INSPECTOR GENERAL

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

MEMORANDUM

DATE: September 16, 2024

TO: Susan Tsui Grundmann
Chairman

Colleen Duffy Kiko
Member

Anne M. Wagner
Member

FROM: Dana Rooney *Dana Rooney*
Inspector General

SUBJECT: Top Management and Performance Challenges for Fiscal Year 2025 (MC-24-02)

Each Inspector General is required by law, the Reports Consolidation Act of 2000[1], to provide the agency head with a statement that "summarizes what the inspector general considers to be the most serious management and performance challenges facing the agency" and "assesses the agency's progress in addressing those challenges."[2] The law states that the "agency head may comment on the inspector general's statement, but may not modify the statement."[3] By statute, this statement must be included in the Federal Labor Relations Authority's (FLRA) "Performance and Accountability Report" (PAR).[4]

The FLRA Inspector General'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 the memorandum for this year, we identified three management and performance challenges facing the FLRA in Fiscal Year (FY) 2025. These challenges include the ongoing challenge of Achieving Performance Goals with Insufficient Funding, a challenge we reported last year. Additionally, we added two new challenges: the Continued Impact on the FLRA's Office of General Counsel's Ability to Fulfill Its Mission Due to the Lack of a Confirmed General Counsel, and Meeting Cybersecurity Requirements in a Resource-Constrained Environment. The FLRA has taken sufficient action to effectively mitigate the challenges of (1) Records Management and (2) Closure of Open Recommendations Outstanding for more than 1 year that we reported in the FY 2023 PAR.

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[1] Pub. L. No. 106-531, § 3 (codified at 31 U.S.C. § 3516).
[2] 31 U.S.C. § 3516(d).
[3] *Id.*
[4] *Id.*

Our analysis considers the accomplishments the FLRA reported as of August 28, 2024. We noted progress that FLRA has made on the Achieving Performance Goals with Insufficient Funding.

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

Attachment

Challenge 1: The Continued Impact on the FLRA's Office of General Counsel's Ability to Fulfill Its Mission Due to the Lack of a Confirmed General Counsel

The Office of General Counsel (OGC) plays a fundamental role in facilitating orderly, efficient, and effective change within the Federal Government. External challenges can make it difficult to achieve the overall mission. One significant management challenge is the seven-and-a-half-year vacancy in the position of General Counsel (GC), a role that is Presidentially-appointed and Senate-confirmed (PAS).

This vacancy has impaired the FLRA's ability to achieve its mission because issuance of unfair-labor-practice (ULP) complaints are reserved exclusively to the GC's discretion (5 U.S.C. §§ 7104(f)(2)(B), 7118(a)(1)). Thus, if there is no GC or Acting GC, then the OGC cannot issue ULP complaints. As the GC position has been vacant since January 20, 2017, and there was no Acting GC for most of that time, OGC's ability to perform its statutory duties has been severely impaired for over seven years.

This has had negative impacts on the efficiency and effectiveness of the Federal Government's labor-management relations system government-wide. ULP charges represent workplace conflicts. When OGC cannot act on the charges, workplace conflicts simmer and distract from agency missions. Moreover, the older the case, the more potential liability increases for the Federal Government in the form of higher backpay and interest.

The vacancy has also distorted OGC practices and created further delays that hurt the agencies, individuals, and bargaining unit representatives OGC serves. Parties file ULP charges that are investigated, but cannot be prosecuted in the absence of a PAS GC or Acting GC. Years pass and the number of ULP charge recommendations waiting for action grow. Then, during the limited tenure of an Acting GC, OGC must sprint to clear out those cases before the Acting GC's term expires. The resulting flood of cases overwhelms limited OGC staff, causing delays in the resolution of other OGC cases.

This is exactly what occurred when an Acting GC was designated in March 2021. At that time, there were 494 ULP complaint recommendations pending. From March 2021 through August 2023, the OGC dealt with those cases through settlement or litigation before the Office of Administrative Law Judges (OALJ). But the OGC did not just clear up the backlog, it also investigated new ULP charges and approved an additional 725 complaints. Those cases have been resolved or are being litigated. The OGC has trials scheduled with the OALJ through November 2024. To focus on their mission essential functions, the then-Acting GC deprioritized all other work and important work has been delayed.

OGC's success in processing the ULP backlog, came with the need to litigate hundreds of complaints after issuance (427 in 2023 alone). This resulted in historically high, unmanageable caseloads, leading to more backlogs and fewer decisions being made on time. From 2020 to 2023, the number of cases filed went up by 42 percent, while the workload of OGC increased by 62 percent. The increased workload caused a 49 percent decrease in timely actions by the OGC during that time. This trend continued in the first quarter of FY 2024, with only 57 percent of cases receiving timely initial ULP decisions and 63 percent cases receiving timely decisions in representation cases. The conclusion that must be drawn from these numbers is plain—cases that had to be held in abeyance when there was no GC, overwhelmed OGC when there was an Acting GC.

Unfortunately, this cycle is beginning again. The Acting GC's tenure ended in August 2023, and so too did OGC's ability to act on ULP complaint recommendations. As of September 11, 2024, there were 218 ULP complaint recommendations pending with OGC. The longer the FLRA is without a PAS GC, the more that backlog will grow. This results in an artificially created backlog of older cases, that will cost more to resolve, and that cannot be timely processed.

This unnecessarily wastes precious resources in the FLRA and government-wide. It has also has hampered the FLRA's ability to fully engage with administration priorities such as Executive Order 14003, Protecting the Federal Workforce (January 22, 2021).

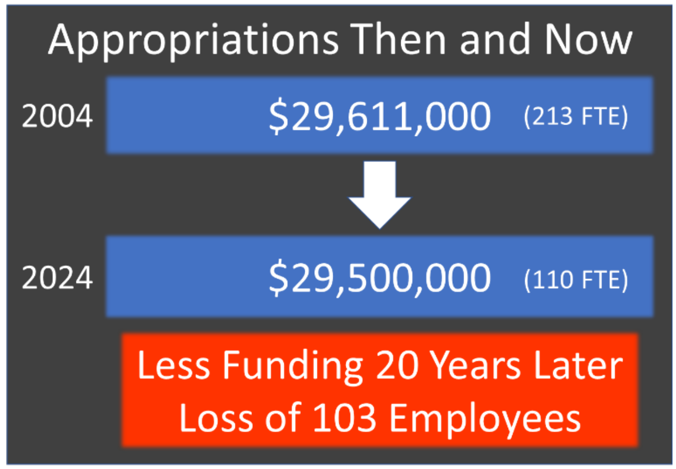
The FLRA should attempt to hasten the process of filling the GC vacancy by actively interacting with key decisionmakers and promptly addressing questions concerning nominees. The FLRA should continue these efforts in the coming year, in the hope that the vacancy will be filled in fiscal year 2025.

Key OIG Resources

- Executive Order 14003, Protecting the Federal Workforce (Jan. 22, 2021)
- Executive Order 14025, Worker Organizing and Empowerment (Apr. 26, 2021)
- Federal Labor Relations Authority, *Strategic Plan 2022-2026*
- Federal Labor Relations Authority, Congressional Budget Justification for FY 2025

Challenge 2: 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 2024 appropriation is less in actual dollars than its FY 2004 appropriation. In 2004, the FLRA employed 213 full-time equivalents (FTEs) with a budget of $29,611,000. In 2024, the FLRA staffed its three components with a workforce of just 110 FTEs and a budget of $29,500,000. Given inflation and increased staffing costs, the FLRA addressed its decreasing purchasing power by not filling vacated positions and by closing 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. That imperils the FLRA's ability to fulfill its mission-related goals and objectives. Recent trends in the FLRA's OGC demonstrate this.

With too few employees and too many cases, the number of OGC cases pending at the end of each FY is growing exponentially. There were, for example, 1,113 ULP cases pending at the end of FY 2023. That number is expected to grow to 1,403 in FY 2024, and more than double by the end of FY 2026. This 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. Over the past 20 years, the FLRA made increasingly tough financial choices and has prioritized the preservation of its workforce for mission delivery. For years, the FLRA not only deferred technology infrastructure investments, but has also cut IT necessary to maintain safe, secure, effective, and modern IT systems. As noted in the third management challenge, those investments cannot be delayed any longer. The strength of the FLRA's cybersecurity efforts, however, is going to be determined, in part, by its financial resources, which are currently limited.

There are a number of areas that the FLRA could explore that could address these challenges. FLRA's 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 are 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 Office of Management and Budget (OMB) for permission to provide fee-based services like those provided by the Federal Mediation and Conciliation Service (FMCS), as allowed by law.

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.

Progress in Addressing the Challenge

FLRA has been actively engaged with the OMB and has held discussions with congressional leaders to express its concerns and articulate the critical need for additional resources. These efforts have yielded promising results. In particular, a bipartisan group of over 60 congressional members have signed a letter in support of FLRA's request for adequate funding.

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. 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, as allowed by law.

Key OIG Resources

- Federal Labor Relations Authority, Congressional Budget Justification for Fiscal Year 2025

Challenge 3: Meeting Cybersecurity Requirements in a Resource-Constrained Environment

FLRA is a small, independent agency facing ongoing challenges in maintaining a robust cybersecurity posture while operating with constrained budgets and limited staffing. The growing complexity and frequency of cyber threats, along with increasing regulatory requirements under the Federal Information Security Modernization Act of 2014 (FISMA)[1], make it difficult to keep pace with compliance expectations and operational demands. Despite demonstrating strong dedication to IT security, resource limitations continue to hinder the agency's ability to fully address the evolving landscape of cybersecurity risks and FISMA findings.

In recent years, Federal cybersecurity requirements have expanded significantly. The annual FISMA review includes evaluating over 900 National Institute of Standards and Technology (NIST) controls, with agencies expected to meet stringent maturity levels across various domains, including risk management, incident response, and continuous monitoring.

The challenge lies in the disparity between the increasing cybersecurity demands and the limited funding and staffing available to small, independent agencies. While larger agencies have greater resources to address these challenges, smaller agencies often struggle to keep pace with the continuous flow of new requirements, guidance, and compliance mandates. This places additional pressure on the agency to meet government-wide cybersecurity standards without the necessary support to scale the agency's efforts.

Key Issues:

1. **Limited Resources:** As a small agency, the FLRA has limited funding and staffing to support comprehensive cybersecurity initiatives, which restricts the agency's ability to implement, monitor, and update the full range of security controls required by FISMA.
2. **Evolving Cyber Threats:** The cybersecurity landscape is dynamic, with threats becoming increasingly sophisticated and frequent. Keeping pace requires continuous investment in advanced tools, training, and expertise—resources that are often difficult to obtain due to budget constraints.
3. **Compliance and Maturity Levels:** Achieving a higher level of cybersecurity maturity, as mandated by FISMA, requires a holistic approach that encompasses risk management, continuous monitoring, and incident response. However, insufficient funding for dedicated cybersecurity teams and infrastructure hinders the FLRA's ability to meet the required metrics and attain higher maturity levels.
4. **Competing Priorities:** The FLRA must balance cybersecurity requirements with other mission-critical priorities. Given finite resources, this often means making tough

[1] Pub. L. No. 113-283 (codified at 44 U.S.C. ch. 35).

decisions on funding allocation, which can lead to delays or reduced scope for cybersecurity initiatives.

Failing to address these challenges effectively can result in increased vulnerability to cyberattacks, potential data breaches, and reduced compliance with Federal security standards. Additionally, ongoing FISMA findings related to cybersecurity may cause reputational harm, heightened oversight, and possible financial penalties.

What Needs to be Done

FLRA needs to continue to optimize its cybersecurity program through its capability to measure and assess the effectiveness of its policies, procedures, and strategies. Achieving this will require ongoing investment and support from external stakeholders. Addressing these challenges is critical to ensuring the security and resilience of the agency's operations in the face of evolving threats and growing Federal expectations:

- **Advocacy for Resources:** Engage with Congress, OMB, and oversight bodies to advocate for increased funding and staffing dedicated to cybersecurity. Highlight the disproportionate impact of new cybersecurity requirements on smaller agencies to secure additional support.
- **Partnerships and Collaboration:** Leverage partnerships with larger agencies and Federal cybersecurity programs to access shared services, expertise, and resources that can help bridge the gap between agency needs and available funding.
- **Risk-Based Prioritization:** Continue implementing a risk-based approach to cybersecurity, focusing on the most critical areas of vulnerability while being transparent about the limitations posed by current resource levels.
- **Innovation in Cybersecurity:** Explore cost-effective cybersecurity solutions, such as automation and cloud services, that provide robust security controls with fewer demands on staff and budget.

Key OIG Resources

- FLRA OIG, *Evaluation of the FLRA's Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2024*, Report No. MAR-24-07 (Aug. 2024).
- Federal Information Security Modernization Act of 2014, Pub L. No. 113-283 (codified at 44 U.S.C. ch. 35).
- NIST, *Framework for Improving Critical Infrastructure Cybersecurity* (Apr. 16, 2018).