,173	2/1/2019	1/31/2028
RO-7 Grand Rapids	Gerald Ford Federal Bldg 110 Michigan St NW, Rm 299 Grand Rapids, MI 49503-23	Federal	MI0137	AMI04500	6,465	9/27/2020	8/31/2029
R-8 Cleveland	Anthony J. Celebrezze Federal Building 1240 East 9th Street, Room 1695 Cleveland, OH 44199-2086	Federal	OH0192	AOH00148	19,286	1/1/2017	10/31/2027
R-9 Cincinnati	John Weld Peck Federal Building 550 Main Street, Room 3003 Cincinnati, OH 45202-3	Federal	OH0189CN	AOH05409	22,971	2/1/2018	1/31/2028
R-10 Atlanta	233 Peachtree Street N.E. Harris Tower, Suite 1000 Atlanta, GA 30303-1531	Leased	GA2152	AGA02990	11,568	2/28/2019	2/27/2021
SR-11 Winston- Salem	Republic Square 4035 University Parkway Suite 200 Winston-Salem, NC 27106-3325	Leased	NC2178	ANC02253	10,209	4/1/2020	12/18/2020
RO-10 Birmingham	Ridge Park Place, Suite 3400 1130 South 22nd Street Birmingham, AL 35205-2871	Leased	AL2154	AAL02336	3,853	8/14/2012	8/13/2022
RO-10 Nashville	810 Broadway - Suite 302 Nashville, TN 37203-3859	Leased	TN2038	ATN02958	3,605	4/15/2013	4/14/2023
R-12 Tampa	South Trust Plaza Suite 530 201 East Kennedy Blvd Tampa, FL 33602-5824	Leased	FL2155	AFL03931	11,702	4/1/2018	3/31/2023

RO-12 Miami	Claude Pepper Federal Building Federal Building, Room 1320 51 SW 1st Avenue Miami, FL 33130-1608	Federal	FL0061	AFL00498	5,769	6/1/2013	3/31/2022
SR-24 Hato Rey	La Torre de Plaza Suite 1002 525 F. D. Roosevelt Avenue San Juan, PR 00918-1002	Federal	PR3928	APR02840	9,343	7/1/2014	6/30/2022
R-13 Chicago	Dirksen Federal Building and Courthouse 219 South Dearborn Street, Suite 808 Chicago, IL 60604	Federal	IL0205	AIL06640	23,860	1/1/2016	12/31/2025
R-14 St. Louis	Robert A. Young Federal Building 1222 Spruce Street, Room 8.302 St. Louis, MO 63103-2829	Federal	MO0106	AMO00055	13,487	6/1/2017	5/31/2027
SR-17 Overland Park	8600 Farley Street, Suite 100 Overland Park, KS 66212	Leased	KS1492	AKS01959	11,057	1/13/2014	1/12/2024
RO-17 Tulsa	Tulsa Federal Building 224 South Boulder Avenue, Room 322 Tulsa, OK 74103-3027	Federal	OK0063	AOK00169	2,233	9/27/2020	8/20/2030
R-15 New Orleans	F. Edward Hebert Federal Building 600 South Maestri Place, 7th Floor New Orleans, LA 70130-3413	Federal	LA0034	ALA01186	18,296	2/6/2019	1/31/2029
SR-26 Memphis	The Brinkley Plaza Bldg. 80 Monroe Avenue, Suite 350 Memphis, TN 38103-2481	Leased	TN2220	ATN01841	9,791	7/16/2020	7/9/2021
RO-26 Little Rock	Metropolitan National Bank Building 425 West Capitol Ave., Suite 1615 Little Rock, AR 72201-3401	Leased	AR1182	AAR01243	1,881	9/1/2020	6/30/2022
R-16 Fort Worth	Fritz G. Lanham Federal Building 819 Taylor Street, Room 8A24 Ft. Worth, TX 76102-6178	Federal	TX0224	ATX00305	12,112	11/1/2012	9/30/2021
RO-16 Houston	Mickey Leland Federal Building 1919 Smith Street, Suite 1545 Houston, TX 77002	Federal	TX0298	ATX02117	5,352	10/1/2014	9/30/2024
RO-16 San Antonio	Garcia Federal Building 615 East Houston Street, Suite 559 San Antonio, TX 78205-1	Federal	TX0164	ATX07520	2,517	9/27/2020	9/30/2030
R-18 Minneapolis	212 3rd Avenue South Minneapolis, MN 55401-2221	Federal	MN0036	AMN03832	14,152	9/27/2020	4/30/2030
SR- 30 Milwaukee	310 West Wisconsin Avenue, Suite #700 Milwaukee, WI 53203-2211	Leased	WI1542RP	AWI02887	10,226	9/1/2013	3/7/2023
R-19 Seattle	Jackson Federal Building 915 2nd Avenue, Room 2948 Seattle, WA 98174-1078	Federal	WA0101	AWA00901	16,307	11/1/2017	10/31/2027

SR-36 Portland	Edith Green -Wendell Wyatt Federal Building 1220 SW 3rd Avenue Portland, OR 97204-2825	Federal	OR0043	APR04200	5,478	10/1/2011	10/1/2021
R-20 San Francisco	901 Market Street, Suite 400 San Francisco, CA 94103-1735	Leased	CA6104	ACA09779	17,029	11/1/2012	7/31/2021
SR-37 Honolulu	Prince Kuhio Federal Building 300 Ala Moana Boulevard, Room 7-245 Honolulu, HI 96850-4980	Federal	HI0011	AHI00093	3,661	10/1/2017	9/30/2027
R-21 Los Angeles	U.S. Courthouse 312 N Spring Street, 10th floor Los Angeles, CA 90017-5449	Leased	CA0041	ACA11399	17,945	10/1/2018	9/30/2028
RO-21 San Diego	555 West Beech Street, Suite 418 San Diego, CA 92101-2939	Leased	CA5938	ACA08118	1,965	1/1/2018	6/30/2021
R-22 Newark	Federal Building 20 Washington Place, 5th Floor Newark, NJ 07102-3	Federal	NJ0056	ANJ00031	17,633	8/1/2017	7/31/2027
R-25 Indianapolis	Minton-Capehart Federal Building 575 N. Pennsylvania Street, Room 238 Indianapolis, IN 46204-1577	Federal	IN0133	AIN00258	12,930	3/1/2018	10/31/2028
SR-33 Peoria	101 SW Adams Street, 4th Floor Peoria, IL 61602	Leased	IL2637	AIL06665	5,599	6/1/2015	5/31/2025
R-27 Denver	Byron G. Rogers Federal Building 1961 Stout Street, 13th Floor Denver, CO 80202-5433	Federal	CO0039	ACO05930	12,743	11/8/2013	11/7/2023
R-28 Phoenix	2600 North Central Avenue, Suite 1400 Phoenix, AZ 85004-3099	Leased	AZ7319	AAZ04330	13,253	11/1/2011	10/31/2021
RO-28 Albuquerque	The Federal Building and U. S. Courthouse 421 Gold Avenue SW, Suite 310 P.O. Box 567 Albuquerque, NM 87103-2181	Federal	NM0502	ANM01766	5,028	7/1/2017	6/12/2027
RO-28 Las Vegas	Foley Federal Building and Courthouse 300 S Las Vegas Blvd, Suite 2-901 Las Vegas, NV 89101	Federal	NV0013	ANV02878	7,952	2/1/2015	2/1/2025
R-29 Brooklyn	Two Metro Tech Center 100 Myrtle Avenue, 5th Floor Brooklyn, NY 11201-4201	Leased	NY7402	ANY07506	23,238	9/11/2016	9/10/2021
R-31 West Los Angeles	11150 West Olympic Blvd, Suite 700 Los Angeles, CA 90064-1824	Leased	CA7365	ACA10028	18,774	2/19/2013	2/18/2023
R-32 Oakland	Oakland Federal Building 1301 Clay Street, Room 300-N Oakland, CA 94612-5211	Federal	CA0281	ACA00440	18,009	11/9/2018	10/31/2028
DOJ- Washington, DC	1015 Half Street, SE - Suite 6034 Washington, DC 20570-0001	Leased	DC0719	ADC07116	Incl. w/ Headquarters	6/30/2015	6/29/2025

DOJ-New York	Jacob K. Javits 26 Federal Plaza, Suite 41-120 New York, New York 10036-5503	Federal	NY0282	ANY09511	4,047	9/11/2017	9/10/2027
DOJ-San Francisco	901 Market Street, Suite 485 San Francisco, CA 94103-1779	Leased	CA6104	ACA09779	Incl. w/ R-20	9/27/2020	7/31/2021



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APPENDICES



## APPENDIX A

### Acronyms

<b>ADA</b>	Antideficiency Act	<b>EEO</b>	Equal Employment Opportunity
<b>AFL-CIO</b>	American Federation of Labor and Congress of Industrial Organizations	<b>EEOC</b>	Equal Employment Opportunity Commission
<b>ALJ</b>	Administrative Law Judge	<b>EVS</b>	Employee Viewpoint Survey
<b>AMB</b>	Acquisitions Management Branch	<b>FASAB</b>	Federal Accounting Standards Advisory Board
<b>CFO</b>	Chief Financial Officer	<b>FEVS</b>	Federal Employee Viewpoint Survey
<b>CFR</b>	Code of Federal Regulation	<b>FFATA</b>	Federal Funding Accountability and Transparency Act
<b>CNN</b>	Cable News Network	<b>FISMA</b>	Federal Information Security Management Act
<b>COOP</b>	Continuity of Operations	<b>FMFIA</b>	Federal Managers' Financial Integrity Act
<b>CWTSato</b>	(Carlson Wagonlit) NLRB's travel Management Service	<b>FPDS-NG</b>	Federal Procurement Data System – Next Generation
<b>DATA Act</b>	Digital Accountability and Transparency Act	<b>FPPS</b>	Federal Payroll and Personnel System
<b>DCIA</b>	Debt Collection Improvement Act	<b>FY</b>	Fiscal Year
<b>DGC</b>	Deputy General Counsel	<b>GAAP</b>	Generally Accepted Accounting Principles
<b>DHS</b>	Department of Homeland Security	<b>GC</b>	General Counsel
<b>DMF</b>	Death Master File	<b>GPRA</b>	Government Performance and Results Act
<b>DNP</b>	“Do Not Pay” List		
<b>DOJ</b>	Department of Justice		
<b>DOL</b>	Department of Labor		

<b>GPRAMA</b>	Government Performance and Results Modernization Act	<b>OBIEE</b>	Oracle Business Intelligence Enterprise Edition
<b>GSA</b>	General Services Administration	<b>OCFO</b>	Office of the Chief Financial Officer
<b>HCPO</b>	Human Capital Planning Officer	<b>OCIO</b>	Office of the Chief Information Officer
<b>IAA</b>	Interagency Agreement	<b>OED</b>	Office of Employee Development
<b>IBC</b>	Interior Business Center	<b>OEEO</b>	Office of Equal Employment Opportunity
<b>IPERA</b>	Improper Payments Elimination and Recovery Act	<b>OGE</b>	Office of Government Ethics
<b>IPERIA</b>	Improper Payments Elimination and Recovery Improvement Act	<b>OHR</b>	Office of Human Resources
<b>IPIA</b>	Improper Payments Information Act	<b>OIG</b>	Office of Inspector General
<b>IUS</b>	Internal Use Software	<b>OMB</b>	Office of Management and Budget
<b>MD&amp;A</b>	Management's Discussion and Analysis	<b>OSC</b>	Office of Special Counsel
<b>MOU</b>	Memorandum of Understanding	<b>OSHA</b>	Occupational Safety and Health Administration
<b>NIST</b>	National Institute of Standards and Technology	<b>PACER</b>	Payments, Claims and Enhanced Reconciliation
<b>NLRA</b>	National Labor Relations Act	<b>PAR</b>	Performance and Accountability Report
<b>NLRB</b>	National Labor Relations Board	<b>SBA</b>	Small Business Administration
<b>NxGen</b>	Next Generation Case Management System	<b>SES</b>	Senior Executive Service
<b>OA</b>	Occupancy Agreement	<b>ULP</b>	Unfair Labor Practice
		<b>USPS</b>	United States Postal Service
		<b>WH</b>	White House
		<b>WHD</b>	Wage and Hour Division

# APPENDIX B

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## Glossary

**Adjudicate:** Formal judgment or decision about a disputed matter.

**Adversarial:** Of a trial or legal procedure in which the parties in a dispute have the responsibility for finding and presenting evidence.

**Arbitrator:** An independent person or body officially appointed to settle a dispute.

**Backpay:** Payment for work done in the past that was withheld at the time, or for work that could have been done had the worker not been prevented from doing so.

**Case:** The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

**Charge:** A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

**Collective Bargaining:** Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

**Complaint:** A document that initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

**Compliance:** The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

**Decisions:** Data related to decisions by the Board and NLRB Administrative Law Judges.

**Deferral:** Under certain circumstances, it may be appropriate for a Regional Director to hold up making a determination on the merits of a charge pending the outcome of proceedings on related matters. Such matters may be pending in the parties’ contractual grievance procedure or before the Agency or other Federal, State or local agencies or courts.

**Expungement:** When a first-time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, making the records unavailable through the state or Federal repositories.

**Gissel Bargaining Order:** Gissel bargaining orders are orders to bargain with a union that may no longer have majority support because of serious employer ULPs that have poisoned the possibility of a fair election.

**Injunctive Relief:** A temporary remedy sought in case of egregious violations of the Act pending final action by the Board in which Counsel for the General Counsel asks a district court judge to issue an order requiring the charged party to cease and desist from engaging in violations of the Act and may also seek certain affirmative actions in order to return to status quo.

**Injunctive Proceedings:** The adjudicatory process by which Counsel for the General Counsel seeks injunctive relief, as described directly above, from a district court judge.

**Interstate Commerce:** In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

**Litigation:** Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

**Meritorious Unfair Labor Practice Charge:** Charge allegations evidencing statutory violations.

**“Nip-in-the Bud” Cases:** Cases arising from allegations of unfair labor practices committed during union organizing campaigns.

**Petition:** A petition is the official NLRB form filed by a labor organization, employee, or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

**Petitioner:** The party who presents a petition to the court.

**Prosecutorial:** Acts related to the process of litigating against a charged party when meritorious charge allegations are found.

**Protected Concerted Activity:** The National Labor Relations Act (NLRA) protects employees’ rights to engage in protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.

**Remedies:** Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement.

**Reinstatement:** To put back or establish again, as in a former position or state.

**Representation Cases:** Initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer.

**Secret-ballot Elections:** A voting method in which voter's choices in an election or referendum are anonymous, forestalling attempts to influence the voter by intimidation and potential vote buying.

**Settlements:** A resolution between disputing parties about a legal case, reached either before or after court action begins.

**Sua Sponte:** A Latin phrase describing an act of authority taken without formal prompting from another party.

**Social Media:** Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

**Status Quo:** A Latin phrase meaning the existing state of affairs, particularly with regards to social or political issues.

**Statutory:** Required, permitted, or enacted by statute.

**Taft-Hartley Act:** The Labor Management Relations Act, better known as the Taft-Hartley Act (enacted June 23, 1947) is a United States federal law that restricts the activities and power of labor unions. The Taft-Hartley Act amended the NLRA, informally the Wagner Act, which Congress passed in 1935.

**Temporary Injunction:** A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action, the purpose of which is to maintain the status quo and preserve the subject matter of the litigation until the trial is over.

**Unfair Labor Practice (ULP):** An unfair labor practice is illegal conduct by either a labor organization or an employer that violates the National Labor Relations Act.

**Union:** An organized association of workers formed to protect and further their rights and interests.

**Withdrawals:** Case resolution resulting from a charging party or petitioner deciding to withdraw the filing of an ULP charge or representation case petition.

# APPENDIX C

## Historical Performance Measures for Goals 1 and 2

**Goal 1:** This goal is new as of FY19 and there is not five years of historical data available to present. FY19 data for Goal 1 can be found in the chart on page 59 in the Performance Section.

**Goal 2:** Promptly and fairly resolve all questions concerning representation of employees.

**Measure:** The percentage of representation cases resolved within 100 days of filing the election petition.

Year	Target	Actual
FY 2015	85.4%	87.1%
FY 2016	85.5%	87.6%
FY 2017	85.7%	89.9%
FY 2018	85.8%	88.8%
FY 2019	85.8%	90.7%

## Historical Performance Measures for Goals 3 and 4

### FY 2015 STRATEGIC GOAL 3 (SUPPORT): ACHIEVE ORGANIZATIONAL EXCELLENCE

#### Management Strategies:

#### Objective 1: Initiative 1:

- The Office of Human Resources (OHR) collaborated with executive officials to refine and expand its performance management program. It held training sessions for Executive staff, Regional staff and Headquarters managers and supervisors on relevant areas of the performance management system. The training focused on the significance of establishing performance plans, providing timely mid-year progress reviews, ensuring that all employees are given appraisals, aligning performance plans with the Agency's strategic goals, and ensuring that performance plans hold employees accountable for achieving results appropriate to their level of responsibility.
- A comprehensive Strategic Human Capital Plan is being developed.
- OHR and the Division of Legal Counsel collaborate regularly to ensure adherence to Agency policies and collective bargaining agreements.
- Management and union representatives successfully work on a Reasonable Accommodations Policy, which was approved by the EEOC.

- OHR issued guidance that expounded on workplace flexibilities for childbirth, adoption, foster care and elder care.
- OHR, on behalf of various NLRB organizational units, issued many recognition awards to employees during FY 2015, including length of service, project and retirement awards.
- OHR held its annual Administrative Professional Day Recognition Ceremony on April 23, 2015, to honor the Agency's outstanding administrative professionals.
- The Agency held its second annual Honorary Awards Program, which recognized eleven employees in a number of different categories.
- The Agency developed and implemented an Agency-wide Cultural Enhancement Program, which will enhance the ability of our increasingly diverse workforce to better work together, and to better understand the cultural differences among the public we serve. The program was launched with holding an "all hands" meeting which featured internal and external speakers who addressed the importance of inclusion and civility to a productive workplace. This was followed by online interactive module and podcasts in which a diverse group of employees shared their life and work experiences, as well as videos and online forums for employees to continue to discuss these topics.
- The Office of Employee Development (OED) also developed and rolled out online training materials, enabling Headquarters employees to better utilize Outlook 2013, Lync and Word 2010, and produced scenario-based videos on ethics topics.
- OED updated the Agency's Management Training Program by developing components such as: enhanced individual development planning and mentoring; obtaining the skills needed for the next level of management; and a pre-supervisory program.
- The GC and the DGC addressed Regional and Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them on their achievements, and seeking suggestions for Agency improvements.

#### Objective 1: Initiative 2:

- OHR and the Office of Equal Employment Opportunity (OEEEO) worked together on the Strategic Recruitment Committee and are developing a Strategic Recruitment Plan.
- OHR routinely partnered with the Local Veterans Employment Representative Program (LVER) to recruit for commonly filled positions, and placed at least five veterans through this program this Fiscal Year.
- The Agency regularly uses the Veteran's Recruitment Appointment (VRA) Special Hiring Authority to place disabled veterans.
- OHR worked to bolster the integrity of its recruitment process and adherence to OPM regulations. It created a series of internal procedures and manuals that are used to correctly navigate the process.



It worked diligently with OPM to redraft its Excepted Service and Pathways policies to ensure that adequate consideration is provided to viable candidates. Furthermore, in direct correlation to OPM's Hiring Reform and the 80-Day Hiring Model, OHR attained an average 74-day hiring rate from the beginning of the process to the on-boarding of the employee for FY 2015.

- OHR implemented a process for applicants with disabilities (Schedule A) which includes a specific mailbox for these applications, retention for 30 days, and focused review when a new vacancy arises in the Agency. If an applicant's qualifications prove to be a match for the job, that information will be forwarded to the hiring manager for further consideration. Presently, applicants are made aware of the program through Agency vacancy announcements on USAJobs and OPM's website.
- The Agency continued to utilize USAJobs in announcing vacancies to a broad category of applicants, including veterans and persons with disabilities.
- OHR entered into a Memorandum of Understanding with the Department of Veteran Affairs to participate in the "VA for Vets Program," in order to process non-competitive hiring actions for veterans and to take part in the in "Feds for Vets" initiative.

#### Objective 2: Initiative 1:

- Facilities and Property Branch (FPB) continued its extensive Communication Plan to keep Headquarters staff informed on matters related to the relocation of the Headquarters facility.
- Following the move, FPB implemented a practice requiring FPB employees to courtesy copy all branch employees on building related requests to ensure that multiple staff are not working on the same task. This practice of sharing information has also resulted in staff feeling more included and aware of work matters transpiring within the branch.
- The Security Branch continued to issue its customer feedback questionnaire, soliciting information to ensure that customer assistance is timely and professional.
- OHR improved communications by distributing numerous documents and notifications via its Ask HR Program.
- The Agency analyzed the FY 2014 FEVS results and is implementing best practices and strategies for strengthening employee engagement and organizational performance through focused leadership and increased communication.
- In response to the FEVS results from FY 2014, Agency managers developed action plans that included: greater transparency, sharing of information, and solicitation of employee input.
- Guidance information on EVS action planning, and best practices involving effective leadership, communication, and engagement, was posted to the Human Capital Planning internal web page.

- The HCPO developed a structured communication plan to increase employees' awareness of the EVS. The response rate to the FY 2015 EVS increased by 15 percent and there was a four percent increase employee engagement scores and a five percent increase in global satisfaction scores.

#### Objective 2: Initiative 2:

- OHR met with incoming Honors Attorneys to seek their feedback on the onboarding process, and how it could be enhanced and improved.
- Training was provided to managers/supervisors on the appraisal process, including how to write performance appraisals, performance management requirements, and their role in communicating expectations to Agency employees on performance management protocols and processes. The training highlighted the importance of getting employees involved in creating their performance plans and having regular feedback discussions with employees.
- The Congressional and Public Affairs Office issued news releases on case successes.
- The GC and the DGC addressed Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them in their achievements, and seeking suggestions for Agency improvements.
- Significant organizational accomplishments are also regularly highlighted to all staff in the Agency newsletter.

#### Objective 2: Initiative 3:

- OEE0 collaborated with OED and the Division of Operations-Management to design and implement a foundational and ongoing diversity and inclusion training program for all Agency employees in alignment with Executive Order 13583.
- OHR continues to provide training to Agency hiring managers on special hiring authorities, including Schedule A, in alignment with Executive Order 13548.
- The Management Directive "MD715" is an affirmative EEO program by which federal agencies can assess, identify deficiencies and conduct barrier analysis of obstacles to EEO and develop ongoing action plans to correct the self-identified deficiencies and work collaboratively to remove identified barriers. The NLRB submitted its report in March 2015 to the EEOC.
- Agency SES Leadership participated in external diversity and inclusion training.
- OEE0 prepared four policy statements that were adopted and issued by Agency leadership on 1) Agency EEO Policy; 2) Statement on the Prevention of Unlawful Harassment; 3) Agency Statement Promoting Alternative Dispute Resolution; and 4) Diversity and Inclusion Policy Statement.
- OEE0 partnered with OHR to incorporate language describing specific standards for inclusion in supervisors' and managers' performance appraisals to measure management accountability on building and maintaining an inclusive work environment.

- The GC's Mentoring Workgroup analyzed the Agency's existing mentoring program and made recommendations on how mentoring can be further developed as a tool to maintain a diverse workforce. In response to the GC's request, the workgroup investigated mentoring models at other federal agencies and their best practices for implantation.
- OEE0 designated staff as Special Emphasis Program Managers (SEPMs) responsible for developing program initiatives that enhance employment opportunities for specific demographic populations and tools to support employee affinity groups.
- OEE0 supports programming initiatives for the Agency's cadre of collateral duty Special Emphasis Program coordinators.

#### **FY 2015 STRATEGIC GOAL 4 (SUPPORT): MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST**

##### **Objective 1: Initiative 1:**

##### **Measure:**

- The Agency completed the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, was migrated successfully into NxGen in September. NxGen was designed and implemented to replace 11 separate legacy systems and integrate them into a single unified solution that leverages multiple technologies. This was the most comprehensive technology project undertaken at the NLRB, and its success has been essential to the Agency's mission.

NxGen presently manages:	
Internal users	1,350
Cases	286,117
Case Actions of the Agency	876,076
Documents, images, and videos, each linked to its Action and Case	6,050,259

##### **Measure:**

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. In FY 2015, 781 documents were sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.
- On April 14, 2015, the Agency expanding its electronic filing program to enable constituents to e-File charges and petitions, the two initiating documents for the Agency's cases. The Agency has received 3,098 electronically filed charge and petitions from the launch of the new service through the end of the

Fiscal Year. Over the course of the Fiscal Year, the Agency received 58,662 documents of all types through its e-Filing program and electronically delivered 3,422 documents to nearly sixty-thousand parties.

#### Measure:

The NLRB has counted millions of votes, investigated hundreds of thousands of ULP charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we do accessible to the public is an important part of the NLRB's mission. For example, the total number of case documents available for public access was 692,456, including Tally of Ballot information. This data is downloadable for analysis at <https://www.nlr.gov>.

Please see <http://www.nlr.gov> for a complete list of the document types available to the public.

#### Objective 1: Initiative 2:

##### Measure:

- Through FY 2015, the Administrative Systems (AS) team actively sought to develop automated solutions to streamline Agency processes.
- The AS team completed a development effort to streamline the enrollment and management processes for the Voluntary Leave Bank. Dynamic reporting was also delivered to the managers and committee to provide aggregate statistics on many aspects of the system.
- The AS team also developed a workflow process for authoring, routing and editing, approving and publishing of documents. This repeatable process will allow groups of users to store documents centrally in a secure authoring library, allowing documents to be finalized and then published to a separate location for consumption by a larger audience.
- The AS team completed a development effort for OHR involving organizing and categorizing all positions and position descriptions (PDs) within the Agency, modifying the PD library, assisting the OHR team with the creation of a set of standardized PD, and developing a streamlined process for OHR and Agency supervisors / managers to update all PDs every three years.
- The AS team completed a development effort and migration of content and documents into a SharePoint site for all continuity of operations (COOP) members. Authors can now create, edit, route and receive approval for yearly COOP plans, and all COOP documents are now available at any time and may be accessed remotely.

##### Measure:

- The Agency awarded its Unified Communications (UC) contract on September 24, 2014, and now expects the implementation to take up to 20 months. After the initial investments in the UC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.

- The first priorities were to upgrade networks in the Agency’s Field Offices and two existing datacenters, and to add network connections to its two new voice datacenters and new Headquarters. These changes add significant bandwidth to the Field Offices, are based on a new, more modern networking technology, and provide greater redundancy to our critical infrastructure. Forty Field Offices are now live on the new network, as are the two existing datacenters, one of the new voice datacenters, and the Agency’s Headquarters.
- All employees in Headquarters now use Skype for Business (SfB) for voice calls, voicemail and instant messaging, as the OCIO deployed the necessary Microsoft Office software and delivered over 775 new unified communications devices.
- OCIO and Operations Management are in the process of planning the SfB deployment to the Field Offices.

#### Measure:

- The AS team continued to build team sites, on request, for geographically dispersed employees to collaborate using Office Online applications, SharePoint lists and discussion forums. Enhanced capabilities continue to be added to allow for user-based filtering of content and more granular management of permissions for documents.
- The AS team completed a development effort for OHR, creating an “Ask HR” knowledge base, which consists of answers to common questions, and if no information is present, a workflow capability will allow a new question to be submitted, routed, and ultimately, become part of the knowledge base.
- The AS team also completed a development effort for the OCFO, creating an “Ask the CFO” knowledgebase, which consists of information related to the Acquisitions Management, Finance and Budget branches.

#### Objective 1: Initiative 3:

#### Measure:

- Required reports to external regulatory bodies were prepared in accordance with established timelines.

#### Measure:

- OCFO held monthly meetings with Contracting Officers and Contracting Officer Representatives (COR’s) to discuss unliquidated obligation amounts, monitor burn rates, and request funding increases and deobligations.

#### Measure:

- OCFO continued to develop a formalized annual training plan for all allowance holders. During FY 2015, finance-related training was incorporated during the monthly obligation monitoring meetings, to include COR’s who recently on-boarded with the Agency.

**Measure:**

- The Finance Branch hosted a training session for CORs and provided a tracking tool to enable increased accuracy and timeliness of reporting burn rates, unliquidated obligation amounts, request for increased funding, and request for de-obligation of funding.
- The Budget Branch worked closely with the program offices and senior leadership to develop a detailed budget spend plan, which is a living document of estimates and actual amounts and is updated monthly on the prior month's execution.
- The Budget Branch has developed several tools for various budget execution line items to monitor timely obligation and liquidation of funds, such as monitoring GSA rent charges, individual training requests, and mass transit benefit funding levels. Some budget lines have demonstrated variable spending cycles during the year, which requires additional training to program managers on the importance of monitoring those cycles to ensure funding requests cover the requirements.

**Measure:**

- The Acquisitions Management Branch (AMB) provided training to Purchase Card Holders regarding electronic submission of monthly statements, and provided guidance on purchase card user registration via the Citibank portal.
- AMB also provided monthly and quarterly reports to the Associate General Counsel (AGC) of Operations- Management, which provided greater insight and transparency on purchasing habits of field offices that it oversees.

**Measure:**

- The NLRB has increased the percentage of contracts awarded woman-owned and small disadvantaged business categories. With AMB's focus on small businesses as the suppliers of choice, continuing to increase the number of awards to small businesses is achievable.

**Objective 2: Initiative 1:****Management Strategies:**Immigration Population

- The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

- The Agency provided direct outreach to immigrant populations by:
  - » Participating in Labor Rights Week activities
  - » Speaking in Spanish and other languages at events organized by the consulates or other community groups to educate the public about the rights afforded under the NLRA
  - » Holding news conferences to disseminate information helpful to immigrant communities
  - » Participating in interviews on Spanish-language radio stations
  - » Staffing phone banks to respond to inquiries from immigrant populations
  - » Staffing booths at informational fairs
  - » Responding to inquiries from individuals who seek consular services
- The Agency has joined with other federal agencies to educate the public by:
  - » participating in the Vulnerable Workers Project
  - » participating in numerous “listening sessions” with those from the Asian American and Pacific Islanders Community
- Other Agency activities include:
  - » meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
  - » meeting with members of the Commission on Human Relations to provide an overview of NLRA rights
  - » making presentations about the NLRA to officials of the French, Colombian, Spanish, and German embassies
  - » speaking at naturalization ceremonies to new citizens from approximately 35 countries about rights they have under U.S. labor laws

### Youth

- The Agency led discussions for high school and middle school classes in English and Spanish concerning the development of the NLRA and the New Deal, as well as the workers’ statutory rights and the Board processes.
- The Agency held mock trials for schools to demonstrate how an ULP trial is conducted.
- The Agency engaged in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.



- The Agency signed an MOU with the Ministry of Foreign Affairs of the Republic of Colombia. Various Regional Offices also held local signing ceremonies with local Colombian consulates, with follow-up outreach sessions.
- The Agency partnered with DHS, DOL (WHD, OSHA and OFCCP), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.
- The Agency presented at the national EEOC EXCEL Conference in Washington, DC, on concerted activity in social media
- DOJ's Office of Special Counsel hosted two webinars for NLRB field personnel to covering the intersection of the NLRA and immigration law.
- Internal Agency deliberations occurred concerning effective outreach methods, including targeting specific audiences through the use of twitter, YouTube, Facebook, and news aggregators.
  - » Since its release in August 2013, the NLRB app has been downloaded 19,296 times
  - » The Agency implemented a SharePoint site available to all of its outreach officers. This site includes a centralized area for collecting outreach presentation materials and a discussion board for addressing outreach inquiries.
  - » The Agency maintains a link on its public website for outreach requests, which are routed to the appropriate Region.
  - » The Agency has inserted QR codes in its correspondence to direct the public to our website.
  - » More Regional Offices are considering producing newsletters in electronic format for delivery through GovDelivery.
- Outreach sessions for veterans and employee advocate organizations were held explaining Protective Concerted Activity, in particular.

### Objective 3: Initiative 1:

#### Measure:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete our annual ethics briefing. This year's briefing served as a reminder to our leadership of all the available ethics training products.
- The "Braking Bad Email Habits" training series emphasized that Agency employees should use their government email in a way that complies with government and legal ethics rules, and avoids the disclosure of confidential case-related information. A related memo was sent to all field professionals to encourage those that had not yet reviewed the material to do so as it was an effective learning tool.

- The Ethics Office provided general ethics guidance to Board Members regarding the use of private social media accounts while serving as a Member of the Board, and met with the DGC, the Chief of Staff to the Chairman, and others to offer guidance in identifying potential conflicts of interest in an administrative program.
- At the request of the GC, the Ethics Office developed and delivered a training session on Civility during the Attorney Trial Training and presented a similar session to Headquarters staff.
- The Ethics Office helped establish a reporting process that would ensure that newly hired and newly promoted employees receive required ethics training and complete required financial disclosure reports (as appropriate) in a timely manner.

#### Measure:

The Ethics Office continued to seek out opportunities to educate Agency employees about their ethical obligations.

During FY 2015 the following was provided:

- A conclusion to the “Braking Bad Email Habits” series that covered the ethical use of government email.
- A Skip Counsel and Attorney-Client Privilege training program was presented to nine Regional Offices.
- Monthly distribution of the “On the Road with the Ethics Code” Job Aids that provide timely legal ethics information to all board agents.
- Monthly Agency newsletter articles. These articles covered, where to find government and legal ethics information on the Agency website, how to navigate gift giving during the holiday season, and provided real-life examples of the consequences of violating criminal conflict of interest statutes.
- Ethics social media guidance for distribution to the Presidential Appointees.
- The redistribution of a Hatch Act job aid to serve as a reminder about partisan political activity.
- Presented legal ethics topics at two attorney conferences co-sponsored by the NLRB and assisted in planning the ethics programming for a conference.
- Provided ethics briefings to newly appointed Regional Directors.
- Distributed one-page Job Aid covering Seeking Other Employment.
- Partnered with the OED to begin development of two legal ethics training programs for online/on-demand distribution to all legal professionals.
- Developed and presented a training session on Civility. This program was offered to attendees at the Trial Training in August and to professionals in Enforcement Litigation, Contempt, Compliance and Special Litigation Branch, and the Washington Resident Office.

- Provided guidance to the GC and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as “prejudging” a case, and lead to requests for recusal.

**Measure:**

- As of September 30, 2015, the Ethics staff received 622 inquiries and 87.7 percent were resolved within 5 business days.

**Measure:**

- As of September 30, 2015, 100 percent of the financial disclosure reports submitted were reviewed within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

**Measure:**

- Ethics staff rolled out the Office of Government Ethics (OGE) electronic filing system to all filers of the Office of Government Ethics (OGE) 278. This included:
  - Meeting with OGE project managers
  - Attending user and administrator training sessions
  - Completing systems and user testing to ensure that NLRB employees would be able to use the system via the NLRB network and agency provided laptops
  - Finalization of NLRB Filer training materials to include: job aids, user guide, demonstration videos, and online training module
  - Creation of OGE 278e Integrity webpage on the NLRB Insider where all training materials are archived
  - Live training sessions on how to file your OGE 278e in Integrity for the first time

**Objective 3: Initiative 2:**

- The OCIO responded timely to internal audits and information requests including:
  - » Audit of the NLRB Fiscal Year Financial Statements
  - » FY 2014 Review of Internal Controls (FMFIA Survey)
- The OCFO submitted timely Corrective Action Plans as required in response to the FY 2014 Financial Statements audit and also timely prepared a corrective action plan for OIG Travel audit OIG-AMR-75-15-02. The actions that were taken and submitted to remediate recommendations found in Audit OIG-AMR-65-11-03 “Purchase Cards” were reviewed by the OIG.

### Objective 3: Initiative 3:

The OCIO responded timely to external information requests including:

- Questions posed in the OMB Memorandum M-15-01, FYs 2014-2015 Guidance on Improving Federal Information Security and Privacy Management Practices
- Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
- NARA's FY 2014 Records Management Self-Assessment
- FY 15 Q1 Federal Information Security Management Act (FISMA) Data Call
- Trusted Internet Connection (TIC) POA&M February 2014 Data Call
- FY 15 Q2 Federal Information Security Management Act (FISMA) Data Call
- Multiple security - and privacy-related ad hoc data calls, including for MS15-011 software "bug" and Indicators of Compromise (IOCs) related to OPM's personnel systems data breach

### Objective 3: Initiative 4:

#### Measure:

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of fourteen days for requests received from October 1, 2014, to September 30, 2015. The Agency received 4,644 requests for this period and responded to 3,543 of those requests in 1-20 days. Thus, 78.34 percent of the FOIA requests were processed within the 20-day statutory time period.

#### Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in about 20 percent of the FOIA requests received during the Fiscal Year.

#### Measure:

- The Agency received 24 FOIA Appeals from October 1, 2014, to September 30, 2015. The average elapsed days to process the appeal was 24 business days.

### FY 2016 STRATEGIC GOAL 3 (SUPPORT): ACHIEVE ORGANIZATIONAL EXCELLENCE

#### Management Strategies:

#### Employee Development

- The Office of Human Resources (OHR) continued its partnership with the Office of Personnel Management (OPM) on the implementation of USA Performance, a new performance management reporting system.

- » OHR issued a memorandum titled Performance Management Validation Cycle to all Agency employees to inform that all management officials had to complete a Performance Management Validation Spreadsheet certifying that they had issued properly executed performance plans to all of their employees.
- » OHR completed a data validation, which showed that more than 86 percent of employees were issued properly executed performance plans. OHR's goal of 100 percent execution of performance plans will be achieved with the full implementation of USA Performance in June 2017.
- The Office of Employee Development (OED) developed online content for legal writing and provided legal writing coaching for Headquarters employees.
- OED is updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance released by OPM on September 28, 2015.
- The Security Branch worked with OED to release the FY 2016 Continuity of Operations Training for Agency personnel via Skillport, and also hosted an Active Shooter Training Event at NLRB Headquarters, which was internally posted for access by all employees.
- In compliance with OPM's hiring reform efforts, OHR implemented a Standard Operating Procedure to provide a detailed explanation and overview of the processes to be followed when a vacancy has been identified and when positions are filled internally.

### Workforce Management

- OHR continued to utilize the Workforce Recruitment Program for College Students with Disabilities as a hiring flexibility for managers to recruit qualified postsecondary students and recent graduates with disabilities who are interested in summer internships or permanent jobs.
- OHR leveraged its relationship with U.S. Department of Veterans Affairs through the Feds for Vets Program, which allows for the recruitment of veterans under various special hiring appointing authorities, such as veterans who are 30 percent or more disabled. Under the program, approximately five special hiring appointments were completed, and one appointment was converted to a career-conditional appointment.
- The HCPO implemented a communication plan to encourage employees to take the EVS, which included guidance on monitoring the participation rates, talking points, and FAQs.
- OHR made enhancements to the New Employee Orientation that includes more information about the Agency to help new employees transition successfully.
- The Office of Equal Employment Opportunity (OEEEO) developed and implemented a training program mandatory for all supervisors' managers and senior executive leaders on whistleblower rights and protections for all Agency employees.

- OEE0 recommended that supervisors' and managers' appraisals contain more specific language to measure their efforts to maintain an inclusive work environment, as an action item from the MD715 report submitted to the EEOC.
- OEE0, OED, and the Division of Operations- Management collaborated in the Agency workgroup on the Culture Enhancement Program and rolled out training podcasts and interviews from a diverse array of Agency employees in segments throughout the Fiscal Year.
- OEE0 sponsored the Agency's network of Asian American and Pacific Islander employees in its request for support from Agency leadership. OEE0 conducted a briefing with Agency leadership on the topic of Employee Resource Groups (ERGs).
  - » There was a briefing by OPM diversity and inclusion experts for Agency leadership to address questions about ERGs.
  - » Consultations with the unions representing Agency employees will assist OEE0 when drafting final recommendations to Agency leadership.
- OEE0 and OHR briefed leadership on the Strategic Recruitment Plan and received critical feedback for the plan. OEE0 and OHR are working to implement the plan in early FY 2017.
- OEE0 develops and hosts special emphasis observances at Headquarters, some of which have been made available to field offices through simultaneous broadcast and/or digital recording.

### Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the FY 2015 EVS results focusing on: identifying Agency trends/ barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts.
  - » During the organizational assessments, results were provided and the two EVS Agency-wide strategic areas of focus, effective leadership and communication, were discussed.
  - » Agency leadership will be implementing action plans/best practices designed to drive higher levels of employee satisfaction and engagement within their respective organizations, with a particular focus on improving effective leadership and communication.
  - » The HCPO also developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.

#### FY 2016 STRATEGIC GOAL 4 (SUPPORT): MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST

##### Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:	
Internal users	1,368
Cases	309,700
Case Actions of the Agency	1,001,206
Documents, images, and videos, each linked to its Action and Case	7,543,929

The Agency expanded electronic distribution of case documents in FY 2016 through the USPS for 15 document types, resulting in 626 documents being sent to the USPS electronically and savings for the NLRB.

The Agency uses an electronic filing program (e-File) to allow constituents to electronically file documents with the Agency.

Number of e-Filings Received	51,229
Number of Documents Received	79,011
Number of cases filed thru e-Filing Charges and Petitions	9,958
Number of Board and ALJ Decisions E-Served	803
Total Number of parties E-Serviced Decisions	54,262
Number of E-Deliveries of Case Documents	3,546

The total number of case documents available for public access in FY 2016 was 984,663

In FY 2016, the Agency expanded the use and capabilities for electronic filing to enable parties to e-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed thru Charge and Petition Wizard was **805** in FY 2016.

Please see <http://www.nlr.gov> for a complete list of the 564 document types available to the public.



- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- The Agency awarded its UCC contract on September 24, 2014. Through FY 2016, 48 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's HQ were upgraded to the new network and 47 field offices were migrated fully migrated to Skype for Business.
- In FY 2016, the OCIO deployed over 1020 iPhone 6's and 6-Pluses to the Field.

#### Financial Management:

- To enhance internal controls of the purchase card program, Acquisition Management Branch (AMB), in coordination with the Budget Office implemented a process by which quarterly target amounts for purchase card spending are sent to each of the Headquarters and Regional Offices. These amounts are disseminated at the beginning of each quarter to the Office of Operations- Management. Operations-Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the Regional Offices.
  - » In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters purchase card holders submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
  - » AMB provided monthly and quarterly reports to the Budget Office which offered greater insight and transparency on purchasing habits and spending. By spending hours analyzing what was being purchased on the p-card and working with the Budget Office, senior leadership had more visibility into that budget line item on the Spend Plan. Analysis of this data also identified purchases that should be on a contract and lead to the establishment of the HQ and field office quarterly bulk purchases.
- In the Agency's continuing effort to increase its financial integrity, financial statement crosswalks were established in order to accurately and efficiently integrate general ledger account balances to the NLRB financial statements. This reduces the timeframe it takes to produce the statements.
- Updated and submitted the NLRB Travel Card Management Plan, as well as travel charge card metrics, to OMB per the Circular no. A-123 Appendix B guidance.
- Developed and disseminated procedure guides for witness payment processes to allow for more timely payments.

- Developed and disseminated travel reimbursement processes internally with accounting technicians and externally with office managers and travel arrangers to increase accuracy in travel reimbursements.
- Successfully implemented the Undelivered Orders (UDO) review process, performed on a quarterly basis that assists in liquidating obligations timely and accurately.
- As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned small businesses. AMB continues to focus on small businesses as the supplier of choice, and particularly on increasing the number of awards to service-disabled veteran owned small business.
- During FY 2016, the Agency reported a total of \$20.26M and 372 contract actions in the Federal Procurement Data System (FPDS). Of this amount, \$7.4M and 181 actions went to small businesses.

Fiscal Year SBA Goaling Report					
Category	Goal	2016	2015	2014	2013
Small Business	23%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	3.43%	2.13%	2.27%	0.84%

### Agency Outreach

- Designated Immigration Coordinators in each Regional office act as a liaison between the office and Headquarters staff regarding casehandling issues that may affect the immigrant worker community.
- The Agency prepared outreach materials for immigrant communities for use during outreach events, and a letter that outreach coordinators may use to introduce themselves to organizations that serve immigrant communities and offer outreach services. The outreach coordinators have been provided with a “collaboration packet” with the contact information for their outreach counterparts with the EEOC, WHD, and OSHA.
- During FY 2016, the Agency provided direct outreach to immigrant populations by:
  - » Speaking in Spanish and other languages at events organized by the consulates or other community groups, such as the Workplace Justice Project to educate the public about the NLRA

- » Participating in interviews on Spanish-language radio stations
- » Responding to inquiries from individuals who seek consular services
- » Speaking at naturalization ceremonies to new citizens
- » Participating in Asian Public Interest and Public Service Panels
- » Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
- Activities directed at the youth population include:
  - » Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
  - » Holding mock trials for schools to demonstrate how an ULP trial is conducted
  - » Engaging in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers
  - » Participating in a union-sponsored youth-to-youth apprentice training
- The Agency is Partnering with DHS, DOL (Wage and Hour Division (WHD), OSHA, Office of Labor Management Standards (OLMS), and Office of Federal Contract Compliance Programs (OFCCP), OSC, DOJ and EEOC in an IAWG for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The work group seeks to:
  - » Ensure agencies' immigration enforcement and worker protection policies, promote workers' cooperation with labor and employment law enforcement authorities without fear of retaliation;
  - » Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by enmeshing immigration authorities in labor disputes; and,
  - » Ensure the consistent enforcement of federal labor, employment, and immigration laws.
- The Agency has produced a new informational pamphlet, available on the NLRB website in both English and Spanish, titled "Protecting Employee Rights," which contains an expanded discussion of an employee's right to engage in concerted activity and other rights under the NLRA.
- The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

#### Ethics:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete the annual ethics briefing. Scenarios were provided that demonstrated how well-

meaning federal employees could violate government ethics laws and regulations when participating in outside activities, fundraising, and speaking engagements.

- The Ethics Office developed and delivered a Job Aid that covered participation as a member of a Board Directors for a non-federal organization. All employees are required to request permission from their approving official prior to accepting a position on a Board. Approving Officials are directed to consult with the Ethics Office prior to granting approval. A list of information that employees must give to their approving officials is also provided.
- The Ethics Office developed an addendum that is used by all NLRB employees and Presidential Appointees to affirm that by consenting to the recording of a presentation, the NLRB employee or official is not permitting the sponsor to use their official title or likeness to advertise or endorse the final product. This addendum is consistent with the requirement, reinforced by the OGE at its latest symposium, that Executive Branch employees take reasonable steps to ensure that a third party does not misuse a government employee's position to promote their products or events.

The Ethics staff continued to seek out opportunities to educate all Agency employees about their ethical obligations. Throughout FY 2016 the ethics branch:

- Distributed a Speaking Engagements guidance memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Provided OHR with government ethics information that will be used in the OHR New Hire Orientation presentation.
- Provided guidance to the GC and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as “prejudging” a case, and lead to requests for recusal.
- Provided legal ethics guidance regarding Immigration and Candor to the Tribunal in consultation with the Immigration Unit.

#### Guidance Provided

Measure:	Goal	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%

- During FY 2016, the Ethics Office received 844 inquiries. 737 (83%) were resolved within five business days.

- » The increase in the number of days to provide guidance is directly related to the significant number of cases in a new area; conflicts involving Board of Director positions. The Ethics Office identified and responded immediately to more routine matters within the targeted time frame. In order to respond more quickly to more complex situations, a template was developed in order to create customized responses for the various types of Board of Director positions. 52% of 53 cases involving Board of Directors exceeded the five business day benchmark. However, the Ethics Office kept everyone apprised of their progress prioritized according to need.
- All financial disclosure reports filed in FY 2016 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.

**Note:** Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

#### Internal and External Audit Responses:

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.

The OCIO and the OCFO responded completely and timely to external information requests including:

- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- CISCO vulnerability Data Call in Q2
- Independent Financial Statement Audit

#### FOIA:

##### Processing Times

Measure:	2016	2015	2014
Respond to initial FOIA requests within 20 working days	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	32.35 working days	24 working days	20 working days

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of 32.7 working days for requests received from October 1, 2015, to June 30, 2016. The Agency received 2,682 requests for this period and responded to 982 of those requests in 1-20 days. Thus, 36.6 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period in about 25.4 percent of the FOIA requests received during the Fiscal Year.
- The Agency received 23 FOIA Appeals from October 1, 2015, to June 30, 2016. The average elapsed days to process the appeal was 32.35 business days.

The increase in processing times correlates to the centralization. In the FY 2014 FOIA duties were handled by Headquarters and each Field/Regional Office by their respective FOIA Points of Contacts (POCs). For uniformity and consistency in FOIA handling, it was decided to centralize FOIA processing and this began at the end of FY 2014 with Headquarters processing, in addition to its own requests, those of Regions 10 and 28. By June of 2015, all FOIA requests were handled at HQ. The consolidation resulted in a very significant increase in the amount of requests handled by Headquarters. In addition, the Branch was dealing with new staff members, who required necessary training to become proficient in handling requests. There were also difficulties associated with the technology that was available to the Branch. However, the technology has been upgraded and the Branch is currently working with OCIO on making additional improvements to the technology. With the staffing and technology issues well in hand, the Agency anticipates significant improvements in processing times in FY 2017.

### **FY 2017 STRATEGIC GOAL 3 (SUPPORT): ACHIEVE ORGANIZATIONAL EXCELLENCE**

#### **Management Strategies:**

#### **Employee Development**

- The Office of Human Resources (OHR) continues its partnership with the Office of Personnel Management (OPM) on the implementation and rollout of the new Agency-wide performance management reporting system, USA Performance. In September 2017, performance plans for all non-bargaining unit employees were fully integrated.
- The Agency continued to comply with OPM's hiring reform efforts, including the 80-day hiring model.
- Domestic Violence, Sexual Assault, and Stalking Awareness training was released to all employees and 1,452 employees have completed the training. Continuity of Operations Training was released, and 1,275 employees have completed the training. The Personal Security On-the-Job Course completion is being monitored to ensure new field employees complete it within the first 90 days on the job.
- OEEO collaborated with a workgroup consisting of OHR and OED, to engage in pre-decisional involvement discussions with the NLRBU and the NLRBPA to develop and implement mandatory training for managers and supervisors on the Agency's Reasonable Accommodation Policy. The workgroup has developed a comprehensive training module and anticipates launching the training in FY 2018.

- The GC Mentoring committee, which includes OEE0, has been focused on developing ways to measure the success of the Agency's mentoring program by ensuring that the mentoring program supports Agency diversity and inclusion goals, and exploring ways to develop mentoring into a more robust individual development vehicle. OEE0's collaboration with this workgroup led to the development and launch of a revised survey for mentees, mentors and mentoring program managers that will enable management to gauge the impact of the program.

### Workforce Management

- The Agency instituted a series of trainings that provides pertinent information on the history of disability in the workforce, current workplace laws and regulations, as well as information on Agency recruitment. HR Staff has taken OPM's HR University training entitled "A Roadmap to Success: Hiring, Retaining and Including People with Disabilities" and "Issues, Impacts and Implications of an Aging Workforce" by the Institute on Employment and Disability.
- OEE0 led the Agency-wide effort to develop a plan for the Agency to develop into a model federal EEO employer as envisioned and implemented through the EEOC's Management Directive 715 (MD715). OEE0 conducted quarterly meetings with a cross section of organizational units, including the Office of Human Resources (OHR), the Office of Employee Development (OED) and the Division of Operations-Management (OPS). Each office was required to identify, develop, measure and report out on its progress on issues related to barriers to full opportunity. These efforts resulted in a more relevant and responsive MD715 report and plan.
- OEE0 collaborated with OGC and OED to develop and launch mandatory training for all Agency managers and supervisors on issues and best practices in supporting transgender employees' transition in the workplace. The training was also made available on a voluntary basis to all Agency employees.
- The HCPO worked on developing a report detailing a deep dive analysis of the changing composition of the workforce and shifting work patterns/trends, including demographics, diversity, size, attrition, performance, and training, to inform core competency requirements for the future workforce.
- The Security Branch completed 23 percent of the backlogged investigation this Fiscal Year.

### Motivation

- The HCPO conducted 18 EVS organizational assessments with Agency heads and senior executives EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and engaging in action planning. During those meetings, the HCPO also discussed the two EVS Agency-wide strategic areas of focus (effective leadership and communication) and its impact on improving



EVS scores and the workforce culture. As a result, Agency leadership endorsed an action plan, with a particular focus on enhancing employee engagement, commitment and satisfaction.

- The HCPO developed an online Employee Suggestion Box making it easier for employees to now go online and submit suggestions electronically.
- The HCPO held the first ever Sensing Session where non-supervisory personnel within the Division of Administration (DoA) assembled to discuss the customer experience based on feedback received from customers. The sessions examined mapping the customer experience and looking for fresh service ideas to improve it; getting front-line employees from each of the functional branches to collaborate on identifying the causes of problems and finding innovative solutions; and coordinating activities to maximize the speed of service from the customer's point of view. Through this method, DoA employees had an active voice in developing innovative solutions and the sessions marked an important milestone in employee engagement and communication efforts linked to the EVS. The HCPO plans to rollout Sensing Sessions to other organizations with the Agency.
- OHR also administered the annual Administrative Professional Program where six Agency employees were selected for recognition.

#### **FY 2017 STRATEGIC GOAL 4 (SUPPORT): MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST**

##### **Information and Technology:**

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:	
Internal users	1,379
Cases	331,074
Case Actions of the Agency	1,115,809
Documents, images, and videos, each linked to its Action and Case	8,977,578

The Agency expanded electronic distribution of case documents for 15 document types, resulting in 626 documents being sent to the USPS electronically and in savings for the Agency.

The Agency uses an electronic filing program (e-File) to allow constituents to electronically file documents with the Agency.

Number of e-Filings Received	51,369
Number of Documents Received	82,459
Number of cases filed thru e-Filing Charges and Petitions	23,356
Number of Board and ALJ Decisions E-Served	563
Total Number of parties E-Serviced Decisions	35,936
Number of E-Deliveries of Case Documents	4,848

The total number of case documents available for public access in FY 2017 was 1,146,108.

In FY 2017, the Agency expanded the use and capabilities for electronic filing to enable parties to e-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed through the Charge and Petition Wizard was 662.

Please see <http://www.nlr.gov> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- The Agency awarded its UCC contract on September 24, 2014. Through FY 2017, 49 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's Headquarters were upgraded to the new network and field offices were fully migrated to Skype for Business.
- In FY 2017, the OCIO deployed over 1,020 iPhone 6's and 6-Pluses to the Field Offices.

#### Financial Management:

- To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office, continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each Headquarters and Regional Offices. These amounts are disseminated at the beginning of each quarter to the Division of Operations Management. Operations Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the Regional Offices. In addition to quarterly target amounts sent to the

Headquarters Offices, all Headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.

- In April 2017, AMB, in coordination with the OCIO, issued a large IDIQ award for Information Technology (IT) services, and ensured strategic sourcing opportunities were carefully effectuated. The result of this acquisition provided the Agency with a framework to promote an agile systems development life cycle, and empowered the Agency's IT personnel to adopt new technologies and automate processes which resulted in increased proficiencies and budgetary savings.
- AMB continued to utilize the bulk purchasing program for paper and toner across the Agency. The program allows for better coordination, distribution and cost-savings of required items. In FY 2017, bulk orders took place in November, February, May and August.
- AMB implemented Split Pay for travel payments, which allows vouchered transactions which utilized the Agency charge card to pay Citibank directly.

As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses.

From October 1, 2016, – September 30, 2017, a total of \$16M and 339 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$6.7M and 176 actions went to small businesses; approximately 41.7 percent of contract dollars and 51 percent of contract actions were awarded to small businesses.

Category	Goal	2017	2016	2015	2014	2013
Small Business	23%	41.7%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	7.47%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	28.33%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	1.62%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	23.33%	3.43%	2.13%	2.27%	0.84%

## Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, Philippine Embassy, Ecuadoran Consulate, El Salvador Consulate, Labor Alliance Committee on Minority Affairs, Colorado Central Region Farmworker Project, West Harlem Development Corporation, and Workplace Justice Project, Justice, Equality and Safety in the Workplace, to educate the public about the NLRA
- Participating in Labor Rights Week activities organized by the Mexican Embassy and Consulates at various locations throughout the country
- Speaking at naturalization ceremonies
- Participating in interviews on Spanish-language radio stations
- Staffing booths at informational fairs
- Responding to inquiries from individuals who seek consular services
- Participating in Platicas en Consulado (Consul on Wheels)
- Participating in a Univision phone bank
- Speaking at the Federacion De Clubes Zatecanos event sponsored by the Mexican consulate
- Speaking at Filipino Workers Center SAMA-SAME Network Meetings

Other Agency activities directed at the immigrant population include:

- Speaking at naturalization ceremonies to new citizens
- Participating in Asian Public Interest and Public Service Panels
- Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation from South Korea

Activities directed at the youth population include:

- Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
- Holding mock trials for schools to demonstrate how an ULP trial is conducted
- Leading discussions at the Hanna Boys Center/La Luz Center

- Participating in Youth to Youth Apprentice Training program

The Agency continued to partner with DHS, DOL, OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- Participating in “listening sessions” coordinated by worker advocacy groups.
- Participating in Wage Theft Task Force discussions
- Meeting with the Illinois Attorney General’s Office
- Meeting with the Michigan Employment Relations Commission
- Participating in a forum sponsored by City of Chicago Department of Human Services
- Participating in a community outreach program sponsored by U.S. Rep. Susan Brooks
- Participating in the EEOC Training Institute Technical Assistance Program Seminar
- Participating in the California Association of Labor Relations Officers annual conference
- Participating in an FMCS open house
- Providing outreach to the New York State DOL Anti Retaliation Task Force
- Participating in SBA Ombudsman roundtables and listening sessions
- Participating in DOL Prevailing Wage Seminar

## Ethics

The Ethics Staff continued to meet with the GC’s office to review the status of all ethics projects and to discuss notable ethics issues.

In coordination with the Office of the GC, the Ethics Staff:

- Developed and distributed guidance concerning OPM’s updated Combined Federal Campaign (CFC) regulations to all Agency employees.
- Met with Agency leadership to discuss the limitations placed on CFC fundraising.
- Distributed an updated Speaking Engagements DAEO memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Distributed guidance to all supervisors and managers highlighting the restrictions that apply when a supervisor serves as a campaign coordinator and/or keyworker for the Combined Federal Campaign (CFC).

- Suggested updates to the Agency’s Pro Bono program to comply with government ethics regulations and the Agency’s IT policy.
- Completed a Structural Assessment of the Ethics Office to maximize resources.
- Developed and distributed a Hatch Act webcast to all Agency employees.
- Answered extensive Hatch Act hypotheticals submitted by the NLRBPA.
- Distributed a memo which was intended to remind supervisors and managers that they should not encourage their subordinates to participate in outside activities or causes, including political advocacy events and activities. The memo explained that this conduct would implicate the regulations in the Standards of Conduct concerning misuse of position, as well as the Hatch Act, if the conduct involves political activity. The DAEO discussed this memo with Agency Leadership at a GC staff meeting.
- Assisted the Office of the OCFO in the review of the Agency’s travel policy to ensure that it is consistent with 31 U.S.C. 1353 which covers Travel Reimbursement from a Non-Federal Source.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY 2017, the Ethics Staff:

- Developed a comprehensive ethics orientation package that is used in the onboarding of NLRB Political Appointed Senate Confirmed employees (PAS).
- Provided customized ethics briefing to newly appointed Board Members.
- Met with newly appointed Regional Directors to discuss how the Ethics Office supports each Regional Office.
- Provided Operations Management with guidance concerning the ethics limitations placed on NLRB employees who are engaged in outreach activities.
- Provided Ethics Briefings for the Professional Exchange Program and Honors Attorney Orientation.
- Developed ethics training materials that will be distributed through the Agency’s SharePoint page in the first quarter of FY 2018.
- Developed comprehensive post-employment guidance which emphasizes an attorney’s recusal obligations after departure from the Agency.
- Continued to participate in the Office of Human Resources (OHR) New Hire Onboarding.
- Continued to use the “Ethical Highway” webpage to archive guidance documents, newsletter articles, Tips of the Month, and Job Aids.

Measure:	Goal	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%

- All financial disclosure reports filed in FY 2017 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the OGE's filing requirement.
- In mid-January, the Ethics Office began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for calendar year (CY) 2016. In all cases, the Ethics Office completed the review of each report within 60 days of receipt and notified the filer of any real or potential conflicts.

During FY 2017, the Agency has completed its review of:

- 30 Annual Confidential Financial Disclosure Reports (OGE 450)
- 84 Annual Public Financial Disclosure Reports (OGE 278e)
- 9 New Entrant Public Financial Disclosure Reports (OGE 278e)
- 119 Monthly Transaction Reports (OGE 278T)
- 13 Termination Reports (OGE 278)

**Note:** Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

#### Internal and External Audit Responses:

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.
- OCFO responded to the Data Act audit.
- OCIO responded to one C-CAR data call regarding Kaspersky software.
- OCIO responded to one C-CAR data call regarding WannaCry Ransomware.
- OCIO responded to Risk Management Assessment data calls related to Executive Order 13800 "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure," and OMB Memorandum M-17-25.



## FOIA

Measure:	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	46.36 days; 35.9 %	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	10.5%	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	20 working days	32.35 workings days	24 working days	20 working days

- Based on the information in the FOIAonline, the Agency responded to initial FOIA requests in an average of 46.36 working days for requests received from October 1, 2016, to September 30, 2017. The Agency received 2,217 requests this period and responded to 798 of those requests in 1-20 days. Thus, 35.9 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period by sending a letter to the requester taking an additional ten working days to respond to the request in approximately 10.5 percent of the FOIA requests received during the FY 2017.
- The Agency received 11 FOIA Appeals from October 1, 2016, to September 30, 2017, and responded to ten of these appeals. The Agency responded to eight of those appeals in 1-20 days. Thus, 72.7 percent of the FOIA appeals were processed within the 20-day statutory time period.
- The Agency did not seek an extension of time for the FOIA appeals received from October 1, 2016, to September 30, 2017.
- All FOIA requests and appeals are now processed in Headquarters. In FY 2017, the influx of new staff members, most of whom required significant training until they became proficient in handling requests, and difficulties associated with technology, which has since been upgraded, affected FOIA response rates.

### FY 2018 STRATEGIC GOAL 3 (SUPPORT): ACHIEVE ORGANIZATIONAL EXCELLENCE

#### Management Strategies:

#### Employee Development

- The agency continued to move forward with the transition to USA Performance. Guidance was issued on July 3, 2018, to managers and supervisors on completing the first rating phase using USA Performance for all Non-Bargaining Unit Employees.
  - » OPM conducted an audit to make certain that the essential points of the Agency's performance management system are in compliance. This was validated by OPM staff during the Human

Accountability Assessment Framework (HCAAF) audit in April 2018. OPM advised that NLRB systems provided robust tools and resources to support the process.

- Security Branch hosted Active Shooter Preparedness Training for the Headquarters employees. The Security Branch is ensuring through Office Managers that all field offices have received this critical training. The last time this was coordinated through the field offices was in FY 2016.
- Office of Employee Development (OED) developed online content for legal writing and provide legal writing coaching for Headquarters employees.
- Office of Employee Development (OED) continued updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance to address critical future skills needed by the Agency.
  - » Additionally, upon the acquisition of additional staff, the HCPO plans to work with leadership to develop a core set of HRstat metrics to use in tracking and analyzing competencies and skills gap data for NLRB's mission critical occupations. The Security Branch worked with OED to release the FY 2016 Continuity of Operations Training for Agency personnel, for the third year in row via Skillport.
- HCPO developed a draft Human Capital Operating Plan pursuant to the newly revised regulations at 5 CFR 250. The draft outlines human capital goals, objectives, and strategies and is currently being reviewed by management.
- The Agency continued to comply with OPM's hiring reform efforts by using the 80-day hiring model.

### Workforce Management

- The Agency continues to provide information and pertinent training regarding disability in the workforce, workplace laws and regulations, as well as information on Agency recruitment. During the 4th Quarter, the Office of Human Resources (OHR) embarked on a new partnership with several Senior Community Employment Service Program (SCSEP) affiliates for Headquarters and Chicago and New York field offices.
- OHR continued to validate that employees have performance plans through its new USA Performance reporting system. The process is being used with all non-bargaining unit employees. The rollout for bargaining unit employee will occur during FY19.
- OHR management team finalized narratives for their program areas to ensure that all HR professionals deliver a unified New Employee Orientation (NEO).
- Office of Equal Employment Opportunity (OEEEO) continues to lead the Agency-wide effort to develop programs for the Agency through the EEOC's Management Directive 715 (MD715).

- » OEE0 held 2 quarterly meetings with a cross section of organizational units, including OHR, OED and the Division of Operations-Management (Ops).
- » It was determined that many EEO and inclusion efforts have a technology component, including handling EEO data, responding to Agency reporting requirements and 508 accessibility. OEE0 consulted with the OCIO in the 2nd quarter to ensure improved reporting in the MD715 report. It was determined that OCIO will be a regular partner in all quarterly model EEO meetings. Each office is required to identify, develop, measure and report out on its progress on issues related to barriers to full opportunity. These efforts will result in a more relevant and responsive MD715 report and plan.
- OEE0, OHR and OED delivered comprehensive mandatory training for managers and supervisors on the Agency's revised Reasonable Accommodation Policy.
- OED led the effort to develop comprehensive mentoring and career development programs for administrative support professionals and for all employees.
  - » OED identified resources to develop Individual Development Plans for Agency employees.
- OEE0 is leading the effort to develop an Agency-wide Diversity and Inclusion Council, as a best practice among federal agencies and as part of the Agency's Diversity and Inclusion Strategic Plan (FY 2012 and FY 2016), to fully engage all employees by serving as a platform for discussion of diversity and inclusion issues and to develop recommendations to leadership. This proposed council would serve as the platform for recognition of Agency Employee Resource Groups.

### Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the 2017 EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; engaged in root cause analyses and action planning efforts for challenge areas.
  - » HCPO developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.
  - » During the assessment meetings, the HCPO also discussed, inter alia, the two EVS Agency-wide strategic areas of focus: effective leadership and communication. As a result, leadership will continue to engage in EVS action planning efforts and implement best practices designed to drive higher levels of employee satisfaction and engagement, with a particular focus on improving the work environment.
- The HCPO completed a comprehensive analysis of the FY 2017 FEVS results and provided each division/office with a comprehensive organizational assessment briefing of the EVS results. During those briefings, a target of increasing the number of employees responding to the FY 2018 EVS was set at a five percent increase over the FY 2017 EVS participation rate.

- » The implemented strategies included the HCPO building successive weekly communications with managers and supervisors during the survey administration period where they would encourage their staff to participate; a communication plan that provided division/office heads with a weekly report on their organization's participation levels; an EVS Management Toolkit to leverage in promoting the EVS; and EVS promotional flyers distributed in NLRB's work space promoting the survey administration period.

#### **FY 2018 STRATEGIC GOAL 4 (SUPPORT): MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST**

##### **Information and Technology:**

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

NxGen presently manages:	
Internal users	1,242
Cases	352,032
Case Actions of the Agency	1,225,231
Documents, images, and videos, each linked to its Action and Case	10,375,671

The Agency expanded electronic distribution of case documents for 15 document types resulting in 626 documents being sent to the USPS electronically, and in savings for the Agency.

The Agency uses an electronic filing program (e-File) to allow constituents to electronically file documents with the Agency.

Number of e-Filings Received	50,682
Number of Documents Received	79,293
Number of Board and ALJ Decisions E-Served	593
Total Number of parties E-Served Decisions	27,249
Number of E-Deliveries of Case Documents	4,148

The total number of case documents available for public access in FY 2018 was 1,259,762

Please see <http://www.nlr.gov> for a complete list of the document types available to the public.

- To streamline Agency processing, the Administrative Systems Team focused on Business Process Automation using SharePoint as the platform. The Administrative System's team is in the process of automating approximately 100 of the Agency's processes/forms using SharePoint, InfoPath, web services and Microsoft Azure components. The processes completed in FY 2018 are:
  - » Administrative Professional Award Nomination
  - » Advanced Annual and Sick Leave
  - » Duress Alarm Test
  - » Facilities Request
  - » Honorary Award Nomination
  - » Property Pass
  - » Recruitment Strategy
  - » Superior Qualifications

#### Training Request

- The Administrative Systems team also completed the modernization of two applications; Archivalware and WIP/CiteNet, to remediate security vulnerabilities associated with end of life operating system support and allow for the continued growth of the systems with respect to access control and data management.
- The Administrative Systems team also completed several projects designed to make the SharePoint-based intranet a robust, dynamic, and secure location for employee collaboration:
  - » Development of a new Events and Announcements application was deployed. This will allow contributors the ability to input events or announcements to be posted on the Intranet home page, the Events and Announcements home page and email notifications to be sent for greater visibility and awareness.
  - » Launched a redesign of the Service Catalog to provide easy to use categorization of services and allows for growth to add additional services as processes are automated. Included in a recent updated release was an alternate view of all services alphabetized A-Z for another easy way to find and launch the services.
  - » Implemented a dynamic Staff Directory which allows employees to easily find office and staff information through browse and/or search.
  - » Created various private office workspaces with document libraries, discussion boards, and calendars for group collaboration.

### Financial Management:

- To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each headquarters and Regional Offices. These amounts are disseminated at the beginning of each quarter to the Office of Operations Management. Operations Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the Regional Offices. In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
- AMB continues to utilize the bulk purchasing program for paper and toner across the Agency. The program allows for better coordination, distribution and cost-savings of required items. In FY 2018, bulk orders have taken place in November, February, May, and August 2018.
- As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses. NLRB will work towards achieving the statutory goal for service-disabled veteran owned businesses in FY 2019.
- From October 1, 2017, – September 30, 2018, a total of \$28,057,166.00 and 244 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$18,211,493.00 and 119 actions went to small businesses. This is a 22% increase in awards given to small business from the previous year. In FY 2017, NLRB awarded 41.70% to small businesses. In FY 2018, this percentage increased to 65%.

Category	Gov-Wide Goal	2018	2017	2016	2015	2014	2013
Small Business	23%	65%	41.7%	36.5%	39.7%	31.6%	34.1%
Women Owned Small Business	5%	5%	7.47%	11.1%	12.4%	13.5%	17.8%
Small Disadvantaged Business	5%	52%	28.3%	8.0%	10.7%	11.0%	7.3%
Service-Disabled Veteran Owned Small Business	3%	1%	1.6%	2.4%	0.3%	0.9%	0.3%
HUBZone	3%	41%	23.3%	3.4%	2.1%	2.2%	0.8%

## Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, the Workplace Justice Project, and workers' rights clinics, to educate the public about the NLRA
- Staffing booths at informational fairs
- Responding to inquiries from individuals who seek consular services
- Participating in Platicas en Consulado (Consul on Wheels)
- Participating in various Labor Rights Week activities in numerous locations throughout the country sponsored by different consulates, including Mexico, El Salvador, Philippines, and Guatemala
- Appearing on Spanish-radio talk show

Other Agency activities directed at the immigrant population included:

- Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation from South Korea, Shaanxi Federation of Trade Unions, and State Tobacco Monopoly Administration of China

Activities directed at the youth population include:

- Leading discussions for high school and middle school classes concerning the development of the NLRA
- Participating in the Great American Teach In

The Agency continues to partner with DHS, DOL (Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Office of Federal Contract Compliance Programs (OFCCP)), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- Participating in the Vulnerable Workers Project
- Participating in "listening sessions" coordinated by the Asian American and Pacific Islanders community
- Participating in Wage Theft Task Force discussions
- Participating in SBA Ombudsman roundtables and listening sessions



The Agency produced an informational pamphlet entitled “Protecting Employee Rights,” which contains an expanded discussion of an employee’s right to engage in concerted activity and other rights under the NLRA, which is available on the NLRB website and in hard copy, in English and Spanish.

The Agency maintains webpages for each individual regional office. This webpage contains news articles relevant to the particular region. To ensure that these pages remain fresh, news articles are tagged by the Agency’s Office of Public Affairs and automatically loaded on the Region’s webpage.

The Agency maintains an internal SharePoint database through which the Agency outreach coordinators post and share outreach materials and participate in a discussion board sharing ideas and leads for outreach.

The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

The Agency inserted QR codes to its correspondence to direct the public to the website.

#### Ethics:

The Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency’s GC and Chairman, the Ethics Staff:

- Prepared and distributed the FY 2017 Annual Ethics Briefing to all Public and Confidential Financial Disclosure filers as required by the OGE. We presented the briefing through the Agency’s learning management system and covered conflicting financial interests, impartiality, misuse of position, gifts, and the NLRB’s Supplemental Regulations. As of the December 31st due date, 92% of Agency filers had completed the FY 2018 Annual Ethics Briefing. Employees who did not complete the training by the specified due date indicated that their delay was due to technical issues and schedule conflicts (mission related or scheduled leave). However, all filer employees completed the training requirement on or before January 5, 2018.
- Distributed the FY 2017 Annual Ethics Briefing to all Agency supervisors and managers. By making this briefing available to supervisors and managers, we ensure that all management employees are in a position to identify potential ethics issues and avoid situations that distract from the mission of the Agency.

Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events, and discussed the importance of During FY 2018, the Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency’s GC and Chairman, the Ethics Staff:

- Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events,

and discussed the importance of preventing coercive activity when a supervisor serves as a campaign coordinator and/or keyworker for the CFC.

- Reissued Speaking Engagement memo to all Agency employees. This document provided general guidance about speaking engagements and emphasized the difference between speaking in an official versus a personal capacity. In addition, the memo encouraged the use of the NLRB Waiver Addendum which affirms that by consenting to the recording of a presentation, an NLRB employee is not permitting the sponsor to use their official title or likeness to advertise or endorse the recording, or endorse any other products or services offered by the organization.
- Distributed guidance memo to all Agency employees that addressed monetary and in-kind donations to disaster relief programs, and individual donations to coworkers who were victims of Hurricanes Maria and Irma.
- Partnered with the OCFO to draft a policy statement relating to the acceptance of travel reimbursement from a non-federal source.
- Assisted Board and GC in evaluating ethics recusal obligations.
- Partnered with the OCIO to index legal ethics Tips of the Month by subject matter. This feature of SharePoint should make it easier for Board agents to find legal ethics resources more efficiently.
- Assisted the GC's office in developing a process for approving speakers for NLRB sponsored events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY 2018, the Ethics Staff:

- Revised and reissued a memo to all Agency employees concerning speaking engagements and encouraged the use of the NLRB Waiver Addendum to comply with the misuse provisions in the Standards of Conduct. This document also reminded employees about the prohibition on soliciting travel reimbursement which is found in the gift regulations.
- Provided customized ethics training to newly confirmed political appointees and their front office staffs.
- Developed a post-employment webcast which is provided to all employees who retire or resign from government service. This webcast supplements the Agency's post-employment guidance documents by providing general guidance covering the Federal Government post-employment restrictions applicable to all government employees, as well as specific post-employment restrictions from the American Bar Association Model Rules of Professional Conduct applicable to Agency attorneys. It helps to ensure the confidentiality of information that belongs to the Agency.
- Began development of the FY 2018 Annual Ethics Briefing which will be offered to all financial disclosure filers, as well as all supervisors and managers, before the end of the calendar year.

Measure:	Goal	2018	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	89%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%	100%

- During FY 2018, the Ethics Office received 927 inquiries. 826 (89%) were resolved within five business days.
- All financial disclosure reports filed in FY 2016 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the OGE's filing requirement.
- In mid-January we began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2017. In all cases, we completed the review of each report within 60 days of receipt and we notified the filer of any real or potential conflicts.

During FY 2018, the Agency completed its review of:

- 31 Annual Confidential Financial Disclosure Reports (OGE 450)
- 105 Annual Public Financial Disclosure Reports (OGE 278e)
- 13 New Entrant Public Financial Disclosure Reports (OGE 278e)
- 119 Monthly Transaction Reports (OGE 278T)
- 11 Termination Reports (OGE 278)

**Note:** Review and approval of New Entrant and Annual filings resulted in 118 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

#### Internal and External Audit Responses:

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations
- OCIO addresses data calls related to DHS Binding Operational Directive 18-01, Enhanced Email and Web Security.
- OCIO responded to data calls in relation to BOD 18-02, High Value Assets (HVA).
- OCIO submitted FISMA quarterly reports to DHS.

- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1.
- CISCO vulnerability Data Call in Q2.

#### FOIA:

Measure:	2018	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	41 days; 54.8%	46 days; 35.9 %	33 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	1%	10.5 %	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	20 working days	20 working days	32.25 working days	24 working days	20 working days

#### Summary

- From October 1, 2017, to September 30, 2018, the FOIA Branch received 1,312 requests and responded to 780 of those requests within 1-20 days. Thus, 54.8 percent of the FOIA requests were processed within the 20-day statutory time period.
- During FY 2018, the FOIA Branch sought an extension of time to process a FOIA request beyond the 20-day statutory time period in 1 percent of the FOIA requests received.
- During FY 2018, the FOIA Branch received 12 FOIA Appeals. The average response time was 20 working days. The Agency did not seek an extension of time to respond to the FOIA appeals.
- The NLRB had a FOIA request backlog of 294 at the end of FY 2017. At the end of FY 2018, the NLRB had a FOIA request backlog of 90, which reflects a backlog decrease of 69.39%.

#### Reports

Each year, the FOIA Branch prepares an Annual Report, which contains statistics on the number of FOIA requests and appeals received, processed, and pending during the Fiscal Year, and the outcome of each request. The NLRB FOIA Annual Reports and the NLRB FOIA Quarterly Reports are available on the:

1. NLRB website at <https://www.nlr.gov>,
2. DOJ website at <https://www.justice.gov>, and
3. FOIA.gov website <https://www.foia.gov/>

The FOIA requires each agency Chief FOIA Officer to report to the Attorney General on their performance in implementing the law and the efforts to improve FOIA operations. The NLRB Chief FOIA Officer Reports are publicly available on the:

1. NLRB website at: <https://www.nlr.gov>, and
2. DOJ website at <https://www.justice.gov>.

#### Proactive Disclosure

In response to receiving several monthly requests for certain records filed or issued by the twenty-six Regional Offices, the FOIA Branch created a webpage where requesters may directly search for these records. These records are: Representation Petitions and Certifications in RD, RM, and RC cases; and ULP Charges and Dismissal Letters in CB, CC, CD, CP, CG, and CE cases. The FOIA Branch began posting the January 2017 records online at: <https://www.nlr.gov>. On a monthly basis, the FOIA Branch maintains and updates this webpage with new responsive records in accordance with the FOIA.

In July 2017, the FOIA Branch became a FOIAonline participating agency. As the FOIA case management system, FOIAonline provides the FOIA Branch with technology tools for FOIA tracking, processing, and posting. Additionally, the NLRB has proactively made more responsive records available to the public on the FOIAonline website <https://foiaonline.gov>.

#### Training

The FOIA Branch continues to promote and use the DOJ training tools such as the FOIA Professional e-Learning Module and the Federal Employee e-Learning Module, which are available to all Agency employees on the NLRB e-Learning platform.

If you are unfamiliar with the FOIA, please view the DOJ FOIA Training for Federal Government Employees available on the NLRB's Skillport and contact your colleagues in the FOIA Branch.

### **FY 2019 STRATEGIC GOAL 3 (SUPPORT): ACHIEVE ORGANIZATIONAL EXCELLENCE**

#### **Management Strategies:**

#### **Employee Development**

- The Agency continued to move forward with the transition to USA Performance.
  - » The transition of all employees to the automated performance management system was concluded effective June 1, 2019.
  - » The performance management team responded to questions and assisted all employees during their transition.
  - » Office of Human resources (OHR) continues to transition appraisals for all Agency employees to Electronic Official Personnel Folder (eOPF) from the USA Performance system.

- Office of Employee Development (OED) offered monthly webinars for administrative professionals, periodic retirement seminars, and other training topics in addition to the robust catalog of online training content covering general skills, technical topics, and legal education.
- OED launched an online Individual Development Plan (IDP) form and conducted training on the IDP process and form for employees and supervisors.
- Human Capital Planning Officer (HCPO) developed a draft Human Capital Operating Plan pursuant to the newly revised regulations at 5 CFR 250. The draft outlines human capital goals, objectives, and strategies and is currently being reviewed by management.
- The Agency continued to comply with OPM's hiring reform efforts by using the 80-day hiring model.
- The Office of Equal Employment Opportunity (OEEEO) participated as resource personnel on the GC's Joint Labor-Management EEO Advisory committee, enabling employee participation as agents of diversity and inclusion, through their collective-bargaining representative.
- During FY 2019, the security Branch reduced the number of backlogged reinvestigations from 462 to 336.

### Workforce Management

- The Agency continued to provide information and pertinent training regarding disability in the workforce, workplace laws and regulations, as well as information on Agency recruitment. OHR embarked on a new partnership with the Senior Community Employment Service Program (SCSEP) affiliates, for the Agency's Headquarters office and initiated new partnership with Melwood, an organization that employs individuals with differing abilities.
- OHR continued to validate that employees have performance plans through its new USA Performance reporting system.
- OHR management team continued to revise its New Employee Orientation (NEO) to ensure a unified and stellar presentation to new employees. Some of the changes in FY 2019 include:
  - » Personalized orientation specifically to the orientee
  - » Information about the Employee Assistance Program and eOPF
  - » Included policy documents such as EEO policy statement, Policy statement on the Prevention of Unlawful Harassment, including Sexual Harassment and the Alternative Dispute Resolution (ADR).
- OEEEO submitted the Agency's annual Management Directive (MD 715) Report to the EEOC during the 4th quarter of FY 2019.
  - » OEEEO held 2 quarterly meetings with a cross section of organizational units, including the Office of Human Resources (OHR), the Office of Employee Development (OED), the Division of Operations-Management (Ops) and the OCIO, to build a fully integrated model EEO program under MD 715 goals.

- OEEEO collaborated with OHR to develop revisions to the Agency's Reasonable Accommodation Procedures, in order to comply with guidance from the EEOC.

### Motivation

- HCPO conducted 17 EVS organizational assessments with senior executives on the FY 2018 EVS results which became available in FY 2019 for review and analysis. The assessments focused on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts for challenge areas.
- The HCPO completed a comprehensive analysis of the FY 2018 FEVS results and provided each division/office with a comprehensive organizational assessment briefing of the EVS results.
  - » Included in the comprehensive analysis were discussions of strategies with leadership to promote higher employee participation.
  - » The strategies involved the HCPO building successive weekly communications with managers and supervisors during the survey administration period that encourage all employees to participate; developing a communication plan that provides division/office heads with a weekly report on their organization's participation levels; leveraging an EVS Management Toolkit for management to promote the EVS; and distributing an EVS promotional flyers in NLRB's work space that promotes the survey administration period.
  - » Additionally, the HCPO fostered greater transparency with the Agency's EVS action planning efforts surrounding EVS results and encouraged an open two-way communication between leadership and employees on the EVS results.
  - » Leadership committed to make a more concerted effort to both transmitting and receiving feedback information, which would inherently translate into a higher employee participation rate in the EVS. The NLRB's FY 2018 EVS participation rate exceeded the FY 2018 governmentwide EVS participation rate by 21 percentage points.



## FY 2019 STRATEGIC GOAL 4 (SUPPORT): MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST

### Information and Technology:

The Agency uses an electronic filing program (e-File) to allow constituents to electronically file documents with the Agency. In FY 2019:

Number of Documents Received	79,381
Number of e-Filings Received	49,852
Total Number of parties E-Serviced Decisions	41,689
Number of E-Deliveries of Case Documents	5,695
Number of Board and ALJ Decisions E-Served	656

Providing accessible information to the public is an important part of the NLRB's mission:

Total Number of Case Documents Available for Public Access	1,489,477
Number of NLRB Document Types Available for Public Access	560

Please see <http://www.nlr.gov> for a list of the document types available to the public and <https://www.nlr.gov> for updated metrics for FY 2019 Charges and Complaints, Petitions and Elections, Decisions, Litigation, Remedies, Recent Filings and Tally of Ballots.

- To streamline Agency processing, the Administrative Systems Team focused on Business Process Automation using SharePoint as the platform. The Administrative System's team is in the process of automating over 200 of the Agency's processes/forms using SharePoint, InfoPath, web services, and Microsoft Azure components. The business analysts continue to collect requirements and document the process flows, while the developers work to complete the automation of the process. Following are the processes that were either completed or are ongoing in FY 2019:

- » Case Records Unit Weekly Statistics
- » Facilities Request enhancements
- » Form 13 – Purchase Request
- » Form 4197 – Employee Exiting
- » Bicycle Benefits Program Reimbursement Certification
- » HR Employee Suggestion Form

- » HR Workforce Relations Activity Tracker
- » HR Performance Management Activity Tracker
- » Individual Development Plan
- » Records Disposition
- » Request a Photographer
- » Request for Retirement Annuity Estimate
- » Temporary Records Loan
- » Transcripts and Exhibits
- » Transportation Reimbursement Form
- The Administrative System's Team also completed the following:
  - » Deployed 95 Polycom Trio8500 conference phones in the Agency to enhance the unified communications platform.
  - » Deployed an enhancement to the Personnel Security Case Management System (PSCMS) to automate the background initiation process. NLRB sponsors enter the candidate's information which is routed to the candidate to complete the form which is then routed to the Security Branch for processing. This remediated a security risk for securely routing sensitive information.
  - » Developed and implemented the Translation Information Management System which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency. The system manages the workflow processes associated with the request and the allocation of resources to manage the requests.
  - » Developed Google Analytics Dashboard for public website metrics which allows Agency employees the ability to view metrics related to most popular pages, number of visitors per month, most popular browsers and devices. Date ranges can be set to show trends. Added additional separate dashboards for the eFiling, eService, and Charge and Petition applications.
  - » Implemented enhancements to the Agency Events and Announcements system to assist with communication to all Agency employees.
  - » Completed the design and development of a Performance Awards Matrix system that allows for the collection of performance data from managers and supervisors to easily calculate awards for employees.

#### Financial Management:

- For FY 2019 the Budget office engaged in quarterly reviews with Program Managers (PMs) throughout the Agency providing accountability to ensure the execution of funds was completed efficiently and

effectively throughout the year. The quarterly reviews also provided the opportunity to take remedial action to address any budget issue identified in the FY 2019 Spend Plan Reviews with Leadership.

- » The Budget Office developed a Spend Plan Analysis tool to track expenses and report on projections, allowing routine briefings to Agency Leadership on budget status, projections, and estimated funding surplus levels.
- The OCFO addressed three audit recommendations from previous audits during FY 2019:
  - » Audit of FY 2014 Financial Statements (OIG-F-19-15-01) – Recommended a reconciliation for each GSA agreement to ensure that the obligations were valid, and the documentation existed to clearly support that the goods or services were ordered.
  - » Audit of the FY 2016 Financial Statements (OIG-F-21-17-01) – Recommended an assessment of the OCFO organizational structure to ensure that the OCFO was adequately staffed to comply with accounting and financial reporting standards.
  - » Audit of the Data Act: (OIG-AMR-83-18-01) – Recommended that the OCFO coordinate with other users of the Oracle financial system to determine if they had similar Data Act findings.
- The OCFO coordinated a multiple organization coalition that included OMB, IRS, Treasury to address questions on backpay and travel.
- The OCFO submitted all quarterly and annual reporting requirements to Congress, OMB, and Department of Treasury.
- In response to the OMB Directive M-19-13, strategic sourcing/category management initiatives, the Agency collects data on those initiatives and reports out annually on progress towards increasing the utilization of the initiatives.
- Small Business Goal Status.

Category	Gov-Wide Goal	2019	2018	2017	2016	2015
Small Business	23%	68.78%	65%	41.70%	36.51%	39.75%
Women Owned Small Business	5%	9.83%	5%	7.47%	11.19%	12.46%
Small Disadvantaged Business	5%	58.48%	52%	28.33%	8.02%	10.71%
Service-Disabled Veteran Owned Small Business	3%	0.75%	1.62%	2.42%	0.31%	0.97%
HUBZone	3%	38.57%	23.33%	3.43%	2.13%	2.27%

### Office Space Management

- In accordance with General Services Administration (GSA) guidelines, 15 field offices have been identified to undergo a space reduction as part of the five-year project plan to reduce the NLRB footprint.

### Agency Outreach

The Agency furthered its outreach to unrepresented employees, unions, and small business owners in the following ways:

- Distributed newsletters describing recent case developments electronically using govdelivery in the Regional Offices.
- Produced an informational pamphlet entitled “Protecting Employee Rights,” which contained an expanded discussion of an employee’s right to engage in concerted activity and other rights under the NLRA, which is available on the NLRB website and in hard copy, in English and Spanish.
- Maintained webpages for each individual regional office that contain news articles relevant to that region. To ensure that these pages remain fresh, news articles are tagged by the Agency’s Office of Public Affairs and automatically loaded on the Region’s webpage.
- Maintained an internal SharePoint database through which the Agency outreach coordinators post and share outreach materials and participate in a discussion board sharing ideas and leads for outreach.
- Maintained an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.
- Conducted regional outreach that provided information about the Act and the Agency’s processes to unions and small business owners. This included outreach to law firms representing employers, employees, and unions, and organizations representing trade groups (such as LERA and SHRM), professional societies, and groups sponsored by various embassies and consulates, including Mexico, El Salvador, Guatemala, and the Philippines. The Agency also appeared on radio programs to discuss various aspects of the Act. Various offices also participated in Labor Rights Week, sponsored by various Central American consulates.

To better educate workers and employers the NLRB:

- Continued to partner with DHS, DOL, (Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Office of Federal Contract Compliance Programs (OFCCP)), OSC, DOJ, EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment, and Immigration Laws.
- Partnered with DOL, EEOC, and DOJ to develop and implement employer.gov, a companion site to worker.gov, to provide information about the Agency relevant to employers.

## Ethics:

The Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency's GC and Chairman, the Ethics Staff:

- Prepared the FY 2019 Annual Ethics Briefing for all Public and Confidential Financial Disclosure filers as required by the OGE. Presented an in-person briefing during the Agency's Leadership Conference held in D.C. on September 18, 2019. The training covered conflicting financial interests, impartiality, misuse of position, gifts, the NLRB's Supplemental Regulations, and the importance of protecting confidential Agency information.
- Analyzed data obtained through the FY 2019 Ethics Survey and provided several recommendations to leadership to continue to develop a robust ethical culture at the NLRB.
- Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events, and discussed the importance of preventing coercive activity when a supervisor serves as a campaign coordinator and/or keyworker for the CFC.
- Reissued Speaking Engagement memo to all Agency employees. This document provided general guidance about speaking engagements and emphasized the difference between speaking in an official versus a personal capacity. In addition, the memo encouraged the use of the NLRB Waiver Addendum which affirms that by consenting to the recording of a presentation, an NLRB employee is not permitting the sponsor to use their official title or likeness to advertise or endorse the recording, or endorse any other products or services offered by the organization.
- Developed a short five-question survey designed to evaluate the effectiveness of the NLRB's ethics program. The collected information will help engage Agency leadership in discussions about how to continue to build a strong and robust ethical culture at the NLRB.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY 2019, the Ethics Staff:

- Distributed reminder email which highlighted the limitations the Hatch Act places on federal employee partisan political activity. The message also summarized additional Office of Special Counsel (OSC) guidance issued in July which addressed federal employee conversations about current events, policy issues, and matters of public interest that, depending on the circumstances, could violate the Hatch Act.
- Revised and reissued the Outside Employment memo to all Agency employees which provided a reminder that outside employment includes the provision of unpaid services such as charitable work and speaking and writing engagements. This memo also served as a reminder that the NLRB's

Supplemental Regulations require all employees to obtain written approval before engaging in outside employment.

- Distributed short one-page email blasts designed to remind all employees about key ethics regulations to include: misuse of position, financial conflicts, the Hatch Act limitations, impartiality in performing official duties, gifts, and the importance of protecting confidential Agency information.

Measure:	Goal	2019	2020	2021	2022
Percentage of inquiries resolved within five business days	85%	88.9%			
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%			

- During FY 2019, the Ethics Office received 839 inquiries. 743 (88.9%) were resolved within five business days.
- All financial disclosure reports filed in FY 2019 were reviewed within 60 days.
- In mid-January ethics staff began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2017. In all cases, the review of each report was completed within 60 days of receipt and filers were notified of any real or potential conflicts.

During FY 2019, the Agency completed its review of:

- 140 Monthly Transaction Reports (OGE 278T)
- 83 Annual Public Financial Disclosure Reports (OGE 278e)
- 29 Annual Confidential Financial Disclosure Reports (OGE 450)
- 12 Termination Reports (OGE 278)
- 5 New Entrant Public Financial Disclosure Reports (OGE 278e)

During FY 2019 the Ethics staff continued to use technology to help filers complete filing requirements under the Ethics in Government Act (EIGA).

Ethics staff supported filers through:

- One-on-one assistance with online filing systems.
- Job Aids and checklists to help filers accurately report their financial holdings.
- Monthly reminders which emphasize the importance of reviewing brokerage statements for transactions which are reportable under the STOCK Act.

### Internal and External Audit Responses:

- Responses to internal and external auditors have been prepared and all deadlines were successfully met in FY 2019.

### FOIA:

From October 1, 2018, to September 30, 2019, the Agency:

- Received 1,351 FOIA requests in FY 2019 and responded to 1,419 (FY 2019 + prior year backlog/pending) of those requests within 1-20 days. Thus, 69.65 percent of the FOIA requests were processed within the 20-day statutory time period.
- Sought an extension of time to process three requests beyond the 20-day period for FOIA requests received. Thus, .22% of the FOIA requests were extended an additional ten days on the due date.
- The Agency received 11 FOIA appeals and responded to 12 (FY 2019 + prior year backlog/pending) FOIA appeals. The average amount of days to process these appeals was 17.33 working days. The lowest number of working days to process these appeals was three. The highest number of working days to process these appeals was 22. Eleven appeals were processed within 20 days. Thus, 91.66 percent of the FOIA appeals were processed within the 20-day statutory time period.
- Did not see an extension of time for the FOIA appeals received in FY 2019.

### Reports

Each year, the FOIA Branch prepares an Annual Report, which contains statistics on the number of FOIA requests and appeals received, processed, and pending during the Fiscal Year, and the outcome of each request. The NLRB FOIA Annual Reports and the NLRB FOIA Quarterly Reports are available on the:

1. NLRB website at <https://www.nlr.gov>,
2. DOJ website at <https://www.justice.gov>, and
3. FOIA.gov website <https://www.foia.gov/>

The FOIA requires each agency Chief FOIA Officer to report to the Attorney General on their performance in implementing the law and the efforts to improve FOIA operations. The NLRB Chief FOIA Officer Reports are publicly available on the:

1. NLRB website at: <https://www.nlr.gov>, and
2. DOJ website at <https://www.justice.gov>.



# APPENDIX D

## Strategic Goals

**Goal #1 (Mission):** Promptly and Fairly Resolve Through Investigation, Settlement or Prosecution, Unfair Labor Practices Under The National Labor Relations Act

**Objective 1:** Achieve established performance measures for the resolution of meritorious unfair labor practice charges.

**Initiative 1:** Achieve a collective 20% increase in timeliness of case processing under established performance measures for the resolution of all meritorious unfair labor practice charges.

**Measure 1:** Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.

**Measure 2:** Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

**Measure 3:** Realize a 5% annual decrease in the average time between issuance of administrative law judge decision and a Board order.

**Measure 4:** Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

**Initiative 2:** Achieve enhanced performance for the resolution of all unfair labor practice charges.

**Measure 1:** Realize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement or issuance of complaint.

**Measure 2:** Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

**Measure 3:** Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.

**Measure 4:** Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

**Initiative 3:** Ensure that all matters before the Agency are handled in a fair and consistent manner.

**Measure 1:** Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

Management Strategy:

Continually review staff suggestions for improvement and modify case processing procedures to ensure more timely and efficient resolution of case.

**Measure 2:** Conduct annual quality reviews of Regional unfair labor practice case files and institute modifications to case processing as appropriate.

Management Strategies:

- Maintain and enhance alternative decision-making procedures to expedite Regional, Board and ALJ decisions in unfair labor practice cases.
- Utilize Compliance Unit to identify and coordinate compliance in merit cases.
- Discontinue existing interregional assistance program and replace it with a program that will ensure unfair labor practice cases in offices with backlogs are transferred to offices with available staff.
- Share best practices in unfair labor practice processing to assist regions in resolving unfair labor practice case issues promptly and fairly.

**Goal #2 (Mission):** Promptly and fairly investigate and resolve all questions concerning representation of employees.

**Objective 1:** Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

**Initiative 1:** Achieve established performance measures for the resolution of representation cases.

**Measure 1:** The percentage of representation cases resolved within 100 days of filing the election petition.

**Initiative 2:** Ensure that all matter before the Agency are handled in a fair and consistent manner.

**Measure 1:** Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

Management Strategy:

Continually review staff suggestions for improvement and modify case processing procedures to ensure more timely and efficient resolution of cases.

**Measure 2:** Conduct annual quality reviews of Regional representation case files and institute modifications to case processing as appropriate.

Management Strategies:

- Maintain and enhance alternative decision-making procedures to expedite Board decisions in representation cases.
- Discontinue existing interregional assistance program and replace it with a program that will ensure that representation cases in offices with backlogs are transferred to offices with available staff.
- Identify and utilize procedures to ensure careful and timely processing of Requests for Review, Special Appeals, and Hearing Officer Reports.
- Share best practices in representation case processing to assist regions in resolving representation case issues promptly and fairly.

### Goal #3 (Support): Achieve Organizational Excellence And Productivity In The Public Interest

**Objective 1:** Recruit, develop, and retain a highly motivated, productive, talented, and diverse workforce to accomplish our mission.

**Initiative 1:** Invest in and value all employees through professional development, workplace flexibilities, fair treatment, and recognition of performance in the public interest.

#### Management Strategies:

- Maintain a current human capital plan that includes human capital goals, objectives, and strategies and a workforce plan that is consistent with the Human Capital Assessment and Accountability Framework (HCAAF) of the Office of Personnel Management (OPM).
- Ensure that the Agency's performance management system is results-oriented and aligned with the Agency's goals and objectives as to quality and productivity.
- Demonstrate significant improvement in OPM's assessment of the Agency's performance management system.
- Ensure that managers collaborate with the Agency's employees and unions to implement Agency policies and collective bargaining agreements that balance performance, productivity and workplace flexibilities.
- Reduce the number of pending background investigations.
- Enhance employee development and learning opportunities through Skillport, West Legal Ed, Training Tuesdays, and other on-line and blended media.
- Develop Individual Development Plans for training and succession planning.
- Identify, through updating the workforce plan, core competencies for managers and actions necessary to close skill gaps as required by OPM.

**Initiative 2:** Develop and implement recruitment strategies to ensure a highly qualified and diverse workforce.

Management Strategies:

- Comply with OPM's hiring reform, which tracks time spent to fill vacancies.
- Identify areas in which the Agency can enhance its diversity and talent through annual analysis of MD-715 guidance.
- Attract qualified and diverse applicants, including veterans and persons with disabilities, by following OPM and Equal Opportunity Commission (EEOC) guidance and utilizing best practices of similar agencies.
- Establish working relationships with veteran's groups and Veterans Administration and Department of Labor veterans' programs to ensure that outreach efforts to veterans are consistent with OPM, congressional and Presidential directives.

**Objective # 2:** Promote a culture of professionalism, mutual respect, and organizational pride

**Initiative 1:** Improve employee satisfaction and employee engagement.

Management Strategies:

- Strive to achieve improved internal communications.
- Identify and implement strategies to increase the number of employees who respond to the Federal Employee Viewpoint Survey.
- Develop a collaborative program to encourage employee creativity and innovation, including the Agency's suggestion program.
- Enhance internal and external recognition programs to acknowledge employee contributions (for example: Honorary Awards).

**Initiative 2:** Ensure that employees understand the Agency’s mission and how they contribute to its accomplishments.

Management Strategies:

- Review and enhance the employee on boarding program.
- Ensure that each employee is provided with a performance plan and a clear understanding of management’s expectations.
- Enhance publicity of significant organizational accomplishments.

**Initiative 3:** Cultivate and promote Agency programs that encourage collaboration, flexibility, diversity, and mutual respect to enable individuals to contribute to their full potential.

Management Strategies:

- Demonstrate leadership accountability, commitment, and involvement regarding diversity and inclusion.
  - » Fully and timely comply with all federal laws, regulations, executive orders, management directives and policies related to promoting diversity and inclusion in the workplace.
  - » Provide on-going diversity and inclusion training for senior leadership.
  - » Evaluate all levels of management on their proactivity in maintaining an inclusive work environment.
- Involve employees as participants and responsible agents of diversity, mutual respect and inclusion.
  - » Reassess Agency mentoring programs to ensure they are used as tools to maintain a diverse workforce by affording a consistency of opportunity throughout all organizational units.
- Encourage participation in special emphasis observances.

**Goal #4 (Support):** Manage Agency Resources Efficiently and in a Manner That Instills Public Trust

**Objective 1:** Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.

**Initiative 1:** Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.

**Measure 1:** Increase the rates of electronic service, delivery, and filings, thereby reducing the paperwork burden on constituents, including individuals, labor unions, businesses, government entities and other organizations.

**Measure 2:** Increase the information shared electronically with the public, making the Agency's case processes more transparent.

Management Strategies:

- Focus on critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Employ ongoing, transparent project oversight from the NxGen Integrated Project Team.

**Initiative 2:** Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing with the Agency.

**Measure 1:** Streamline the Agency transactional processes by providing employees ready access to the tools, data and documents they require from anywhere, at any time.

**Measure 2:** Continue to enhance and utilize a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video, and data from all locations including the office, at home and on the road.

**Measure 3:** Fully utilize a dynamic social collaborative environment for employee engagement.

Management Strategies:

- Focus on critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Increase information sharing within the Agency through mechanisms that are easy for employees to contribute to and access.
- Employ ongoing, transparent project oversight from the NxGen Integrated Project Team.



**Initiative 3:** Effective Management of fiscal resources.

**Measure 1:** Develop and/or support the development of the Agency's budget.

**Measure 2:** Produce financial reports as required by OMB, Treasury, and Congress.

**Measure 2:** Conduct quarterly Program Management reviews on requirements development and execution to ensure programs stay on time and on budget.

**Measure 4:** Monitor unliquidated obligations quarterly for current year execution and re-allocate to other unfunded mission requirements.

**Measure 5:** Increase the use of strategic sourcing, purchase card program, and in sourcing to minimize waste and abuse. Continue to support minority business enterprises for contract awards.

**Initiative 4:** Right-sizing and closing Field Offices and Headquarters office space by up to 30% over the next five years in accordance with GSA guidelines.

**Measure 1:** Develop five-year Project Plan that identifies field offices for reductions in square footage or for closure.

**Objective # 2:** Evaluate and improve the Agency's Outreach Program.

**Initiative 1:** Enhance Agency's Outreach Program.

Management Strategies:

- Employ further non-traditional outreach to the following populations:
  - » Unrepresented employees
  - » Unions, Small Business Owners
- Engage with organizations, such as those listed below, to better educate workers and employers:
  - » Joint outreach with sister agencies
  - » Memorandums of Understanding (MOU) with other agencies related to co-extensive investigations

**Objective # 3: Conduct all internal and external Agency business in an ethical and timely manner.**

**Initiative 1:** Promote an ethical culture within the NLRB through leadership, communications, awareness, resources, and oversight.

**Measure 1:** Involve Agency leadership in promoting visibility and commitment to the NLRB Ethics Program.

**Measure 2:** Increase employee awareness of ethics responsibilities by maintaining an education program that reaches all NLRB employees at all levels and uses internet technology to expand access to program materials.

**Measure 3:** Respond to at least 85% of ethics inquiries within 5 days of receipt.

**Measure 4:** Review and certify financial disclosure reports within 60 days of receipt and notify filers of real or potential conflicts.

**Measure 5:** Use technology to improve financial disclosure reporting and review process.

**Initiative 2:** Respond to internal audits in a timely manner.

**Measure 1:** Prepare responses to internal audit reports as required by the auditor, meeting the deadlines specified in the reports.

**Initiative 3:** Respond to external audits in a timely manner.

**Measure 1:** Prepare responses to external audit reports as required by the auditor, meeting the deadlines specified in the reports.

**Initiative 4:** Respond to FOIA and other public inquiries in a timely manner.

**Measure 1:** Respond to at least 60% of initial FOIA requests within 20 working days.

**Measure 2:** Seek a statutory extension for less than 15% of requests.

**Measure 3:** Respond to at least 95% of statutory appeals within 20 working days.

**Measure 4:** Seek a statutory extension for less than 20% of appeals.





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