INSPECTOR GENERAL

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: October 5, 2023

TO: Susan Tsui Grundmann
Chairman

Colleen Duffy Kiko
Member

FROM: Dana Rooney *Dana Rooney*
Inspector General

SUBJECT: Top Management and Performance Challenges for Fiscal Year 2024 (MC-24-01)

Each Inspector General (IG) is required by law, the *Reports Consolidation Act of 2000*[1], to provide the agency head with a statement that summarizes the "most serious management and performance challenges facing the agency" and to assess the agency's progress in addressing those challenges. The law states that the "agency head may comment on the IG's statement, but may not modify the statement." By statute this statement should be included in the Federal Labor Relations Authority's (FLRA) "Performance and Accountability Report" (PAR).

The FLRA IG's Statement is based on the Office of Inspector General's (OIG) experience and observations from our oversight work, as well as our general knowledge of the FLRA programs and operations. In this year's, memorandum, we identified three management and performance challenges facing the FLRA in Fiscal Year 2024. They include two challenges: Records Management and Closure of Open Recommendations Outstanding for more than 1 Year that we reported last year. We added one new challenge Achieving Performance Goals with Insufficient Funding.

Our analysis considers the accomplishments the FLRA reported as of August 31, 2023. We noted progress that FLRA has made on the Records Management and Closure of Open Recommendations Outstanding for more than 1 year.

The attached document describes the most serious management and performance challenges facing the FLRA along with a brief assessment and management's progress in addressing them. We appreciate management's strong commitment in addressing these challenges and welcome comments to our assessment.

Attachment

---

[1] The Reports Consolidation Act of 2000, § 3, Pub. Law 106-531 (amending U.S.C.§ 3516).

Challenge 1: Records Management

Federal agencies are required by law (the Federal Records Act of 1950, as amended and codified in Title 44 of the United States Code) to adequately document their missions, functions, policies, procedures, decisions, and transactions. They are required to preserve historically valuable records, and it is a crime to destroy records without approval from the U.S. National Archives and Records Administration (NARA).

In 2011, Presidential Memorandum, *Managing Government Records,* required Federal agencies to manage both permanent and temporary email records in an electronic format by the end of 2016. By the end of 2019, agencies were directed by the Office of Management and Budget (OMB) and NARA in a jointly issued Memorandum M-12-18, *Managing Government Records Directive* to manage all permanent records in an electronic format.

OMB issued M-19-21, *Transition to Electronic Records* to direct agencies to convert to and manage all records electronically. This memorandum directs agencies to: "ensure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata, and develop plans to close agency-operated storage facilities for paper and other analog records, and transfer those records to NARA's Federal Records Centers or commercial storage facilities."

The memo also states, "Beginning January 1, 2023, all other legal transfers of permanent records must be in electronic format, to the fullest extent possible, regardless of whether the records were originally created in electronic formats. After that date, agencies will be required to digitize permanent records in analog formats before transfer to NARA."

On December 23, 2022, OMB issued Memorandum M-23-07, which is an update to M-19-21. M-23-07 reiterates the objectives and goals set forth in M-19-21, but updates the target dates because of the delays caused by COVID. All permanent and temporary records must be stored or managed electronically by June 30, 2024.

The FLRA continues to diligently work toward compliance with the records management directive by continuing to implement an electronic records system as well as policies and procedures to properly handle the FLRA files and records. Management continues to provide employees and contractors annual mandatory Records and Information Management training. In Fiscal Year (FY) 2023, the FLRA did not receive the funding necessary to fully comply with the directives contained in M-19-21 and M-23-07; however, the FLRA is able to direct some of its funding to continue move towards compliance.

Progress in Addressing the Challenge

FLRA provided the following management challenge update:

"FLRA has continued to shift its recordkeeping practices from paper to electronic format, building on the agency's records management progress over the past year. I am pleased to report significant strides in addressing both hard copy and electronic records management within our agency.

One of the most noteworthy achievements has been our transition from traditional paper-based records to a more efficient electronic format. This change not only aligns with modern record-keeping best practices but also contributes to a more sustainable and environmentally-friendly approach. As a result, we have witnessed a reduction in storage costs, enhanced accessibility to records, and improved disaster recovery capabilities.

In tandem with this transition, we have diligently updated our business processes to facilitate complete record lifecycle management in electronic format to the fullest extent possible. This effort has been a complex but necessary undertaking, touching upon various aspects of our agency's operations. Key highlights of our progress include:

1. **Digitization Initiatives:** We have worked to digitize a substantial portion of our historical paper records. This digitization effort involved converting paper documents into electronic formats and ensuring that they are indexed, searchable, and accessible to authorized personnel.
2. **Electronic Records Management System (ERMS):** We have implemented an ERMS that integrates with our existing workflow processes. This system helps us create, classify, store, retain, and dispose of electronic records in compliance with legal and regulatory requirements.
3. **User Training and Awareness:** We have conducted extensive training programs to ensure that all staff members are well-versed in using the ERMS and adhere to established records management policies. This has significantly improved the accuracy and consistency of record-keeping practices.
4. **Policy Alignment:** Our agency's records management policies and procedures have been reviewed and updated to align with the transition to electronic records. This ensures that our practices remain compliant with relevant laws and regulations.
5. **Security and Access Control:** We have invested in robust security measures to safeguard electronic records, including encryption, access controls, and regular audits to identify and mitigate potential vulnerabilities.

While we are proud these achievements, we acknowledge that challenges persist. In particular, we remain committed to addressing the following areas:

1. **Legacy Paper Records:** The complete transition from paper to electronic format is an ongoing process, and we continue to explore efficient ways to digitize remaining paper records.
2. **Data Retention and Disposal:** Ensuring proper retention and timely disposal of electronic records is crucial. We are working to refine our retention policies and improve compliance.
3. **Change Management:** Managing the cultural shift towards electronic record-keeping is an ongoing challenge. We will continue to prioritize user training and change management efforts to foster a culture of accountability and responsibility.
4. **Cybersecurity:** The security of electronic records is critical; we will remain vigilant in enhancing our cybersecurity measures to protect sensitive information from cyber threats.

Federal agencies must conduct a Records Management Self-Assessment (RMSA) each year and submit the findings to NARA. The goal of the self-assessment is to determine whether Federal agencies are compliant with statutory and regulatory records management requirements: The FLRA continues to make significant improvements since scoring a moderate risk in 2019 the Agency achieved a low-risk score during the reporting periods of 2021 and 2022. Below are the 2021 and 2022 comparative scores we received from our agency's responses to NARA annual reports. During this period, the Agency Records Officer also responded to a NARA request to provide documentation to validate our responses to their Annual RMSA 2022 Reports. The documentation demonstrated the Agency's success with its records management program and prevented the need for a NARA audit.

The following are this year's results:

- Senior Agency Official for Records Management (SAORM) Annual Report. (The SAORM Report is not scored)
- Records Management Self-Assessment (RMSA) for 2022 score: 98.

FLRA previous RMSA scores:

- 2021- score: 100
- 2020- score: 94
- 2019- score: 77
- 2018- not submitted
- 2017- score: 51
- 2016- score: 54

Federal Electronic Records and Email Management Report for 2022 scores:

- Part I Electronic Records Score: 71
- Part I Electronic Records Maturity Model Score: 3.74
- Part II Email Score: 18
- Part II Email Maturity Model Score: 3.6

The previous year's 2021 scores for the Federal Electronic Records and Email Management Report Scores:

- Part I Electronic Records Score: 66
- Part I Electronic Records Maturity Model Score: 3.47
- Part II Email Score: 18
- Part II Email Maturity Model Score: 3.6

New tasks and goals to improve our Records and Information Management Program:

- Annual role-based training for the Records Coordinators and Records Custodians,
- Finalizing File Plans for each program office,
- Creation and use of records management checklists specific to each program office for new and departing employees,
- Continue to update the Records and Information Management Intranet Page with records management guidance and information, and
- Continue to transfer permanent electronic to NARA is a priority for the FLRA.

Finally, the Agency continues to develop and implement the information technology necessary to support 100 percent electronic case files, per M-19-21. Unfortunately, the Agency again did not receive its request for additional funding in the FY 2023 enacted budget. As a result, the transition to a new Agency Case Management System (CMS), which is linked to achieving 100 percent electronic case records, has been delayed. However, the Agency continues to use available funds for this project, including any available end-of-year funds, to keep the project moving. The Agency again sought funds for this project in its FY 2024 budget request and remains hopeful that is will of receive the funds it needs to complete this project on time."

What Needs to Be Done

FLRA needs to continue its efforts in securing the necessary budget resources to successfully achieve compliance with OMB deadlines.

Key OIG Resources

- President Memorandum, *Managing Government Records,* signed on November 28, 2011
- OMB Directive M-12-18, Managing Government Records Directive, issued August 24, 2012
- OMB/NARA Memorandum M-14-16, which included NARA Bulletin 2014-06, Guidance on Managing Email issued September 14, 2014
- NARA Memorandum, Records Management Priorities for 2017, issued March 15, 2017
- OMB Memorandum M-19-21, *Transition to Electronic Records,* signed on June 28, 2019
- OMB Memorandum M-23-07, *Update to Transition to Electronic Records*, signed on December 23, 2022

Challenge 2: Closure of Open Recommendations Outstanding for More Than One Year

The Inspector General Act of 1978, as amended, requires explanations for all audit reports with recommendations open for more than one year. These outstanding recommendations are also reported to the FLRA and Congress in the OIG's Semiannual Reports to Congress. At this time, the FLRA has three open recommendations outstanding for more than one year.

In FY 2020, the OIG presented and agency management concurred with 23 recommendations. In FY's 2021 and 2022, agency management resolved 19 of the 23 recommendations. In FY 2023, the FLRA resolved one of the four outstanding recommendations during FY 2023. The three remaining recommendations are over three years old.

In March 2020, the OIG issued a Management Advisory Review of Credit Hours and Premium Pay (MAR-20-03) and made 17 recommendations. In March 2021, the OIG performed a Follow-up Review from the 2020 Credit Hours and Premium Pay (MAR-21-03) and closed 14 of the 17 open recommendations. The OIG made multiple attempts to schedule a follow-up review in FY 2022 and delayed the review at the request of management until Calendar Year 2024.

The table below shows a summary of reports with corrective actions outstanding for more than one year and whether report recommendations are open or closed.

Reports with Corrective Actions Outstanding for more than 1 year

Report Title	Report Number	Issue Date	Number of Recommendations	Closed	Open
Management Advisory Review of Credit Hours and Premium Pay	MAR-20-03	3/11/20	17	14[1]	3

[1] OIG performed a Follow-up Review from the 2020 Credit Hours and Premium Pay Report MAR-21-03 dated March 15, 2021 closed 14 of the 17 open recommendations.

Progress in Addressing the Challenge

FLRA provided the following management challenge update:

"The Agency has made significant progress in addressing the management challenge of closing open recommendations that have been outstanding for more than a year. The Agency takes these recommendations seriously and is actively working to address audit findings in a timely manner. Out of the four recommendations that were open for more than a year, one has been successfully closed by the Agency.

Furthermore, the Agency has adopted a proactive approach to prevent other audits from being open for more than a year. The Agency has ensured that all newly opened audits have been promptly addressed and closed to minimize the number of audits with open recommendations.

However, there remains a particular audit in which the Agency encountered difficulties in closing the three remaining recommendations. The recommendations were related to changes in the Agency's timekeeping system, leading to discrepancies between Agency policy and the system's functionality. Turnover within the Agency's Human Resources office has contributed to delays in closing these recommendations.

The Agency has taken steps to address the three remaining recommendations by appointing a new HR Director. We are confident that the new appointment will enable us to close the recommendations during FY 2024 because the new HR Director has the expertise to overcome the obstacles that impeded the timely closure of these recommendations.

The Agency continues to take steps to address its identified management challenges. We look forward to continuing to work with you on addressing and resolving any outstanding matters, as well as any management challenges identified for FY 2024 and beyond."

What Needs to Be Done

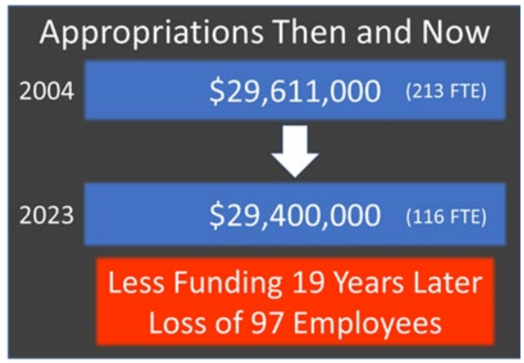
At this time, FLRA has three recommendations outstanding for more than one year. This is an improvement from the prior year where there were four recommendations that exceeded one year. However, FLRA needs to prioritize closing out these three recommendations in early FY 2024.

Key OIG Resources

- OIG Report, Follow-up Review from the 2020 Review of Credit Hours and Premium Pay, March 15, 2021

Challenge 3: Achieving Performance Goals with Insufficient Funding

The FLRA has been struggling with limited budget resources for many years—that underfunding is having an adverse effect on the ability of its components to accomplish their duties in an efficient and effective manner.



The FLRA's FY 2023 budget allocation is almost exactly the same as its FY 2004 budget allocation. In 2004, the FLRA employed 213 FTEs with a budget of $29,611,000. In 2023, the FLRA staffed its three components with a workforce of just 116 FTEs and a budget of $29,400,000. Given inflation and increased staffing costs, the FLRA addressed its decreasing purchasing power by not filling vacated positions and by reducing its real estate footprint by closing two regional offices. As a result, the FLRA now occupies less space and has roughly half as many employees as it did in 2004—but no less responsibility. And that will imperil the FLRA's ability to fulfill its mission-related goals and objectives. Recent trends in the FLRA's Office of the General Counsel (OGC) demonstrate this.

Congress charged OGC with prosecuting unfair labor practices (ULPs) committed by unions and federal agencies. The OGC is also responsible for making initial determinations as to whether employees should be included in bargaining units (also called REP petitions). From 2020 to 2023 there was a 62 percent increase in ULP case filings, but an 80 percent increase in the number of ULP cases pending. And there was a 20 percent decrease in the number of timely ULP initial dispositive actions taken by the OGC. Similarly, there was a 22% increase in the number of REP petitions filed with the office from 2020-2023, but a 160 percent increase in the number of petitions pending. There was also a 35 percent decrease in the number of timely REP initial dispositive actions taken by the OGC. The conclusion that must be drawn from these numbers is plain—recent years of budget cuts/austerity have already made it difficult for the OGC to fulfill its Congressionally-mandated function in a timely manner. Further cuts will result in a loss of confidence from both labor and management parties, due to the inability to function effectively.

All of the above is a problem because the longer it takes for the FLRA to resolve disputes between federal actors, the more expensive it is to resolve the disputes. Unresolved labor-management issues mean lingering disputes that distract from workplace missions. Delayed adjudication of cases involving backpay in particular costs taxpayer money—because the longer it takes to resolve the cases, the greater the Federal Government's potential backpay liability.

Another year of fiscal austerity will also mean that much needed investments in the FLRA's information technology (IT) systems will again need to be deferred—further deepening the

FLRA's vulnerability to cyberthreats. The FLRA will have to defer significant IT investments in everything from mandated cybersecurity improvements to day-to-day IT operations technology. This is a serious problem because the prolonged absence of funding for critical administrative infrastructure, such as cybersecurity, IT equipment, and technology modernization impairs the FLRA's ability to work efficiently and leaves the FLRA vulnerable to cyberthreats. The FLRA has done its best to shuffle mission priorities and keep mission-critical functions working. But doing so indefinitely puts the FLRA at very serious risk. Current budget constraints also will mean that the FLRA will not have employee bandwidth to fully engage in current Federal Government initiatives.

There are a number of areas that the FLRA could explore that could address these challenges. FLRA leadership has acknowledged the need to reduce its space requirements. The majority of the FLRA's leased space is at 1400 K Street, NW Washington, DC; the lease for the space is set to expire in 2026. FLRA has begun to work with the General Services Administration (GSA) to determine what the current requirements with a goal to reduce the square footage at this location, including options to reduce space prior to the lease expiring in 2026.

The FLRA could also explore alternative revenue streams, including petitioning OMB for permission to provide fee-based services like those provided by the Federal Mediation and Conciliation Service (FMCS).

FLRA continues to plan for, but has not received, an increase in agency funding from the prior years that keeps pace with inflation. This presents a challenge to management and creates a morale problem for staff when there is continued uncertainty over FLRA's funding levels. Once funding is appropriated, management must assess where to allocate resources for the mission. Management must continually assess the FLRA's needs regarding staffing so that the agency can be effective now and prepare for the challenges of future. These challenges are complicated by budget constraints and uncertainty.

What Needs to Be Done

FLRA needs to continue its efforts in securing the necessary budget resources to successfully achieve its performance goals. It also must continue to explore ways that it can achieve cost savings without cutting personnel. Additional avenues that it should explore include:

1) Continue requesting funding through the annual budget appropriations process, to restore needed staffing and resources.
2) Developing current space requirements with GSA to reduce the funds that it spends on leases.
3) Exploring the possibility of the provision of fee-based services such as those used by the FMCS.