



Audit of the Criminal Division's Process for
Incoming Mutual Legal Assistance Requests
Audit Division



21-097

JULY 2021



EXECUTIVE SUMMARY

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Objective

The Office of International Affairs (OIA) in the Department of Justice's (DOJ) Criminal Division (CRM) is responsible for responding to incoming mutual legal assistance (MLA) requests from foreign authorities to assist foreign criminal investigations. The objective of this audit was to assess CRM's process for incoming MLA requests.

Results in Brief

In 2013, OIA determined it needed to reform its process for executing incoming MLA requests to address a critical vulnerability to national security: OIA's inability to respond timely to these foreign requests. Specifically, declining resources at OIA had led to mounting delays and concerns about U.S. compliance with treaty obligations that threatened foreign execution of MLA requests for U.S. cases. CRM and OIA developed a strategy to address four key interrelated areas—Centralization, Reducing the Backlog, Technology, and Training and Outreach—that would provide OIA the resources needed to reform and enhance OIA's ability to execute incoming MLA requests.

We assessed CRM and OIA's reform initiative efforts, which began in 2015, and we found OIA has made some progress, but several reform initiative goals remain unmet with no current plan for how they will be achieved. Specifically, OIA continues to be challenged by its high pending caseload, difficulty hiring and retaining staff, and an antiquated case management system. Addressing these challenges could increase OIA's operational efficiency and boost its ability to manage its increasing volume of incoming requests, thereby helping ensure foreign requests are processed timely to achieve its mission.

Recommendations

Our report contains seven recommendation to help continue the reform initiative efforts and enhance OIA's incoming MLA process. We requested a response to our draft audit report from the Executive Office of the U.S.

Attorneys' (EOUSA) and CRM, which can be found in Appendix 2 and 3, respectively. Our analysis to their response is included in Appendix 4.

Audit Results

As the central authority for U.S. law enforcement interactions with other countries, CRM's OIA secures evidence from foreign authorities that is critical to, solving crimes against Americans and obtains the extradition of fugitives from foreign countries to face justice in U.S. courts. OIA also plays a critical role in fostering international cooperation with foreign countries, and timely execution of mutual legal assistance requests is critical to helping OIA efficiently move fugitives and evidence across borders, an essential element in prosecutors' and law enforcement's efforts to combat transnational organized crime both in the U.S. and abroad.

In 2013, CRM determined that OIA was under-resourced, its execution of MLA requests was significantly delayed, and its work volume was increasing. In response, CRM undertook a reform initiative that sought to address four key areas: Centralization, Reducing the Backlog, Technology, and Training and Outreach. In Fiscal Year (FY) 2015, the Department sought budget enhancements to significantly increase OIA resources to support the goals of the reform initiative, as well as resources at Offices of the United States Attorneys (USAO) and the Federal Bureau of Investigation (FBI) for execution of incoming MLA requests.

Congress appropriated additional funds to the USAOs and the FBI but elected not to appropriate additional funds to CRM for OIA. To provide resources to OIA, DOJ made a one-time, intra-departmental transfer of \$13.5 million (transfer funds) to CRM to support the reform initiative. While CRM initially used the transfer funds to increase positions at OIA, due to the risk of using temporary funds to pay for permanent positions, CRM changed its strategy

and decided to conserve the transfer funds for as long as possible until CRM received the requested enhancement from Congress to its portion of the General Legal Activities appropriation. In FY 2019, CRM received from Congress the requested funding enhancement it needed to support the additional OIA positions. The absence of this funding at the onset of the reform initiative impacted OIA's ability to fully reform its MLA process and important challenges remain.

Centralization

A key weakness of the MLA process at the outset of the reform initiative was OIA's inability to centralize its incoming request process. OIA noted the passage of the Foreign Request Efficiency Act in 2009 gave it greater autonomy to self-execute incoming MLA requests. Prior to the reform initiative, OIA generally prioritized incoming MLA requests as a lower priority than domestic law enforcement matters, such as extraditions and outgoing MLA requests. As a result, OIA created the Incoming MLA and Cyber teams that helped reduce the redundancies and inefficiencies of the pre-reform initiative process where OIA had to rely on USAOs, thereby improving OIA's ability to be responsive and timely to incoming MLA requests. These changes had a positive effect on OIA's perception by foreign authorities, which contributed to an increase in the amount of incoming MLA requests it receives. While OIA's centralization efforts reduced its reliance on USAOs across the country, OIA continued to refer incoming requests, specifically for electronic evidence, to USAOs in the District of Columbia (DC) and the Northern District of California (NDCA). OIA ended its referral of incoming requests for electronic evidence to USAO DC at the end of 2019 due to a lack of timeliness. The decision to discontinue referrals to USAO DC will impact how OIA manages its pending caseload and the number of referrals made to USAO NDCA, particularly since OIA anticipates a continued rise in the demand for incoming requests. We found that USAO NDCA had only two of the five additional positions, added to USAO NDCA in FY 2015, currently dedicated to handling OIA-referred requests, which may not be sufficient to address expected increases in caseloads.

Reducing the Backlog

We found OIA's staffing challenges prevent it from maintaining stable onboard personnel numbers and managing its high pending caseload effectively. While OIA has increased its hiring in response to the reform initiative, its onboard personnel number has remained stagnant due, in part, to high attrition, especially with its

International Affairs Specialist positions and on its Management and Administration team. While OIA leadership agrees that its caseloads are contributing to morale concerns and retention among its personnel; it has not assessed the manageable caseload threshold it identified in 2013, prior to the reform initiative. OIA's Cyber team incoming process could also be further refined to improve morale and greater accountability of attorney work products. Lastly, the forthcoming CLOUD Act agreements will likely increase personnel workloads and further affect OIA's ability to effectively manage its pending caseload. Although, OIA leadership believes it has the information needed to make informed decisions about assignments and balanced caseloads, OIA does not currently have a hiring and retention plan to address its staffing challenges.

Technology

We found that CRM and OIA's efforts to satisfy the reform initiative's technology goal of modernizing OIA's case tracking and management system were not successful. Between 2015 and 2016, CRM spent \$3.57 million to develop a new system for OIA, but due to data protection and access concerns, the system was never fully developed or salvaged upon termination. The failure of the project meant OIA had to rely on its legacy Oracle database, which presents limitations with its functionality, data reliability, and visibility of the MLA process. CRM Admin and OIA have not had any funding discussions since 2017 about meeting this technology requirement. However, CRM and OIA could leverage the opportunity to enhance OIA's Oracle automation capabilities as it works to develop a workflow for the forthcoming CLOUD Act agreements. We found CRM currently has no strategy for how it intends to replace OIA's antiquated case tracking and management system.

Training and Outreach

We found that OIA's training and outreach efforts are limited and provided on an ad hoc basis. Training and outreach have been a lower priority for OIA given its challenges with staffing and its caseload. However, OIA acknowledged that additional training for foreign authorities could improve its incoming MLA process by helping to reduce the number of requests that do not meet U.S. legal standards. OIA also identified the need to establish a website of resources for foreign authorities, we believe that creation of this external website could improve the completeness and legal sufficiency of incoming requests, and thereby improve the efficiency and timeliness by which OIA responds to these requests.

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Introduction

The Criminal Division's (CRM) mission is to protect the American people from the most serious criminal activity, including transnational criminal organizations, violent gangs, drugs, cybercrime, child exploitation corruption, fraud, and money laundering. CRM responds to critical and emerging national and international criminal threats. As the Central Authority for U.S. law enforcement interactions with other countries, CRM's Office of International Affairs (OIA) secures evidence through mutual legal assistance requests that is critical to solving crimes against Americans, and it obtains the extradition of fugitives from foreign countries to face justice in U.S. courts. OIA also plays a critical role in strengthening U.S. partnerships and fostering international cooperation with foreign countries, which is essential to ensuring justice in individual criminal cases and protecting national security. The timely execution of mutual legal assistance requests is critical to helping OIA efficiently move fugitives and evidence across borders, an essential element in prosecutors' and law enforcement's efforts to combat transnational organized crime both in the U.S. and abroad.

The U.S. is a party to several bilateral treaties with countries around the world to obtain mutual legal assistance (MLA) in criminal matters. Since the first U.S. bilateral Mutual Legal Assistance Treaty (MLAT) entered into force with Switzerland in 1977, MLATs have become increasingly important to law enforcement as criminal activity more frequently crosses international borders. MLATs are one of the most widely used mechanisms for acquiring foreign information and evidence, including witness statements or sworn testimony of persons located in the U.S., business records of entities within the U.S., and other assistance in criminal investigations and prosecutions. MLATs are negotiated by the Department of State in cooperation with the Department of Justice (Department) to facilitate cooperation in criminal matters. For every MLAT, each country designates a Central Authority, generally the country's Justice Department, which handles requests made under the MLAT. OIA is responsible for responding to incoming MLA requests under these treaties from foreign authorities to assist foreign criminal investigations. Among other things, such requests may involve providing assistance in obtaining business records of entities with the U.S. and conducting interviews of persons located in the U.S. It is OIA's responsibility to effectively manage these requests both to ensure reciprocity from foreign authorities for U.S. outgoing requests and to ensure that transnational crime and terrorism is investigated and prosecuted whenever possible.

The MLA Reform Initiative

In 2013, CRM performed a review of OIA and identified that OIA was under-resourced, it was experiencing delays with executing MLA requests, and its work volume was increasing. OIA noted from 2000 to 2012, the number of requests for assistance from foreign authorities handled by OIA had increased nearly 60 percent and the number of requests for computer records had increased ten-fold. CRM determined that OIA's total caseload was becoming unmanageable. OIA's caseload included 4,500 incoming MLA requests from foreign authorities. In the 2013 reform initiative justification, OIA highlighted that its attorneys carried on average caseloads of 264 cases each, a caseload that had increased 30 percent since 2008 and estimated that caseloads would increase to over 400 cases per attorney in 2020 without additional resources to reform its incoming MLA process.

According to the 2013 reform initiative justification, OIA's incoming MLA process had become "mired in antiquated, decentralized systems and steeped in bureaucratic wheel-spinning and passivity." Further, OIA highlighted that mounting delays in its processing of incoming MLA requests led foreign countries to express frustrations about the U.S. government's compliance with treaty obligations and threatened foreign

execution of U.S. requests for assistance in U.S. criminal and counterterrorism cases. To address these challenges, CRM developed the MLA reform initiative (reform initiative). CRM and OIA identified four key elements of the initiative to address OIA's challenges with incoming MLA requests: (1) Centralization, (2) Reducing the Backlog, (3) Technology, and (4) Training and Outreach.

Funding for the MLA Reform Initiative

To support the MLA Reform Initiative, the Department sought budget enhancements to significantly increase resources at OIA, Offices of the United States Attorneys (USAO), and the Federal Bureau of Investigation (FBI) for the execution of incoming MLA requests, especially for electronic evidence from Communications Service Providers (CSP).¹ In CRM's FY 2015 budget justification, CRM requested a funding enhancement of \$19.6 million to its level of funding within the General Legal Activities (GLA) appropriation to support OIA and the goals of the reform initiative.² In FY 2015, Congress appropriated additional funds to the USAOs and the FBI to support the reform initiative but elected not to appropriate additional funds to CRM for OIA.

Since OIA did not receive the requested MLA funding to support the reform initiative in FY 2015, CRM sought and obtained a one-time, intra-departmental transfer of \$13.5 million from a surplus in the Department's Fees and Expenses of Witnesses fund to initiate the reform initiative and address OIA's personnel shortfalls. The \$13.5 million was no-year funding, as defined by OMB Circular A-11, no-year funding is available until expended. According to CRM, CRM could incur obligations against the transfer funding indefinitely and the Department did not have to request approval from Congress to carry forward no-year funding balances, but CRM reports unobligated balances quarterly to Congress. This funding, however, did not constitute a permanent enhancement to its annual funding level that CRM receives as part of DOJ's GLA appropriation, of which the CRM appropriation is a subset. CRM continued to request additional funding to support OIA in its budget requests for FYs 2016 and 2017.

Table 1 shows an accounting of how the \$13.5 million in transfer funds were spent by CRM from FY 2015 to FY 2020.

¹ A CSP is a service provider that offers telecommunications services or some combination of information and media services, content, entertainment, and application services over networks. CSPs include telecommunications carriers, content and applications service providers, cable service providers, and cloud communications service providers.

² CRM Office of Administration officials told us that Congress does not generally earmark CRM's level of funding within the GLA appropriation for the Criminal Division and does not earmark specific funding for any CRM sections or programs.

Table 1

CRM's Accounting of the \$13.5 million MLA Transfer Funds for OIA

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Prior Year Balance		\$13,425,856	\$6,181,993	\$5,218,196	\$5,224,405	\$4,993,169
Prior Year Recoveries		\$0	\$0	\$6,209	\$0	\$196,478
Beginning Balance	\$13,500,000	\$13,425,856	\$6,181,993	\$5,224,405	\$5,224,405	\$5,189,647
Salaries and Benefits	\$74,144	\$3,986,863	\$963,797	\$0	\$231,236	\$2,889,073
IT System Development	\$0	\$1,805,000	\$0	\$0	\$0	\$0
Contract Services	\$0	\$1,452,000	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0
Annual Total	\$74,144	\$7,243,863	\$963,797	\$0	\$231,236	\$2,889,073
Ending Balance	\$13,425,856	\$6,181,993	\$5,218,196	\$5,224,405	\$4,993,169	\$2,300,574

Source: CRM Admin

The CRM Office of Administration (CRM Admin) assists with managing the appropriated funds for CRM under the direction of the CRM Assistant Attorney General. A senior CRM Admin Official noted that initially CRM used a substantial amount of the \$13.5 million to fund an increase in OIA's authorized position level and add positions in support of the reform initiative, but CRM did not have the permanent funding to support these additional positions.³ Due to the risk of using one-time funding to pay for permanent positions, CRM Admin shifted its strategy to conserving the transfer funds for as long as possible until CRM received the requested increase to CRM's portion of the GLA annual appropriation. Therefore, to support the additional positions, CRM Admin officials told us that CRM had to apply more of its portion of the annual GLA appropriated funds to support OIA. This meant CRM could not use those funds to pay for other needs of CRM, such as hiring for the other 16 CRM sections, or infrastructure improvements, such as purchasing new information technology and upgrading antiquated information technology systems. CRM officials told us they used the transfer funds as a safety net: if there was a year where CRM's portion of the annual GLA appropriated funds was not sufficient to pay for the additional OIA positions, then CRM Admin used the transfer funds to support the shortfall. As Table 1 reflects, CRM Admin applied varying amounts of the transfer funds to OIA each year based on whether CRM could cover expenses for OIA with its portion of the annual GLA appropriated funds for that fiscal year.

³ The CRM Assistant Attorney General makes personnel allocations which are communicated in ceiling memos to each section, including OIA. The ceiling memo identified the number of positions allocated to OIA.

In FY 2019, Congress included a \$13 million enhancement to the annual GLA appropriation, this increase included funding for CRM to support additional positions for OIA as part of the reform initiative. This enhancement provided CRM the funding it needed to support the additional positions it added in FY 2015. Thus, because CRM no longer needed to continue to conserve the remaining transfer funds for the purpose of funding personnel costs, it decided to allocate all remaining transfer funds to personnel and other costs in FY 2020 and FY 2021. CRM Admin officials told us that CRM continues to support OIA's important mission, and OIA's leadership continues to advocate for its resource needs, including continued needs for its MLA process; according to CRM Admin officials, future enhancements for OIA and its MLA process will be pursued in line with the priorities established by the Department and CRM leadership and balanced against the needs of all the sections in CRM.

Office of the Inspector General Audit Approach

Our audit objective was to assess the Criminal Division's process, through OIA, for incoming MLA requests. Specifically, we assessed whether CRM and OIA efforts in support of the reform initiative addressed OIA's challenges related to incoming MLA requests and improved the incoming MLA request process, as identified in the justification for the reform initiative.

To accomplish our objective, we interviewed CRM Admin personnel who are responsible for managing OIA's resource needs and OIA personnel who receive and respond to incoming MLA requests from foreign countries. We also interviewed personnel at the FBI and USAOs that receive referrals from OIA for incoming MLA requests, specifically for electronic evidence. We surveyed 63 individuals who currently work or formerly worked on the Incoming MLA and Cyber teams to gather feedback on OIA's access to resources, caseloads, technology needs, and training and outreach efforts.⁴ Additional information about the objectives, scope, and methodology for this audit are available in Appendix I.

⁴ The majority of survey respondents were attorneys and International Affairs Specialists (IAS), but the list also includes management analysts and other support personnel.

Audit Results

We found that OIA has made some progress improving its incoming MLA process since the reform initiative begun in 2015; however, due to a lack of permanent funding and other issues, several reform initiative goals remain unmet with no strategy on how they will be achieved. While the transfer of \$13.5 million from the Fees and Expenses of Witnesses fund in FY 2015 allowed CRM to increase OIA's authorized position level and add positions in support of the reform initiative, but CRM did not receive an increase to its portion of the annual GLA appropriated funds to support the addition of those positions. As a result, CRM did not receive an increase to its portion of the annual GLA appropriation to support those positions until FY 2019, and the absence of this funding at the onset of the reform initiative impacted OIA's ability to fully reform its MLA process. We found that OIA continues to be challenged by its high pending caseload, difficulty hiring and retaining staff, an antiquated case management system, and other inefficiencies. Addressing these challenges that remain in the four areas of the reform initiative – Centralization, Reducing the Backlog, Technology, and Training and Outreach – could increase OIA's operational efficiency and boost its ability to manage its increasing volume of incoming requests, thereby helping to ensure that it can process foreign requests in a timely manner.

Centralization

OIA highlighted in the reform initiative justification that it had seen growth in the amount of incoming MLA requests it received from foreign countries especially between 2009 and 2013, but OIA's incoming MLA process hindered its ability to manage and process these requests effectively. One key weakness of its process was the inability to centralize the execution of incoming MLA requests at OIA. The passage of the Foreign Evidence Request Efficiency Act of 2009 (FERE Act) allowed OIA to consolidate and process incoming MLA requests itself in the District of Columbia (DC), rather than relying extensively on USAOs across the country to process incoming requests.⁵ However, to utilize the flexibility of the FERE Act, OIA needed to address its organizational structure and its impact on how it processed incoming requests, especially since incoming MLA requests from foreign governments were generally treated by OIA personnel as a lower priority than extradition efforts and outgoing MLA requests that related to domestic law enforcement efforts. In this section, we detail OIA's centralization efforts under the reform initiative to develop dedicated teams to handle incoming MLA requests, and the involvement of the FBI and USAOs in OIA's incoming MLA process.

OIA's incoming MLA process, prior to the reform initiative, included the following steps:

1. reviewing incoming requests and assessing compliance with the requirements of applicable MLATs and U.S. law;
2. determining the appropriate means for execution and the competent authority;

⁵ The Foreign Evidence Request Efficiency Act of 2009 (18 U.S.C. § 3512) provides courts authority to issue orders and search warrants based solely on a foreign request, such as an incoming request for MLA. Section 3512(c) permits legal process execution in the district where "the documents or things to be produced are located" or "in any case...in the District of Columbia".

3. referring the request to the USAOs in the various districts where the evidence was located and/or the law enforcement agency charged with executing the request; and monitoring the request and transmitting the evidence to the foreign authority in the requesting country.

The former incoming MLA process was decentralized and heavily reliant on USAOs to process incoming requests for assistance that required court orders or for evidence located in multiple districts. According to OIA this model was inefficient and ineffective, and assistance was not provided in a timely fashion. OIA noted that too often, OIA attorneys and prosecutors were focused on domestic priorities and failed to give MLA requests the attention OIA believed they warranted, resulting in incoming MLA requests that often languished for years. Mounting delays in execution caused foreign countries to express concerns about the U.S. government's compliance with treaty obligations and threatened the willingness of foreign governments to execute U.S. requests for assistance. For example, CRM stated in its FY 2015 Budget Request that in 2013, the Latvian Prosecutor General held a press conference to publicly criticize the U.S. for its failure to respond in a timely manner to their MLA requests; according to OIA, Latvia had been one the U.S.'s most reliable partners in Eastern Europe. Overall, OIA believed this lack of responsiveness threatened to impede timely responses to U.S. requests made to other countries in connection with ongoing U.S. criminal and counterterrorism investigations. The passage of the FERE Act provided OIA an opportunity to consolidate and process incoming MLA requests itself in the District of Columbia (DC), rather than relying so heavily on USAOs across the country to process the requests and helped increase foreign authorities' satisfaction with OIA's response to incoming MLA requests.

Creation of New OIA Teams

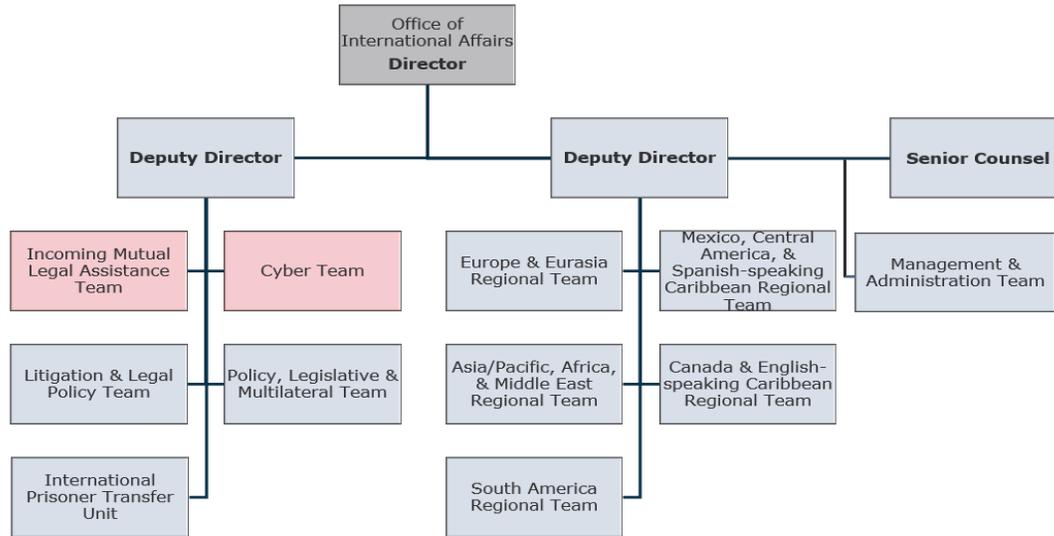
Prior to 2015, OIA was divided into regional teams consisting of attorneys and paralegals, known as International Affairs Specialists (IAS), who handled matters related to extradition, outgoing requests, and incoming requests for their assigned countries or regions of the world.⁶ OIA's former Director noted that incoming MLA requests were generally treated as the lowest priority. Barring urgent circumstances, OIA noted that work supporting domestic criminal matters was generally given greater attention, leaving foreign incoming MLA requests to be prioritized after extradition and outgoing MLA requests, which involved domestic law enforcement matters.

As part of the MLA reform initiative, OIA created a Cyber team to handle incoming MLA requests for electronic evidence from CSPs and an Incoming MLA team to handle all other incoming MLA requests, for items such as bank records and witness statements. Figure 1 shows OIA's organizational chart after the creation of the two dedicated teams for incoming MLA requests. The creation of the Incoming MLA and Cyber teams helped relieve the burden of incoming MLA requests on OIA's regional teams, allowing them to focus their attention on extradition and outgoing MLA requests.

⁶ Extradition is a legal process by which one country (the requesting country) may seek from another country (the requested country) the surrender of a person who is wanted for prosecution, or to serve a sentence following conviction, for a criminal offense. We did not review OIA's extradition process as part of this audit.

Figure 1

OIA Organizational Chart, as of FY 2020



Source: OIA

Overall, these two new teams dedicated to handling incoming requests and the OIA's ability to self-execute requests under the FERE Act helped reduce the redundancies and inefficiencies created by the pre-reform initiative process where OIA had to rely on USAOs; thereby improving OIA's ability to be responsive and timely in handling incoming MLA requests. These changes also had a positive effect on OIA's perception by foreign authorities: OIA officials told us that because of these changes, foreign authorities recognized OIA was becoming more efficient at responding to incoming MLA requests. OIA officials believe this improved perception by foreign authorities contributed to an increase in the amount of incoming MLA requests OIA receives.

FBI Assistance

Executing incoming MLA requests is not performed by OIA and the USAOs alone. The FBI also plays an important role in OIA's process for incoming MLA requests. The FBI MLAT Unit fields a high volume of requests from foreign partners seeking subject, victim, and cooperating witness statements, as well as electronic evidence from CSPs. Specifically, the MLAT Unit is involved with all incoming MLA requests for electronic evidence from CSPs. For these requests, FBI MLAT Unit Special Agents serve as the affiants for search warrant applications and execute search warrants, and FBI contractors filter the production received from CSPs. Filtering involves reviewing the records produced by the providers to ensure that only those records described by the search warrant are included and provided to foreign authorities. This process generally parallels domestic practice, but it can be time consuming and vary in difficulty depending on the volume of the providers' production and the language in which the material is written.

The FBI MLAT Unit was created in FY 2015, when the FBI requested and received \$3.2 million to create the unit in support of the OIA's efforts to reform the MLA process and to centralize the intake, tracking, and

management of all MLA requests referred to the FBI. Prior to the MLAT Unit's establishment, the FBI stated that it did not have a systematic process for incoming MLA requests, and it took the FBI 12 to 18 months on average to provide results to OIA. With the creation of the MLAT Unit, response time for these requests has greatly improved. According to OIA data, from December 2016 through May 2020, the FBI's average processing time for incoming MLA assistances was approximately 4 months.⁷

USAO Assistance in the District of Columbia and Northern District of California

Prior to 2009, venue limitations under U.S. law required execution of incoming MLA requests in the district where the evidence sought was located. The passage of the FERE Act in 2009 gave OIA the ability to process incoming requests itself in the District of Columbia, instead of having to refer them to the USAOs. However, OIA was unable to fully utilize this authority until it received additional resources it needed to reform its incoming MLA process.

In FY 2015 the Executive Office for United States Attorneys (EOUSA) received funding for an additional 13 positions (8 attorneys and 5 paralegals) in support of the reform initiative, and specifically to address OIA referrals for incoming MLA requests. EOUSA allocated 8 of the 13 positions (5 attorneys and 3 paralegals) to USAO DC and 5 of the 13 positions (3 attorneys and 2 paralegals) to the USAO for the Northern District of California (NDCA), where a large number of CSPs are located. As the number of incoming requests for electronic evidence continued to increase, OIA continued to refer incoming MLA requests for electronic evidence from CSPs to the USAO NDCA, and to USAO DC, since these offices had received funding for additional positions in support of the reform initiative.

USAO DC

In our discussions with OIA officials, they highlighted concerns with USAO DC's lack of timeliness in responding to OIA-referred requests, even after USAO DC received funding to add eight positions to support OIA in FY 2015, and stated they believed the delays were due to domestic cases being a higher priority for USAO DC personnel. Additionally, USAO DC did not dedicate any positions, including the eight additional positions, to exclusively handling OIA referral requests. In FY 2020, USAO DC and CRM agreed to transfer the eight positions USAO DC received in support of the reform initiative to OIA.⁸ Consequently, OIA stopped referring incoming MLA requests for electronic evidence to USAO DC as of December 31, 2019, and OIA is now responsible for handling the cases it used to refer to USAO DC.

USAO NDCA

USAO NDCA currently has two personnel (one attorney and one paralegal) dedicated to handling referrals from OIA of incoming MLA requests, including those for electronic evidence.⁹ EOUSA originally allocated

⁷ Requests are often comprised of several "assistance" items such as multiple interviews, accounts, and/or court filings. For the timeframes presented in this paragraph, we counted the FBI's average time to complete each individual assistance item that makes up a request.

⁸ The transfer of positions and funding was completed through an intradepartmental reimbursable agreement which is anticipated to be renewed annually.

⁹ USAO NDCA also noted that an additional approximately 0.5 attorney full time equivalent is dedicated to supporting this work by attorneys in the office on an intermittent basis; because this is on an intermittent basis, we focused on the number of personnel USAO NDCA dedicated to this work on a fulltime basis.

USAO NDCA five additional positions (three attorneys and two paralegals), in FY 2015, to support OIA's MLA mission. According to an EOUSA official, USAO NDCA hired for the two paralegal positions in FY 2015 and two of the three attorney positions were backfilled with existing Assistant U.S. Attorney (AUSA) positions who transferred into those new positions. The third attorney position was intermittently supported by AUSAs until an AUSA filled the position on a part-time basis in 2018 and transitioned to a full-time basis in 2019. The EOUSA official noted this is a common practice in situations where a new initiative benefits from the services of an experienced prosecutor. According to USAO NDCA, OIA concurred with and supported USAO NDCA's belief that the specialized duties for these positions were more appropriate for an experienced prosecutor. As vacancies with the MLA positions occurred, USAO NDCA believed that, through a combination of the two filled positions and intermittent assistance, the assigned MLA workloads would be able to be addressed.

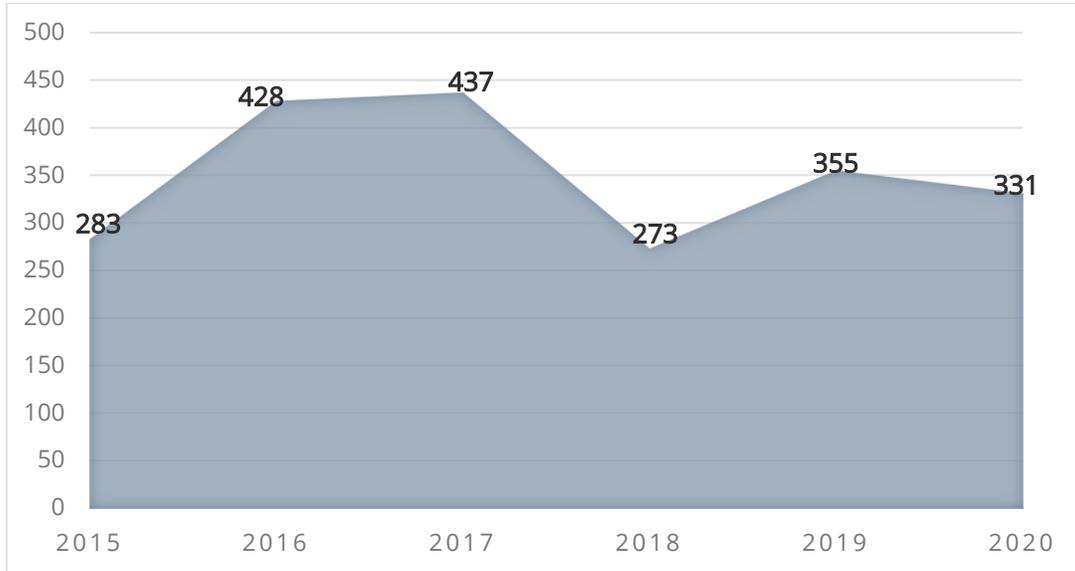
USAO NDCA noted three factors contributed to the number of personnel dedicated to the MLA mission:

1. caseloads did not surpass the FY 2015 level as originally anticipated;
2. USAO NDCA did not backfill the positions after the departure or transfer of the original hires because USAO NDCA believed the workload was manageable by the remaining positions; and,
3. USAOs often have more positions than they can afford to fill because of community wide budget reductions that are applied when costs grow faster than appropriations and have to prioritize which vacancies are backfilled based on current and near-term needs and requirements.

We analyzed the data USAO NDCA compiled in response to our July 2020 request to assess the MLA workloads. Figure 2 shows the USAO NDCA MLA caseload between FYs 2015 and 2020. Contrary to its statement that USAO NDCA caseloads did not surpass the FY 2015 level as originally anticipated, the data indicates that USAO NDCA caseloads were 17 percent to 54 percent higher than FY 2015 levels in 4 out of the next 5 fiscal years. The exception was FY 2018 when, according to OIA, it referred fewer cases to USAO NDCA due to the unavailability of Special Agents at the FBI San Francisco Field Office to assist USAO NDCA in executing requests. OIA also paused referrals to USAO NDCA because of new Department policy issued in October 2017. According to OIA, the new policy changed OIA's practice for seeking extended nondisclosure orders (NDO) from the courts and OIA's Cyber Team Associate Director was designated as an approving authority for extended NDOs. OIA told us because NDOs are an essential part of the execution process for most requests, having a procedure in place for the NDO concurrence process was important; thus, until a new procedure was agreed upon, OIA paused referrals to USAO NDCA during this period.

Figure 2

USAO NDCA Caseload, FYs 2015 through 2020



Source: USAO NDCA

Our audit identified other factors that are likely to cause OIA-related caseloads at USAO NDCA to remain high or grow. The OIA Associate Director for the Cyber team told us that a goal for the Cyber team was to eventually increase the swearing out of search warrants and filings at USAO NDCA, as a result of losing USAO DC support for handling the referral of incoming MLA requests. Further, a survey respondent on OIA's Cyber team identified that their caseloads were unmanageable and would continue to grow, and especially with USAO DC no longer assisting with cases, it is likely that OIA's staffing concerns, as discussed in the Reducing the Backlog section, will cause USAO NDCA's MLA caseload to rise. Therefore, two personnel at USAO NDCA dedicated to handling referrals from OIA of incoming MLA requests may not be sufficient to address the increasing caseloads. During the audit, USAO NDCA expressed support for being responsive to OIA and their MLA workloads, should they increase, and intends to leverage the remaining MLA positions allocations as the workload necessitates.

Overall, OIA's centralization efforts under the reform initiative have improved the incoming MLA process by creating a new model for handling incoming MLA requests to improve efficiency and address its caseload, eliminate inefficiencies, and expedite the execution process. Further, USAO NDCA handles a large volume of referrals for incoming MLA requests for electronic evidence from OIA, but only has two personnel currently dedicated to handle this work. Therefore, we recommend that EOUSA and OIA review current and projected caseloads to assess whether dedicating additional USAO NDCA personnel to support the MLA mission would help OIA manage the increasing demand of incoming MLA requests for electronic evidence.

Reducing the Backlog

In the 2013 reform initiative justification, OIA noted that because of resource constraints it did not have enough personnel to respond to the MLA requests it received. OIA noted that incoming MLA requests made

up the largest number of its pending cases; in FY 2013, its backlog included approximately 4,500 incoming MLA requests from foreign authorities.¹⁰ Further, the Department identified OIA's MLA backlog, which we refer to as OIA's pending caseload, as a Tier 2 enterprise risk in its Enterprise Risk Profile for FY 2018. We found as a result of the reform initiative efforts, OIA has made improvements to its incoming process which have contributed to its ability to better manage its pending caseload, which are requests that are moving through OIA's process. As a result of OIA's reorganization and expanded authority under the FERE Act, OIA can now respond to each incoming MLA request it receives and tracks its pending caseload. We also found the Department has removed OIA's MLA backlog, which we refer to as OIA's pending caseload, from its current Enterprise Risk Profile.¹¹ However, OIA's ability to manage its pending caseload continues to be affected by its staffing challenges. This section describes these challenges, including OIA's struggles to hire and retain the personnel necessary to effectively manage its pending caseload; the significant assistance that OIA provides to foreign authorities to ensure incoming MLA requests meet U.S. legal standards; and OIA's assumption of additional responsibilities—to be addressed with existing personnel—as part of the future Clarifying Lawful Overseas Use of Data (CLOUD) Act Agreements. We describe OIA's challenges with attrition and caseloads and identify actions OIA could take to improve hiring and retention.

In OIA's request for enhancements for FY 2022, OIA projected it would receive 40 percent more requests in FY 2020 than it received in FY 2016 and expected this trend to continue. OIA data reflects that OIA had a nearly 70 percent increase in case openings from FY 2014 to FY 2020. Figure 3 shows the trend of incoming requests opened by OIA between FYs 2014 and 2020.¹²

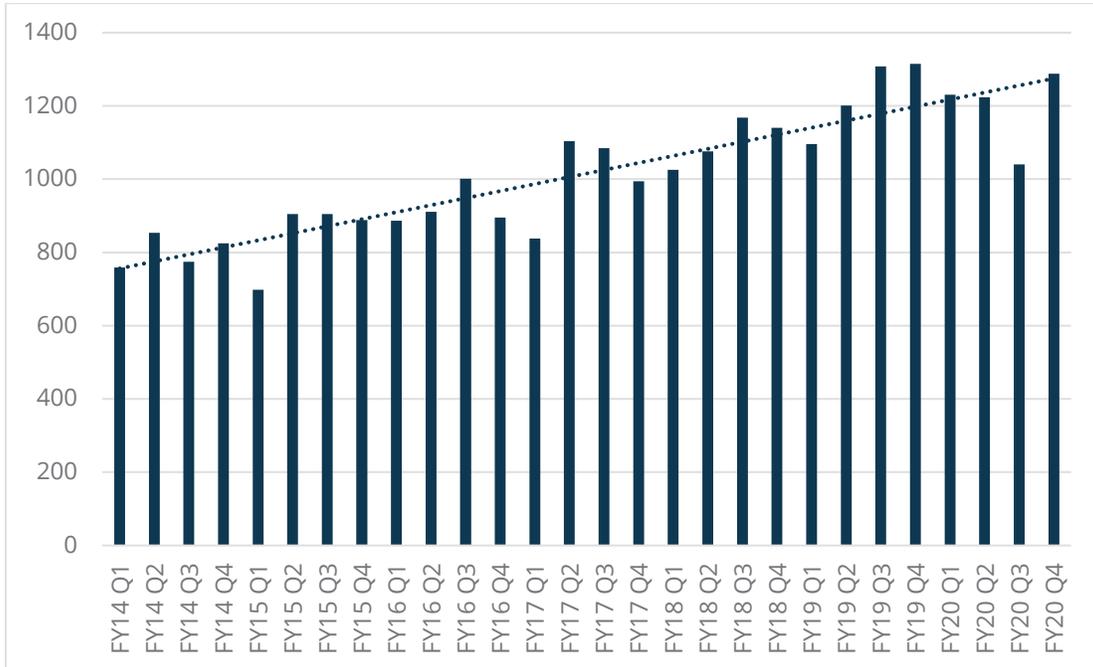
¹⁰ While the reform initiative justification identified Reducing the Backlog as one of the four core areas, OIA defines its caseload as cases that are opened and in process, and it does not use the term backlog. Thus, we generally do not use the term backlog to refer to any part of OIA's caseload in this report, and only use the term in reference to the goals of the reform initiative itself.

¹¹ CRM Admin officials told us that the Department removed OIA's backlog from the Enterprise Risk Profile based on efforts to mitigate risk, but that the risk remains part of the Department's Risk Register.

¹² Once OIA receives an incoming MLA request, the request is reviewed, assigned a case number, and logged into OIA's case management and tracking system.

Figure 3

Incoming Requests Opened between FYs 2014 and 2020



Source: OIA

In the FY 2015 budget justification, OIA noted the delay in fulfilling requests resulted for two reasons:

1. Many of the requests OIA receives do not meet the probable cause standard necessary to obtain certain information under U.S. law and these requests often require extensive consultation before OIA can seek the evidence requested.¹³
2. OIA and the USAOs did not have enough personnel to respond to the increasing volume of MLA requests.

¹³ For a judge to issue a search warrant, the request must precisely describe the facts demonstrating that it is probable that the place or thing to be searched contains evidence of a crime.

OIA Personnel Viewpoint

"Foreign countries have different background assumptions about the process, including the often-mistaken belief that an attorney can order the production of documents rather than needing to obtain a court order. The result is that even when requests are complete, they usually do not supply all the necessary factual material";

"Even some of our most sophisticated counterparts often send us requests that require at least one round of additional information to meet the relevant legal standard";

"Many foreign [countries] are able to meet the legal standard for a [2703d order] but not for a search warrant, even though the request is originally for content (necessitating a search warrant)";

"If we were able to do more training – such as by webinar, we [could] assist in helping foreign authorities to meet the applicable standards...[however] we are not able to perform virtual trainings thus must send the same questions to the foreign authorities for each case (in some countries)".

We surveyed 63 individuals from OIA who were mostly attorneys and International Affairs Specialists (IAS) who currently work or formerly worked on the Incoming MLA and Cyber teams to gather feedback on OIA's access to resources, caseloads, technology needs, and training and outreach efforts. Survey respondents frequently commented on issues regarding the sufficiency of requests for assistance submitted to OIA by foreign authorities (see OIA Personnel Viewpoint box). Specifically, we were told that incoming MLA requests seeking the content of electronic communications (e.g., user-generated content, such as the text of e-mail messages stored on a CSP server) are subject to the legal standard of probable cause. Respondents stated that the probable cause standard can be especially difficult for foreign partners to meet without significant assistance from OIA. As a result, OIA attorneys frequently allocate additional time to address legally insufficient requests in order to obtain the information needed from foreign authorities to meet the appropriate standards for the evidence the foreign country is seeking. Thus, legally insufficient requests are time consuming and impact OIA's ability to manage its caseload. Reducing the number of legally insufficient incoming MLA requests is also hindered by OIA's limited training and outreach efforts, which we discuss later in this report.

OIA's Onboard Personnel

In the CRM FY 2015 budget request, in support of the reform initiative, OIA noted its caseload had dramatically increased, but OIA's onboard personnel decreased due to retirements, other assignments within the Department, or personnel leaving for private sector jobs. In the reform initiative justification, OIA stated that it needed to increase positions at OIA to address the challenges it faced with managing an increasing volume of incoming MLA requests and its existing caseload. After receiving the \$13.5 million transfer funds in FY 2015, CRM Admin increased OIA's authorized position level by 57 positions. This increase allowed OIA to hire and increase onboard personnel. However, OIA's hiring efforts were restricted when a federal hiring freeze was executed in January 2017 and remained in place for the Department until April 2019.¹⁴ OIA provided quarterly onboard personnel numbers for OIA for FYs 2015 to 2020; however, we found OIA's data for FYs 2015 to early FY 2018 had data limitations because OIA did not track its attrition consistently until the second half of FY 2018. As a result, we focused on OIA's onboard personnel data for the second half of FY 2018 through FY 2020. Table 2 shows OIA's onboard personnel numbers, the number of personnel hired, and personnel who left OIA during FYs 2018-2020.

¹⁴ In September 2018, the International Prisoner Transfer Unit, and its 16 positions, were transferred from the Office of Enforcement Operations to OIA.

Table 2

**OIA Onboard Personnel, Hires, and Attrition Data
for FYs 2018-2020**

OIA Onboard, Hired, and Attrition Numbers	
FY 2018^a	
Onboard Personnel (start)	153
Hired	4
Attrition	(16)
Onboard Personnel (end)	141
FY 2019	
Onboard Personnel (start)	141
Hired	22
Attrition	(31)
Onboard Personnel (end)	132
FY 2020	
Onboard Personnel (start)	132
Hired	54
Attrition	(32)
Onboard Personnel (end)	154
Totals	
Personnel Hired	80
Personnel Lost to Attrition	79

^a OIA's FY 2018 numbers only include data for the 3rd and 4th quarter because OIA did not track attrition consistently until the 3rd quarter of FY 2018.

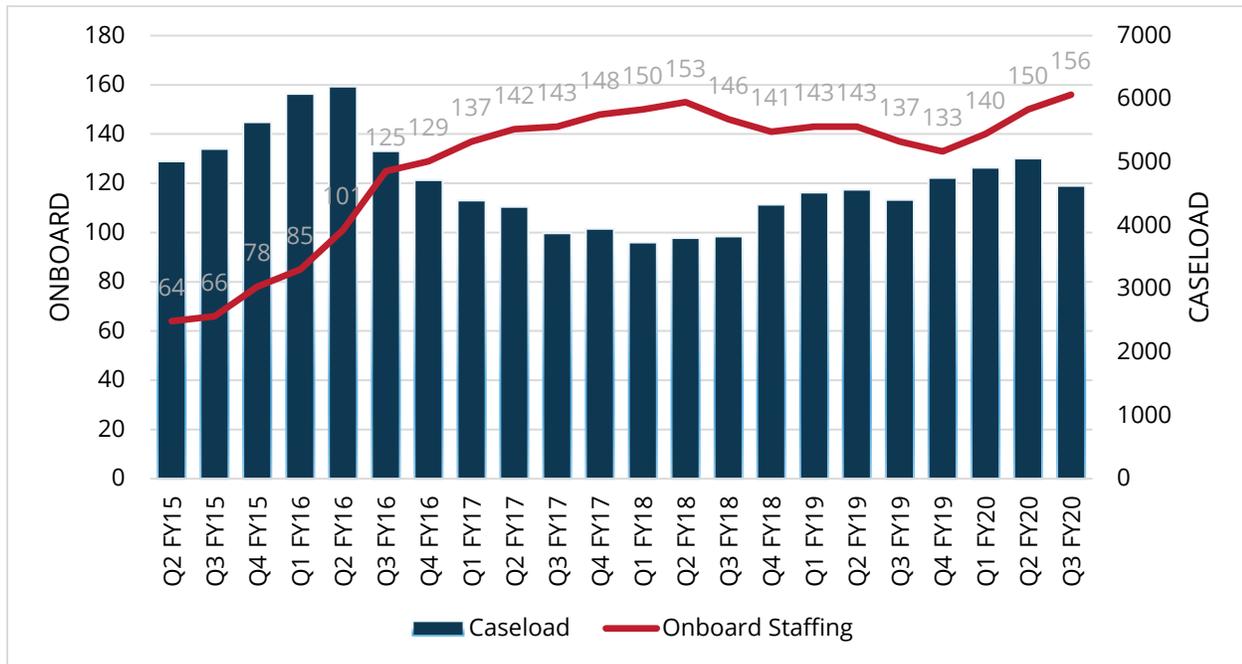
Source: OIA

During the audit, the OIA Director emphasized to us the importance of OIA's onboard personnel numbers to managing its pending caseload. We compared OIA's caseload numbers to the onboard personnel numbers OIA provided us for FYs 2015-2020, as shown in Figure 4. To determine the association of OIA's caseload to its onboard staffing, we performed a regression analysis. The results identified a moderate negative

correlation between onboard staffing and caseloads, indicating that an increase in staffing is moderately associated with a decrease in caseloads.¹⁵

Figure 4

OIA Incoming MLA Caseload between October 2015 - June 2020



Source: OIA

Based on our review of OIA data, from February 2016 through May 2018, OIA improved its ability to manage its caseload by reducing its incoming MLA pending caseload from nearly 6,300 cases to approximately 3,800 cases, a nearly 40 percent decrease. However, since May 2018, OIA’s pending caseload has generally risen during a time when it experienced staffing fluctuations.

We found that while OIA’s authorized positions increased in response to the reform initiative, it has struggled to fill all its open positions. The OIA leadership told us that OIA has faced challenges with hiring and attrition. We found as of March 2021, OIA had 11 unfilled authorized positions - 6 attorney and 5 IAS positions. Table 2 highlights that OIA increased its hiring from only 4 personnel hired in the second half of FY 2018 to 54 personnel hired during FY 2020. Although, OIA hired 80 personnel between the second half of FY 2018 and FY 2020, it lost 79 personnel. Thus, OIA’s high attrition prevented its overall onboard personnel number from increasing significantly.

¹⁵ This analysis measured the extent and strength of association, but association does not imply causation. Appendix 1 provides more detail for the methodology of the regression analysis.

OIA Personnel Caseloads

The CRM FY 2015 budget request highlighted that OIA determined that between 120 and 150 cases would be a manageable caseload per attorney.¹⁶ OIA based this threshold on historical experience and a qualitative review of OIA's existing teams and its process before any of the reform efforts. OIA noted at the time, which was prior to the reform initiative, that its attorneys carried twice the manageable caseload. According to OIA, it believes this resulted in the attrition of some of OIA's best attorneys and led to a concerning change in OIA's workload trends. The OIA Deputy Director also told us that OIA's attrition issue is partly caused by its 'crushing caseloads,' specifically for the Cyber and Incoming MLA teams. OIA leadership tracks the caseloads for its attorneys and IASs through its leadership dashboards, which highlight data pulled from its Oracle database for OIA's different teams and are developed on a weekly basis. We reviewed the Cyber and Incoming MLA leadership dashboards for July 24, 2020, and April 30, 2021 to identify the caseloads of attorneys and IAS on those teams. The July 24, 2020 Cyber and Incoming MLA leadership dashboards showed:

- 1 attorney had a caseload of more than 250 cases,
- 6 attorneys and 9 IASs had a caseload between 200-249 cases,
- 14 attorneys and 11 IASs had a caseload between 151-199 cases, and
- 3 attorneys and 2 IASs had a caseload of 150 cases and below.

The April 30, 2021 Cyber and Incoming MLA leadership dashboards showed:

- 2 attorneys and 5 IASs had a caseload of 250 cases and above;
- 9 attorneys and 15 IASs had a caseload between 200-249 cases,
- 16 attorneys and 4 IASs had a caseload between 151-199 cases, and
- 1 attorney and 1 IAS had a caseload of 150 cases and below.

We found both teams saw an increase in caseloads between July 2020 and April 2021. Specifically, an attorney on Cyber team had a caseload that increased by over 150 cases and an attorney and IAS on the Incoming MLA team had caseloads that increased by over 100 cases between July 2020 and April 2021.¹⁷ While OIA tracks the caseloads of attorneys and IASs using its leadership dashboards, we found OIA has not reassessed the 120 to 150 caseload per attorney manageable caseload threshold to determine whether this caseload is achievable and manageable for the Cyber and Incoming MLA teams, since these teams were created as a result of the reform initiative. OIA's Deputy Director told us OIA continues to operate with the

¹⁶ The FY 2015 CRM budget request did not say whether OIA had also evaluated caseloads for IAS positions.

¹⁷ The OIA Director told us the Cyber team caseloads were in flux since two attorneys left on extended leave and another attorney left for a detail outside of OIA.

ideal threshold of 120 to 150 cases per attorney, but noted the work of the Incoming MLA and Cyber teams is very different now since those teams do a tremendous amount of self-execution that was not contemplated when OIA established the 120 to 150 case threshold in 2013.

Although the OIA Director told us that OIA can make informed decisions about assignments and caseloads based on the information currently available to OIA leadership, we believe that assessing OIA’s manageable caseload threshold for attorneys and IASs, and developing a caseload strategy that accounts for the creation of the Cyber and Incoming MLA teams, would help to ensure that caseloads are manageable, which in turn would improve morale and retention of personnel. Thus, we recommend that CRM coordinate with OIA to conduct a caseload assessment for OIA attorneys and IASs that accounts for changes from the reform initiative, and to develop a strategy to ensure that caseloads remain manageable for OIA personnel.

OIA Personnel Viewpoint

“The staffing [at OIA] fluctuates drastically very quickly”;

“As of July 2020, our staffing is sufficient. A year ago, we were understaffed in attorneys. Six months ago, we were severely understaffed in IAS [positions]. As people leave and rotate, we do not have sufficient cushioning in staffing to prevent understaffing”;

“[For] the Cyber team, there were times when we [were] better staffed and times when we were very understaffed, particularly for IAS [positions] and during the hiring freeze”;

“My caseload was unmanageable from approximately November to May/June 2020 due to the shortage of IAS [positions]”;

“IASs typically always had a higher caseload in comparison to attorneys...the staffing imbalance is also a reflection of the low IAS retention rate”;

“The IAS position should be increased to a GS-12 considering the performance elements [of the position]”;

“There is not a well-thought out/structured training program for new hires and ongoing training, especially [for] the Cyber [team]. Consideration has [not] been given to a well-organized and formalized training and onboarding program.”

Retention and Attrition Challenges at OIA

As noted above, attrition is a significant issue for OIA. OIA experiences a higher attrition rate than the rest of CRM. Specifically, we found OIA’s IAS positions have experienced high attrition. We found from 2018 to 2020, 37 IAS personnel left OIA, and 27 attorneys left OIA during the same period. IAS attrition was also an issue highlighted in the feedback we received from survey respondents (see OIA Personnel Viewpoint box, excerpting responses we received from our survey). The OIA Director told us that one factor contributing to the high IAS attrition rate was that the position was limited to a General Schedule (GS)-11 grade level, which led to personnel leaving OIA for higher grade level positions. To help alleviate this issue, OIA sought and, in August 2020, received CRM approval to increase the grade level to a GS-12 for the IAS position. The OIA Director believes that this change will have a positive effect on OIA’s ability to retain personnel in IAS positions, but that OIA still expects attrition with the IAS position as a result of personnel leaving for other opportunities, including higher promotion potential.

Additionally, OIA’s Management and Administration (M&A) team, which is responsible for managing OIA’s case tracking and management system, producing its team trackers and leadership dashboards, administering human resource responsibilities, and managing its office space, has had consistent challenges with maintaining adequate staffing. The former Lead Management Analyst (lead analyst) on the M&A team explained that the team lost its Assistant Director in 2019 and Supervisory Coordinator in early 2020, and only recently filled the Assistant Director position in July 2020. As a result, the M&A team has been functioning with a “skeleton crew,”

with the former lead analyst taking on an unsustainable level of additional responsibilities and eventually leaving the position. To address vacancies on the M&A team, OIA pulled in personnel from other OIA teams; one of these personnel is temporarily assuming the duties and responsibilities of the lead analyst. Consequently, the M&A team has had to delay M&A projects to ensure the existing personnel can continue mission critical responsibilities, such as producing the team trackers and leadership dashboards that OIA senior leadership rely on. Ultimately, the lack of personnel dedicated to the M&A team has led to increasing workloads that are unmanageable for the limited personnel on the team and diminishing work-life balance, which contributes to personnel leaving OIA for other opportunities.

OIA officials told us that OIA's hiring ability is impacted by delays related to the background investigation process and restrictions that CRM placed on OIA preventing them from posting a vacancy announcement for positions until after personnel have left OIA, factors that create challenges for OIA in its ability to onboard personnel and meet its authorized personnel level. While the delays due to the background investigation process are outside OIA's and CRM's control, announcing vacancies prior to personnel leaving could allow better planning by OIA to fill those positions and help reduce the delay between when personnel vacate positions and vacancies are announced to bring new personnel onboard. According to CRM Admin officials, posting vacancy announcements ahead of actual departures has been approved in CRM for certain positions.

Further, the OIA Director told us that onboarding new personnel is time intensive because they require considerable training due to the complex nature of OIA's work. OIA officials added that OIA's ability to conduct training for new personnel is further complicated due to the remote posture OIA has been operating in since March 2020 because of the COVID-19 pandemic. Specifically, the Cyber team requires constant training and there is a steep learning curve for personnel who join that team. According to the OIA Director, OIA needs to maintain a balance between hiring and training new personnel while ensuring new incoming MLA requests and its pending caseload are adequately addressed.

CLOUD Act Responsibilities

Despite its staffing challenges, OIA will take on additional responsibilities as part of forthcoming CLOUD Act agreements. The CLOUD Act, which Congress passed in March 2018, permits foreign countries to enter into agreements with the U.S. to facilitate faster access to the content of electronic communications (e.g., user-generated content, such as the text of email messages stored on a CSP server). As of 2020, there are currently no CLOUD Act agreements in force. The discussion of these responsibilities and requirements are preliminary.

According to OIA, unlike traditional MLA requests, requests under the CLOUD Act Agreements (Agreement) would allow requestors to seek real time capture of content data. However, these type of requests will have to meet certain requirements which will be defined in each Agreement, then partner countries would be able to submit requests directly to a CSP and the CSP would be able to comply with the request without requiring the country to submit a traditional MLA request. The CLOUD Act requires these Agreements to be reciprocal, so the U.S. would also be able to issue requests for data held by CSPs in foreign countries under the Agreements. Each country with an Agreement will have a Designated Authority (DA) which will be responsible for reviewing that the requests submitted to CSPs meet the requirements defined in the Agreements, among other responsibilities. OIA noted it will serve as the U.S. DA for all Agreements and will have the responsibility for reviewing requests submitted by U.S. authorities to foreign CSPs to ensure they

meet the requirements of the applicable Agreement. According to OIA, this responsibility will be in addition to OIA's role as Central Authority for regular incoming MLA requests and would only be applicable for countries with CLOUD Act Agreements in force with the U.S.¹⁸ While its assessment of the impact of the CLOUD Act agreements is preliminary, OIA noted it could see a reduction in the number of incoming requests for production of electronic evidence, once CLOUD Act agreements are in force. According to OIA, it will need to allocate resources, including attorneys and support personnel to carry out the DA role. OIA identified that its resource needs will continue to increase once the U.S. enters into these Agreements in the coming years. Currently, OIA has no plans to add additional positions to account for this added responsibility once these Agreements are in force. OIA officials told us they anticipate that the Cyber team will handle the additional responsibilities related to these Agreements once one is in force, adding to the existing responsibilities of OIA's Cyber team for traditional MLA requests.

While OIA has made progress with its hiring since the reform initiative, it continues to struggle with retaining personnel. OIA will also assume additional responsibilities under the CLOUD Act Agreements, yet it currently lacks a plan for how these responsibilities will be staffed. Further, OIA leadership agrees that its caseloads are contributing to morale concerns and retention among its personnel. As a result, we recommend that CRM develop a 3-5 year hiring and retention plan that considers OIA's challenges related to attrition and staffing, including posting vacancy announcements for planned departures, staffing for the M&A team, and that also anticipates the growing demand for MLA requests and the increased responsibilities under the forthcoming CLOUD Act agreements.

OIA's Cyber Team

OIA maintains an internal Deskbook documenting OIA roles, responsibilities, and processes. The Deskbook includes chapters which define procedures for the Incoming MLA and Cyber teams. The Cyber Team chapter identifies that "for a period of time, determined by the Cyber Team Associate Director (AD), attorneys must present their draft applications to the AD, or a designated attorney, for review prior to filing in court." In response to our survey, attorneys on the Cyber team provided feedback on this requirement noting it can cause delays and affect productivity. We provided this feedback to the OIA Director who noted OIA was aware of attorney concerns related to this requirement and acknowledged that the volume of work product approvals was too much for a single supervisor. Thus, to alleviate these concerns, OIA sought approval to add a Deputy position to assist the AD with reviewing legal products and other duties. In August 2020, OIA received approval to hire a Deputy AD for both the Cyber and Incoming MLA teams.¹⁹ According to OIA, the Deputy AD position will help the Cyber Team AD with reviewing attorney work product more efficiently.²⁰

¹⁸ As of 2020, there are currently no CLOUD Act Agreements with the U.S. currently in force, but OIA is preparing for this new responsibility as agreements with the U.K., Australia, and the European Union are currently underway and additional Agreements with several other countries are expected in the future.

¹⁹ These positions are not additional positions. Instead, OIA re-designated two existing attorney positions as Deputy AD positions.

²⁰ We noted that the AD already had the authority to delegate these reviews to other attorneys under the existing policy.

Further, OIA leadership noted attorneys are authorized to file some of their own legal products once they produce consistently high-quality products, free of errors, and exhibiting the exercise of good judgement. Currently, 4 out of 16 attorneys on the Cyber team have received approval to file directly with a court their own applications for orders to compel a provider to disclose records about a customer's or subscriber's use of services (called "d-orders"); however, search warrants from all Cyber team attorneys require approval by the AD before filing.²¹ We believe it would greatly assist OIA to update its Deskbook to define the standards attorneys need to meet to achieve the ability to file their own legal products, since the Deskbook does not include this detail, and to assess its training program to ensure that attorneys are assisted in meeting these standards in a timely manner. Thus, we recommend that CRM coordinate with OIA to ensure it has adopted appropriate strategies to help reduce delays caused by supervisory reviews for the Cyber team, including updating its Deskbook or creating specific policy for attorneys defining the standards attorneys need to meet to receive approval to file their own legal products; assessing the sufficiency of training opportunities for Cyber team attorneys; and assessing whether supervisory reviews are optimally delegated. Such strategies could help alleviate delays and promote timely execution of MLA requests while also improving attorney morale and retention by providing attorneys more accountability and responsibility for their work products.

Technology

The modernization of OIA's case tracking and management system was the primary technology requirement of the reform initiative. OIA has used its case management system, referred to as its Oracle database, since its implementation in 1999. To address this technology goal, CRM sought to modernize OIA's Oracle database beginning with a July 2013 request for Automated Litigation Support (ALS) funds. In 2014, this effort transitioned to the Atlas project where the FBI was chosen to develop a workflow solution, known as Atlas, to replace OIA's aging Oracle database, based on the expertise of the FBI's Business Process Management Unit (BPMU). Between 2014 and 2016, CRM spent \$3.57 million (including \$1.57 million of the transfer funds) to support the development of Atlas. However, the Atlas project was overcome by concerns related to data privacy and development was not completed. The Atlas project was the extent of CRM and OIA's efforts to modernize its case management system. In this

OIA Personnel Viewpoint

"The Cyber Associate Director reviews each and every court filing from all Trial Attorneys and this significantly delays case progression.... While this might create a desired perfect uniformity in court filling across attorneys, it significantly delays progress and hurts attorney morale";

"Attorneys assigned to the Cyber team are generally not permitted even after years of service to file their own [d-orders] or search warrants. This results in extreme delays and inefficiencies...because the sheer number of legal [products] the Cyber Associate Director mandates must be reviewed personally by themselves is overwhelming. Getting [legal] products cleared is the number one factor slowing down our productivity. Attorneys are rigorously vetted before joining the Department and a great number of attorneys are previous state or federal prosecutors";

"Attorneys should eventually be given greater autonomy to file, at least for d-orders. Since I was 'cut loose' and can file my own d-orders without supervisor approval, I have become so much more efficient and effective";

"There either needs to be a process to get attorneys cleared to file on their own or there needs to be another supervisor who can review and clear legal process for filing."

²¹ "D-orders" are based on the Stored Communications Act, 18 U.S.C. § 2703d.

section, we detail CRM and OIA's technology efforts under the reform initiative and the status of OIA's case management system modernization goal.

Atlas Development

OIA, CRM, FBI BPMU, and the Justice Management Division (JMD), Office of the Chief Information Officer agreed that the FBI's BPMU would develop this new workflow solution named Atlas; a memorandum of understanding (MOU) for the project was signed by each office in November 2014. The plan was for Atlas to be housed on the FBI's Enterprise Automation System (EPAS) and OIA would access Atlas via the Department's Law Enforcement Enterprise Portal (LEEP). The goal of Atlas was to allow OIA to manage its case work efficiently, gather performance metrics on the case execution process, provide country and employee-specific analytics and promote consistent practices. The former OIA Director noted that Atlas was going to help OIA identify trends with requests to help them better align staffing and resources, since OIA's Oracle database did not have this capability. Atlas development began in January 2015 and continued into 2016.

However, by mid-2016, OIA began expressing significant doubts about the viability of the Atlas project. When the Data Privacy and Protection Agreement (DPPA) was signed with European Union officials in June 2016, OIA determined that the FBI's custodianship of, and access to, all OIA data posed an unacceptable institutional risk: according to OIA, having OIA data in the hands of the FBI, and FBI's desire for unfettered access to such data whether related to incoming or outgoing MLATs or incoming or outgoing extradition matters, was problematic and would likely create serious disruptions to OIA's bilateral MLA relationships as well as considerable litigation risk.²² In an effort to mitigate OIA's concerns, the FBI proposed the use of non-disclosure agreements for all non-OIA personnel with administrative access to Atlas, and implementation of enhanced auditing controls and encryption was included in an updated MOU for the project. However, these proposed actions did not alleviate OIA's concerns and in December 2016, OIA's Director decided that CRM would host Atlas on a new platform, effectively terminating the FBI's role in the development of Atlas.

In February 2017, CRM Admin requested \$3.35 million in ALS funds to support CRM assuming ongoing development and maintenance costs of Atlas, including moving Atlas' host location from the FBI to CRM. However, in an email to OIA in May 2017, a senior CRM Admin official, noted CRM had made the decision to withdraw its ALS request for Atlas due to the inability to award a contract and obligate funds for the project prior to the end of the FY, but stated that CRM Admin would keep the Atlas project 'at the top of the list' and send a new request for ALS funds in FY 2018. However, we found neither OIA requested nor CRM submitted any further ALS requests for the Atlas project after FY 2017; thus, no further action was taken for Atlas and the system has never been used in any capacity. We asked CRM Information Technology Management (ITM) about the viability of Atlas moving forward and CRM ITM officials told us it would take significant time and resources to replace Oracle and using the remnants of Atlas to do so isn't a viable solution because Atlas was built using licenses that the FBI had which CRM does not have and the program Atlas was built on is now outdated.

Ultimately, we found CRM spent \$3.57 million on Atlas, including \$1.57 million of this amount from the

²² The Data Privacy and Protection Agreement (DPPA) is an agreement between the United States and the European Union which provides certain restrictions on data usage.

transfer funds, with nothing of the project salvaged upon termination and no plans to complete the primary technology requirement of the reform initiative. We believe that OIA's planning for this project was not sufficient, given that several of OIA's concerns from 2016 could have been anticipated and assessed at the project's onset. OIA's Deputy Director noted that the DPPA was the ultimate reason Atlas did not move forward, and while we agree that changing events and circumstances can undermine a project or force project owners to revisit the project's viability, we also believe that the DPPA's passage should not have been a surprise to OIA given that OIA's Deputy Director told us its privacy experts had been involved in the DPPA's negotiations during the 5 years preceding its passage. The failure of the Atlas project meant that OIA did not accomplish its primary technology requirement and was a missed opportunity to replace OIA's antiquated case management system. Furthermore, as discussed in more detail in the Workflow for Future CLOUD Act Agreements section below, CRM and OIA could be missing another opportunity to replace OIA's Oracle database as it works to develop a workflow for the forthcoming CLOUD Act agreements.

OIA's Oracle Database

In the absence of a modernized case management system, OIA continues to use their legacy Oracle database, with some modifications, to manage its cases. OIA told us that the database can produce some historical data, but OIA acknowledged that the data is limited in its accessibility and presentation, the reports are static in content, and retrieval of information is largely dependent on the use of another program. Several survey respondents provided feedback on the database's functionality and limitations. They also described the time-consuming, manual nature of the database, which they said takes away from their ability to efficiently process requests.

Based on our review of OIA data, there are several limitations with OIA's Oracle database. OIA personnel did not consistently enter case assistance data into the Oracle database until 2017, resulting in data reliability issues, especially when comparing incoming MLA data over a timeframe encompassing both before and after 2017. We found that OIA's Oracle database also provides limited visibility on how long a request takes to move through each step of the incoming MLA request process. For instance, attorneys are tasked with conducting a legal review of requests to ensure the request is sufficient for execution within 2-4 weeks of receipt, depending on the nature of the request. The database does not have a reliable mechanism for tracking how long attorneys take to complete this legal review. Additionally, while the database can track when OIA refers a request, such as to a USAO, when OIA decides to self-execute a request, it is unclear on what date OIA's self-execution process begins. This makes it difficult to reliably determine how long OIA takes to self-execute a request, and to compare that to the length of time a USAO

OIA Personnel Viewpoint

"Oracle should have been phased out 10 years ago. It is difficult to use and does not provide an accurate statistical picture of the mutual legal assistance practice";

"Oracle is not intuitive and lacks search and statistics functions that would help Trial Attorneys find previous requests for templates and/or precedents";

"The system is antiquated and relies upon too many inputs into the system (many of which are duplicative) to effectively manage the workflow of the individual case";

"In terms of data analysis, pulling from Oracle is not automated and must be done manually, which can be very time consuming";

"We can make Oracle work, but it is so inefficient, it consumes an extraordinary amount of time";

"A major fault of Oracle is that we have to manually copy and paste emails into Oracle and we rely so much on email communication";

"A number of changes were made to Oracle to improve its functionality and it is still not a very effective means of tracking the status of cases."

takes to execute a referred request. Such limitations hamper OIA's ability to properly track the requests it received, isolate where in its process delays occur, identify trends and measures OIA can take to address delays and better align its staffing and resources.

While OIA tracks caseload metrics, to identify these metrics an OIA analyst must manually create a set of Excel files to produce and maintain the Incoming MLA and Cyber team trackers and leadership dashboards that OIA management rely on. Currently, the process is extremely labor intensive and, the lead analyst responsible for the trackers and dashboards departed from OIA in 2020. The former lead analyst shared that CRM ITM was reluctant to make any additional changes to OIA's Oracle database; CRM ITM's reluctance was due to not having the personnel to address their requests and because CRM ITM believed OIA's Oracle database was too outdated and OIA needed to consider a new system. However, prior to leaving OIA, the former lead analyst noted that OIA was working with CRM ITM to access CRM's Oracle Apex platform (Apex), which would not require additional funding but would provide OIA the ability to automate the creation of its team trackers and leadership dashboards.²³ The former lead analyst noted such automation could save OIA analysts up to 10 hours of manual data compilation per week. Aside from OIA working with CRM ITM to get access to Apex, which is not intended to replace OIA's Oracle, CRM Admin officials told us that, since FY 2017, there have not been any discussions about modernizing OIA's existing case management and tracking system. During the audit, these officials told us that when it is decided to upgrade OIA's existing Oracle database, CRM Admin will seek funding from sources such as ALS funds or CRM's direct appropriation. In its FY 2022 budget request, CRM highlighted that it has several antiquated systems that must be replaced in the coming years and that given the scope of its antiquated legacy systems, CRM will be working on replacing these systems for an extended period and will require significant funding to support.

Overall, CRM and OIA's efforts to satisfy OIA's technology requirements under the reform initiative were not successful. CRM highlighted in 2013 that OIA had reached a critical need for resources, including increased personnel and updated technology. CRM further highlighted in its FY 2019 budget request, that a lack of adequate resources for OIA's mission would risk serious compromise of other aspects of CRM's operations, including prosecution of complex transnational criminal enterprises, child exploitation offenses, major fraud cases, and computer crimes. We found OIA's Oracle database presents certain limitations with data reliability and visibility of the MLA process, and while CRM ITM has been able to modify its Oracle database to add functionality for OIA, adding further functionality to the database is likely not possible. OIA thus continues to need an upgraded case management and tracking system that can properly manage its caseload, including historical data for trend analysis and to compute metrics to demonstrate its efforts. As a result, because CRM has identified that it has several antiquated systems that must be replaced in the coming years, we believe that CRM and OIA should plan for how to reach this technology goal before OIA's technology needs become more dire and further threaten its success and U.S. national security. We recommend that CRM develop a plan to evaluate replacing OIA's Oracle database, including requests for ALS funds to meet OIA's primary technology requirement, the modernization of OIA's case tracking and management system.

Workflow for Future CLOUD Act Agreements

As previously discussed, OIA will serve as the U.S. DA for all forthcoming CLOUD Act Agreements. As the

²³ The former lead analyst noted that Oracle Apex does not have any data entry capabilities. It is a dashboard that provides visibility into data that is in other Oracle interfaces, such as OIA's Oracle database.

U.S. DA for the forthcoming agreement with the U.K., OIA will be responsible for dealing with any technical issues or legal questions that arise from working with the relevant U.K. CSP on those issues. According to OIA, the preliminary process for these agreements will include receiving any stored data that U.K. CSP produces in response to the order and providing that data to the requesting prosecutor in the U.S. For orders sent by the U.K. under the forthcoming Agreement, the U.K. DA will handle that process similarly to how OIA would for U.S. requests. To satisfy requirements under the CLOUD Act and prepare for the forthcoming Agreements, CRM and OIA have been developing a separate workflow, also using Oracle, to manage and track U.S. requests that will be made under the forthcoming Agreements, but with a newer Oracle interface, Apex. It is unclear what the full capabilities of this new system will be since OIA's responsibilities under these requests are preliminary and different than the normal MLA process or whether the new workflow will expand on what OIA's Oracle database can do. OIA officials noted that CRM ITM has suggested that this new Oracle interface where the CLOUD Act workflow is being developed could be further developed to include workflows for all of OIA, but there is no set plan or timeline for if or when that could occur. Therefore, CRM and OIA could leverage this opportunity to enhance OIA's Oracle automation capabilities as it works to develop a workflow for the forthcoming CLOUD Act agreements. We recommend CRM coordinate with CRM ITM to ensure OIA has access to CRM's Oracle Apex platform and support the automation of OIA's team trackers and leadership dashboards.

Training and Outreach

OIA personnel on the Cyber and Incoming MLA teams are responsible for providing training and outreach to foreign authorities in addition to processing incoming MLA requests, both of which are time and resource intensive efforts. We found that OIA's training and outreach efforts have been limited and are provided on an ad hoc basis, with a focus on topics, including probable cause and the First Amendment. We determined that creating an external website with resources and information on OIA's MLA request process could not only improve the sufficiency of incoming requests, but also reduce the time OIA personnel spend on ensuring incoming requests meet the appropriate standards for the evidence the foreign country is seeking.

According to OIA, many of the incoming MLA requests that require court orders, such as requests for searches of stored communications, initially do not meet the stringent legal requirements for the U.S. to provide the requested evidence. OIA's Cyber and Incoming MLA teams cannot obtain records on behalf of a foreign partner if the information in support of the request does not meet the applicable U.S. evidentiary standard. In our interviews with OIA officials, they told us that a significant amount of time in the process includes providing guidance to foreign authorities on the stringent U.S. legal standards. These OIA officials

OIA Personnel Viewpoint

"Providing more training to foreign authorities on the OIA process, U.S. legal standards, and just [electronic] evidence generally would be beneficial";

"Increased training and outreach to foreign authorities on U.S. legal standards and the MLA process would be a good way to increase efficiencies for OIA attorneys responding to foreign requests, particularly for cyber requests";

"[Training and Consultations] are very helpful opportunities to improve our relationships and improve the quality of requests we receive";

"Would be helpful if we prepared a template [MLA request] for our foreign authorities with the sections we expect to be addressed [to help ensure] they address them and provide sufficient facts for probable cause. Each country might have different relevant areas noted, but the overall template would look the same";

"For many countries the Central Authority does not assess legal sufficiency and just sends [the request] to us, but if we could train them on the basics of the what needs to be in a [request]....they could go back and try to get the info before sending it to

further told us that OIA's foreign counterparts experience frequent turnover, and OIA training helps new personnel understand OIA's process. However, according to OIA, two issues impact the effectiveness of OIA's training:

1. whether the foreign Central Authority is involved in assisting their domestic authorities to prepare requests to the U.S.; and
2. whether the people preparing the requests to the U.S. are local prosecutors in the foreign country who may make infrequent requests to the U.S.

The level of training needed to address these areas is significant. We reviewed data from OIA on its training and outreach efforts and found that from September 2016 through December 2019, OIA provided 238 trainings or consultations in 65 countries, including the U.S. OIA's trainings and consultations are conducted on an ad-hoc basis and generally cover information on preservation requests, extraditions, asset forfeiture, and incoming MLA requests. The sessions related to incoming MLA requests specifically included topics such as U.S. legal standards including probable cause and the First Amendment, and the process for requesting electronic evidence.

The CRM FY 2015 budget request identified the importance of OIA's coordinated training and outreach to foreign partners and a need for funding to develop a comprehensive program with the Computer Crime and Intellectual Property Section (CCIPS) and the FBI to train foreign authorities in U.S. legal standards for obtaining evidence as well as core training in cyber investigations. To help meet its training and outreach needs, OIA determined it needed an additional eight positions which would focus on training and outreach with foreign partners. However, OIA has not received funding to support additional positions to devote to training and outreach activities. Thus, attorneys and IASs on the Cyber and Incoming MLA teams continue to conduct these activities as needed, but it is a tradeoff since they must also continue to manage active caseloads. OIA has not received funding to develop a comprehensive training program with CCIPS or the FBI. OIA officials noted that training on the FBI's role in the process is not requested by foreign authorities; rather, foreign counterparts request training on how to meet U.S. legal standards so they can provide the proper information in support of their MLA requests.

Resources for Foreign Authorities

We surveyed 63 individuals who currently work or formerly worked on the Incoming MLA and Cyber teams and found that most of the 54 respondents agreed that providing more training or outreach to foreign authorities would significantly improve the efficiency of the incoming MLA process.²⁴ Respondents were split on whether OIA should have personnel dedicated to training and outreach activities who would not carry a caseload of incoming requests.

OIA also identified the need to establish an external website of resources for foreign authorities. To date, such a website has not been created. Seventy-four percent of survey respondents agreed that OIA needs an external website to provide resources to foreign authorities. We identified several foreign countries,

²⁴ The majority of survey respondents were attorneys and International Affairs Specialists (IAS), but the list also includes management analysts and other support personnel.

including the United Kingdom, Canada, Ireland, and the Czech Republic, that have external websites with resources for foreign authorities submitting MLA requests. The CRM ITM Director noted that building an external site and electronic system to receive requests is not impossible but would require additional resources and funding. Additionally, OIA officials noted that it has collaborated with international partners to create and promote an online writer tool hosted on a law enforcement accessible site that requires authentication for access to help draft effective MLA requests.

Overall, OIA's training and outreach efforts have been limited and are provided on an ad-hoc basis. We understand that training and outreach has been a lower priority for OIA given the challenges it experienced related to maintaining onboard personnel. As a result, challenges related to training and outreach remain. However, as described in the Reducing the Backlog section above, one of the factors that contributes to OIA's ability to efficiently manage incoming MLA requests is the sufficiency of the requests, as OIA regularly receives incoming MLA requests that do not meet legal sufficiency requirements, which adds additional time and work for OIA personnel to address these requests. Therefore, we recommend that CRM coordinate with OIA to develop a plan to improve its training and outreach efforts including considering the creation of an external site of resources for foreign authorities.

Conclusion and Recommendations

In 2013, OIA recognized it was essential to reform international mutual legal assistance (MLA) for criminal and counterterrorism matters and address a critical vulnerability to national security – OIA's inability to respond in a timely manner to foreign requests for MLA assistance, particularly for requests involving records from CSPs, which became the basis for supporting its need to reform its process. OIA's inability to be responsive and timely to foreign authorities' requests threatened to impede foreign authorities' responsiveness to requests made by the U.S. government in connection with ongoing domestic criminal and counterterrorism investigations. Between 2009 and 2013, OIA saw a growth in incoming MLA requests but resources for OIA had fallen behind. In FY 2015, CRM received a one-time, intra-departmental transfer of \$13.5 million from the FEW fund to initiate the reform initiative and add positions at OIA; however, CRM did not receive an increase to its portion of the GLA annual appropriation to support those positions until FY 2019. We found that the absence of this funding increase created challenges for CRM in its ability to fully support OIA's reform initiative. Since 2015, OIA has made some efforts to reorganize and improve its incoming MLA process, but the reform efforts are not complete, and challenges remain. CRM and OIA identified four key, interrelated areas – Centralization, Reducing the Backlog, Technology, and Training and Outreach – for the reform initiative, and we found because of a lack of permanent funding for the reform initiative and other issues there are challenges in each area that hinder the overall effectiveness and efficiency of the reform of OIA's incoming MLA process.

First, the passage of the Foreign Request Efficiency Act in 2009 was pivotal to OIA's centralization efforts as it gave OIA greater autonomy in filing incoming MLA requests itself, thereby reducing the redundancies and inefficiencies created by the pre-reform initiative process where OIA had to rely on USAOs. This centralization improved OIA's ability to be responsive and timely in its handling of incoming MLA requests. These changes also had a positive effect on OIA's perception by foreign authorities. However, the volume of incoming MLA requests received by OIA continues to grow, leading to higher caseloads for those on OIA's Cyber and Incoming MLA teams. Further, USAO NDCA, which currently handles a large volume of referrals from OIA for incoming MLA requests for electronic evidence and which received funding to add five positions to support OIA's work, has only two staff dedicated to this work. USAO NDCA believes the existing two personnel can handle the current work volume from OIA. We believe it is likely that OIA will need to increase the number of referrals made to USAO NDCA in the future, thus, having only two personnel at USAO NDCA dedicated to handling referrals from OIA of incoming MLA requests may not be sufficient to address the increasing caseload.

Second, OIA has made improvements to its incoming MLA process which have contributed to its ability to better manage its pending caseload. However, OIA's staffing challenges prevent it from maintaining stable onboard personnel numbers and managing its pending caseload effectively, including identifying manageable caseloads for personnel on the Cyber and Incoming MLA teams. OIA has experienced significant attrition with its IAS positions, and it has struggled to maintain adequate staffing on its Management and Administration team. While OIA has increased its hiring in response to the reform initiative, its onboard personnel number has remained stagnant due to continued high attrition. The additional responsibilities under forthcoming CLOUD Act agreements will also likely increase personnel workloads. However, OIA does not currently have an up-to-date threshold for what constitutes a manageable caseload for its attorney and IAS personnel, nor does it have a hiring and retention plan to address these staffing challenges.

Third, CRM and OIA's efforts to satisfy OIA's technology requirements under the reform initiative were not successful. The modernization of OIA's case tracking and management system was OIA's primary technology requirement. Yet we found that between 2015 and 2016, CRM spent \$3.57 million on the FBI's Atlas project to develop a new system for OIA, but due to data protection and access concerns the system, was never fully developed and little to nothing from the project was salvaged upon termination. We believe that OIA's planning for this new system was not sufficient, given that several of OIA's concerns could have been anticipated and assessed at the project's onset. The failure of Atlas project has left OIA reliant on its legacy Oracle database, which presents limitations with its functionality, data reliability, and visibility of the MLA process. CRM Admin and OIA have not had any discussions since 2017 about how to address this technology deficiency. CRM and OIA could leverage the opportunity to enhance OIA's Oracle automation capabilities as it works to develop a workflow for the forthcoming CLOUD Act agreements. Further, CRM highlighted in its FY 2022 budget request, that it has several antiquated systems that must be replaced in the coming years and that given the scope of its antiquated legacy systems, CRM will be working on replacing these systems for an extended period and will require significant funding to support. We found that CRM does not currently have a plan for how it intends to replace OIA's antiquated case tracking and management system.

Lastly, performing training and outreach activities has been a lower priority for OIA given its staffing challenges and responsibility to address and manage its caseloads. OIA acknowledges that providing more training or outreach to foreign authorities could significantly improve the efficiency of the incoming MLA process, especially since OIA regularly receives incoming MLA requests that do not meet U.S. legal standards and require additional time and attention to ensure the requests meet the appropriate standards for the evidence the foreign country is seeking.

Overall, OIA has made some progress since the reform initiative began over five years ago, but challenges associated with managing its pending caseload, meeting technology needs, and reducing legally insufficient incoming MLA requests remain. OIA's incoming MLA process is a vital piece of its overall mission. CRM highlighted in its FY 2019 budget request, that a lack of adequate resources for OIA's mission would risk serious compromise of other aspects of CRM's operations, including prosecution of complex transnational criminal enterprises, child exploitation offenses, major fraud cases, and computer crimes. Given the continued demand for incoming MLA requests from foreign countries, rising caseloads, and forthcoming responsibilities under CLOUD Act agreements, there is a continued need for CRM and OIA to plan and identify additional resources and enhancements that are needed to fully reform OIA's incoming MLA process before OIA's challenges in this area become more dire and further threaten OIA's success and U.S. national security.

We recommend that the Executive Office for U.S. Attorneys:

1. Review current and projected caseloads with OIA to assess whether dedicating additional USAO NDCA personnel to support the MLA mission would help OIA manage the increasing demand of incoming MLA requests for electronic evidence.

We recommend that the Criminal Division:

2. Coordinate with OIA to conduct a caseload assessment for OIA attorneys and IASs that accounts for changes from the reform initiative, and to develop a strategy to ensure that caseloads remain manageable for OIA personnel.
3. Develop a 3-5 year hiring and retention plan that considers OIA's challenges related to attrition and staffing, including posting vacancy announcements for planned departures, staffing for the Management and Administration team, and that also anticipates the growing demand for MLA requests, and the increased responsibilities under the forthcoming CLOUD Act agreements.
4. Coordinate with OIA to ensure it has adopted appropriate strategies to help reduce delays caused by supervisory reviews for the Cyber team, including updating its Deskbook or create specific policy for attorneys defining the standards attorneys need to meet to receive approval to file their own legal products; assessing the sufficiency of training opportunities for Cyber team attorneys; and assessing whether supervisory reviews are optimally delegated.
5. Develop a plan to evaluate replacing OIA's Oracle database, including requests for ALS funds to meet OIA's primary technology requirement, the modernization of OIA's case tracking and management system.
6. Coordinate with CRM ITM to ensure OIA has access to CRM's Oracle Apex platform and support the automation of OIA's team trackers and leadership dashboards.
7. Coordinate with OIA to develop a plan to improve its training and outreach efforts including considering the creation of an external site of resources for foreign authorities.

APPENDIX 1: Objective, Scope, and Methodology

Objective

The objective of the audit was to assess the Criminal Division's (CRM) process for incoming mutual legal assistance (MLA) requests.

Scope and Methodology

The audit scope generally focused on CRM and Office of International Affairs (OIA) MLA reform initiative efforts from FY 2015 to FY 2020, unless otherwise stated. We reviewed CRM and OIA's efforts in the four key areas of initiative – Centralization, Reducing the Backlog, Technology, and Training and Outreach - identified in the justification documentation for the reform initiative. The Department also identified OIA's MLA backlog, which we referred to as its pending caseload in this report, as a tier-two enterprise risk on the FY 2018 Enterprise Risk Management Risk Profile. We also performed work related to the OIA's incoming MLA process and the involvement by United States Attorney's Offices and the Federal Bureau of Investigation (FBI) in this process.

To accomplish the audit objective, we interviewed OIA personnel, including current and former senior officials, Associate Directors of the two dedicated teams – Incoming MLA and Cyber- for handling incoming MLA requests in Washington D.C., as well as personnel from OIA's Management and Administration team. We surveyed individuals, including attorneys and International Affairs Specialists, who currently or formerly worked on the Incoming MLA and Cyber teams to gather feedback on OIA's access to resources, caseloads, technology needs, and training and outreach efforts. We interviewed FBI personnel from the FBI's Mutual Legal Assistance Treaty Unit who assisted OIA with incoming MLA requests for electronic evidence. We also interviewed personnel at the Executive Office for United States Attorneys who oversee the administration of funds to United States Attorney's Offices and personnel who provide assistance to OIA's incoming MLA request process at the United States Attorney's Offices for the District of Columbia and the Northern District of California. As a result of the COVID-19 pandemic response, we performed our audit fieldwork exclusively in a remote manner.

To determine the association of OIA's caseload to its onboard staffing, we conducted a correlation and regression analysis. The results suggested the relationship between the two variables was significant (pvalue = 0.000423) and moderate (correlation coefficient = -0.67). The negative correlation coefficient suggests an increase in staffing tends to decrease caseloads. The analysis measured the extent and strength of association, but association does not imply causation. These results are also based on a small set of data points.

Statement on Compliance with Generally Accepted Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Internal Controls

In this audit, we performed testing of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of the Criminal Division or the Office of International Affairs to provide assurance on its internal control structure as a whole. Department management is responsible for the establishment and maintenance of internal controls in accordance with OMB Circular A-123. Because we do not express an opinion on OIA's internal control structure as a whole, we offer this statement solely for the information and use of the Criminal Division and OIA.²⁵

In planning and performing our audit, we identified the following internal control components and underlying internal control principles as significant to the audit objective:

Internal Control Components & Principles Significant to the Audit Objectives	
Control Environment Principles	
	Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.
	Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
Control Activity Principles	
	Management should implement control activities through policies.
Information & Communication Principles	
	Management should use quality information to achieve the entity's objectives.
	Management should internally communicate the necessary quality information to achieve the entity's objectives.

We assessed the operating effectiveness of these internal controls and identified deficiencies that we believe could affect the OIA's ability to effectively and efficiently operate its processing of incoming MLA requests. The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited to aspects of these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Computer Processed Data

During our audit, we obtained data from OIA's case tracking and management system, known as its Oracle database. As discussed throughout this report, there are limitations with OIA's Oracle database. OIA also stated that there are issues with the reliability of the data. As a result, whenever we used data from OIA's Oracle database, we sought corroborating audit evidence prior to making conclusions.

²⁵ This restriction is not intended to limit the distribution of this report, which is a matter of public record.

APPENDIX 2: The Executive Office for the U.S. Attorneys' Response to the Draft Audit Report



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 252-1000

July 8, 2021

MEMORANDUM

TO: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General


FROM: Monty Wilkinson
Director

SUBJECT: Response to the Inspector General's Audit of the Criminal Division's Process for Incoming Mutual Legal Assistance Evidence Requests

The Executive Office for United States Attorneys (EOUSA) appreciates the opportunity to review the Office of the Inspector General's report, *Audit of the Criminal Division's Process for Incoming Mutual Legal Assistance Evidence Requests* (the Report), and provides the following formal comments and response regarding the recommendation directed at EOUSA:

Recommendation #[1]: Review current and projected caseloads with OIA to assess whether dedicating additional USAO NDCA personnel to support the MLA mission would help OIA manage the increasing demand of incoming MLA requests for electronic evidence.

EOUSA's Response to Recommendation #[1]: EOUSA concurs with this recommendation.

Based on periodic communication with OIA, both EOUSA and the USAO-NDCA believe that USAO-NDCA's support for the MLAT program is both productive and effective.

Through the end of FY19, data available to EOUSA and USAO-NDCA reflect the following number of matters referred to USAO-NDCA by OIA and processed by the USAO-NDCA:

Year	# of MLATs opened in CaseView and processed by USAO-NDCA
2014	293
2015	428
2016	358
2017	425
2018	269
2019	388

The above data is different from that identified in Figure 2 of the Report. EOUSA will work with OIA to reconcile this data with OIA's data, as well as to update it with FY 2020 and 2021 numbers. Based on the reconciled data, EOUSA and OIA will then assess whether dedicating additional USAO-NDCA personnel to support the MLA mission is necessary or appropriate to facilitate OIA's effective management of MLA requests for electronic evidence. Subject to OIA's concurrence and availability, EOUSA anticipates being able to complete this analysis by December 31, 2021.

As has been the case since receiving these FTE positions, USAO-NDCA remains ready to address any increase in workload OIA deems appropriate to send their office, up to the full resources provided.

Should you have any questions or concerns regarding this response, please contact Milan Calloway, Audit Liaison, at 202-254-5864.

cc: Kimberly L. Rice
Acting Regional Audit Manager
Office of the Inspector General

Bradley Weinsheimer
Associate Deputy Attorney General

Louise Duhamel
Acting Assistant Director
Audit Liaison Group Internal Review and Evaluation Office
Justice Management Division

APPENDIX 3: The Criminal Division's Response to the Draft Audit Report



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 2021

MEMORANDUM

TO: Jason Malmstrom
Assistant Inspector General for Audit
Office of Inspector General

FROM: Nicholas L. McQuaid
Acting Assistant Attorney General

SUBJECT: Response to Draft Audit: Audit of the Criminal Division's Process for Incoming Mutual Legal Assistance Requests

NICHOLAS
MCQUAID

Digitally signed by
NICHOLAS MCQUAID
Date: 2021.07.06
21:51:33 -04'00'

This is in response to correspondence from the Office of Inspector General (OIG) requesting comment on the recommendations associated with the subject draft audit report. The Criminal Division (CRM) appreciates the opportunity to review the report and concurs with the recommendations therein. Actions planned by CRM with respect to OIG's recommendations are outlined in the attached response.

Should you have any questions or concerns regarding this response, please contact Debie Frary, Audit Liaison, at 202-305-4967.

Attachment

Attachment

Recommendation 1. Review current and projected caseloads with OIA to assess whether dedicating additional USAO NDCA personnel to support the MLA mission would help OIA manage the increasing demand of incoming MLA requests for electronic evidence.

This recommendation is for the Executive Office for U.S. Attorneys and they will respond separately.

Recommendation 2. Coordinate with OIA to conduct a caseload assessment for OIA attorneys and IASs that accounts for changes from the reform initiative, and to develop a strategy to ensure that caseloads remain manageable for OIA personnel.

CRM Response (Concur): At the beginning of the reform initiative in 2015, OIA determined that between 120 and 150 cases would be a manageable caseload per attorney for the United States to meet its treaty obligations in a timely fashion. Although the reform initiative created significant efficiencies in OIA's work processes, the nature of OIA's work has shifted as the office has taken on more work by self-executing the majority of incoming MLA requests instead of referring them out to the USAOs. At the same time, requests have also become increasingly complex and the number of requests have increased. The number of requests are anticipated to continue to increase. Taking these factors into consideration, OIA has assessed that these numbers still represent a manageable caseload per attorney.

As part of its strategy to ensure caseloads remain manageable for its attorneys, OIA will continue to monitor caseloads at biweekly OIA "Resources to Requirements" meetings; reassess caseloads every six months and communicate its findings to CRM leadership; and consider ideas and options to address any rising caseload.

Recommendation 3. Develop a 3-5 year hiring and retention plan that considers OIA's challenges related to attrition and staffing, including posting vacancy announcements for planned departures, staffing for the Management and Administration team, and that also anticipates the growing demand for MLA requests, and the increased responsibilities under the forthcoming CLOUD Act agreements.

CRM Response (Concur): The Criminal Division has invested efforts in this area by devising strategies to counter OIA's hiring challenges and best address OIA's attrition. The Division's Office of Administration and the Office of International Affairs team will formalize the efforts its already devised and further document a 3-5 year hiring and retention plan. The Division will aim to complete the drafting of this plan by early 2022.

Recommendation 4. Coordinate with OIA to ensure it has adopted appropriate strategies to help reduce delays caused by supervisory reviews for the Cyber team, including updating its Deskbook or create specific policy for attorneys defining the standards attorneys need to meet to receive approval to file their own legal products; assessing the sufficiency of training opportunities for Cyber team attorneys; and assessing whether supervisory reviews are optimally delegated.

CRM Response (Concur): OIA is already working to adopt Recommendation 4 and will take the following steps: OIA will define, in the Cyber Team's chapter of the OIA Deskbook, the criteria Cyber Team attorneys must meet to receive approval to file their own applications for non-content data pursuant to 18 U.S.C. § 2703(d) (d order) without first seeking supervisory review. Two supervisory attorneys, including the Deputy Associate Director, and, in appropriate circumstances, other senior attorneys as

designated by the Associate Director, will conduct supervisory review of order applications and will provide appropriate feedback to the drafters. Because of their complexity, search warrants will continue to be subject to supervisory review. OIA will review this policy periodically to determine if modifications are necessary to promote increased efficiency while maintaining high standards for OIA's litigation practice.

Recommendation 5. Develop a plan to evaluate replacing OIA's Oracle database, including requests for ALS funds to meet OIA's primary technology requirement, the modernization of OIA's case tracking and management system.

CRM Response (Concur): As a first step, the Division's FY 2022 budget included an appropriations language change to increase/expand the General Legal Activities' appropriation from \$20 million to \$50 million and broadened its purpose to include information technology projects. This authority would assist the Division in funding new technology requirements. Congress would need to change the General Legal Activities appropriation language in an enactment to provide this increased authority.

The Office of Administration and the Office of International Affairs will work together to develop a plan to evaluate replacing OIA's Oracle database that will satisfy this recommendation. The Division is completing a large, Division-wide case tracking system update in CY 2021 that will provide almost all sections with vital enhancements. Limited IT staff and funding are focused on this ongoing effort, while also balancing specific and important section IT needs, such as OIA's Cloud Act system currently under development. Assuming all timelines are met, the Assistant Attorney General will determine if replacement for OIA's Oracle database will be the priority system development for CY 2022. This is also contingent on securing proper funding.

Recommendation 6. Coordinate with CRM ITM to ensure OIA has access to CRM's Oracle Apex platform and support the automation of OIA's team trackers and leadership dashboards.

CRM Response (Concur): The Criminal Division's Information Technology Management staff has been working with the Office of International Affairs on this issue and will continue to work with them to support automation of OIA's team trackers and leadership dashboards.

Recommendation 7. Coordinate with OIA to develop a plan to improve its training and outreach efforts including considering the creation of an external site of resources for foreign authorities.

CRM Response (Concur): OIA has a dual-faceted training and outreach plan that includes specific training and outreach events as well as publicly-available information.

OIA plays an active role in training both foreign and domestic partners, including incorporating trainings into formal consultations and other meetings with foreign partners, as well as participating in training events sponsored by multilateral organizations. The latter events afford OIA the most effective opportunities to reach broad audiences in a single event. These training events are targeted to reach foreign partners, with different levels of experience, who submit MLA requests to OIA. This maximizes the impact that limited training and outreach resources have on the overall MLA process. Any plan to expand training and outreach efforts, beyond those in which OIA continues to engage, would require additional resources.

Additionally, OIA has assessed what information can be provided to foreign partners publicly, and has included that information on its website at <https://www.justice.gov/criminal-oia/frequently-asked-questions-regarding-evidence-located-abroad>.

APPENDIX 4: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Audit Report

The OIG provided a draft of this audit report to Executive Office for U.S. Attorneys (EOUSA) and the Criminal Division (CRM). The EOUSA and CRM responses are incorporated in Appendix 2 and Appendix 3, respectively, of this final report. In response to our audit report, CRM and EOUSA both concurred with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendation for EOUSA:

- 1. Review current and projected caseloads with OIA to assess whether dedicating additional USAO NDCA personnel to support the MLA mission would help OIA manage the increasing demand of incoming MLA requests for electronic evidence.**

Resolved. EOUSA concurred with our recommendation. EOUSA stated in its response that based on periodic communication with the Office of International Affairs (OIA), both EOUSA and the U.S. Attorney Office's for the Northern District of California (USAO NDCA) believe that USAO NDCA's support for OIA's mutual legal assistance (MLA) program is both productive and effective. EOUSA noted that the data available to EOUSA and USAO NDCA is different than the data presented in Figure 2 of the report. However, the discrepancy EOUSA noted is solely attributable to a difference in the presentation of the data: EOUSA's response presents its data on the number of cases opened and processed by USAO NDCA by calendar year, whereas Figure 2 of this report presents the same data by fiscal year. EOUSA also stated in its response that EOUSA and OIA will assess whether dedicating additional USAO NDCA personnel to support the MLA mission is necessary or appropriate to facilitate OIA's effective management of MLA requests for electronic evidence. EOUSA noted subject to OIA's concurrence and availability, EOUSA anticipates being able to complete this analysis by December 31, 2021.

This recommendation can be closed when we receive evidence that EOUSA and OIA have completed their assessment of current and projected caseloads including a determination of whether additional USAO NDCA personnel are needed to support the MLA mission.

Recommendations for CRM:

- 2. Coordinate with OIA to conduct a caseload assessment for OIA attorneys and IASs that accounts for changes from the reform initiative, and to develop a strategy to ensure that caseloads remain manageable for OIA personnel.**

Resolved. CRM concurred with our recommendation. CRM stated in its response that at the beginning of the reform initiative in 2015, OIA determined that between 120 and 150 cases would be a manageable caseload per attorney for the U.S. to meet its treaty obligations in a timely fashion. CRM stated that although the reform initiative created significant efficiencies in OIA's work

processes, the nature of OIA's work has shifted as the office has taken on more work by self-executing the majority of incoming MLA requests instead of referring them out to the USAOs, requests have become increasingly complex, the number of requests have increased and are anticipated to continue to increase. CRM also stated that OIA has assessed that these numbers still represent a manageable caseload per attorney. CRM noted that as part of OIA's strategy to ensure caseloads remain manageable for its attorneys, OIA will continue to monitor caseloads at biweekly OIA Resource to Requirements meetings; reassess caseloads every six months and communicate its findings to CRM leadership; and consider ideas and options to address any rising caseload.

During the audit, we reviewed documentation which showed that the 120 and 150 manageable caseload number for attorneys was identified based on a right-sizing exercise performed by CRM in 2013. This occurred prior to the reform initiative efforts and before the creation of the Cyber and Incoming MLA teams at OIA. Additionally, neither the 2013 right-sizing exercise, nor the assessment CRM stated OIA performed in response to our recommendation identified any assessment of International Affairs Specialists (IAS) caseloads, which we found to be higher than attorney caseloads. We reviewed OIA's leadership dashboards for the Cyber and Incoming MLA teams and found that caseloads for attorneys and IAS varied and frequently changed because of staffing changes and other factors. We also found that the Cyber Team responsibilities will likely increase because of the forthcoming Clarifying Lawful Overseas Use of Data Act (CLOUD Act) agreements, which will have an impact on caseloads for those personnel. In its response, CRM did not provide details on OIA's assessment and how it determined that the 120 to 150 manageable caseload was appropriate based on changes from the reform initiative, anticipated trend of increasing request for incoming MLA requests, and increased responsibilities due to the forthcoming CLOUD Act.

This recommendation can be closed when we receive evidence that CRM and OIA have completed a caseload assessment for attorneys and IASs that accounts for changes from the reform initiative and documentation of its strategy for ensuring caseloads remain manageable for OIA personnel.

- 3. Develop a 3-5 year hiring and retention plan that considers OIA's challenges related to attrition and staffing, including posting vacancy announcement for planned departures, staffing for the Management and Administration team, and that also anticipates the growing demand for MLA requests, and the increased responsibilities under the forthcoming CLOUD Act agreements.**

Resolved. CRM concurred with our recommendation. CRM stated in its response that it has invested efforts in this area by devising strategies to counter OIA's hiring challenges and best address OIA's attrition. CRM stated that the Office of Administration and OIA will formalize the efforts it has already devised and further document a 3-5 year hiring and retention plan. CRM aims to complete the drafting of this plan by early 2022.

This recommendation can be closed when we receive documentation of CRM's 3-5 year hiring and retention plan for OIA.

- 4. Coordinate with OIA to ensure it has adopted appropriate strategies to help reduce delays caused by supervisory review for the Cyber team, including updating its Deskbook or create specific policy for attorneys defining the standards attorneys need to meet to receive approval to file their own legal products; assessing the sufficiency of training opportunities for Cyber team attorneys; and assessing whether supervisory reviews are optimally delegated.**

Resolved. CRM concurred with our recommendation. CRM stated in its response that OIA is already working to adopt this recommendation and will take the following steps: OIA will define in the Cyber team's chapter of the OIA Deskbook, the criteria Cyber team attorneys must meet to receive approval to file their own applications for d-orders without first seeking supervisory reviews; two supervisory attorneys, including the Deputy Associate Director, and in appropriate circumstances, other senior attorneys as designated by the Associate Director, will conduct supervisory review of d-order applications and will provide appropriate feedback to the drafters; and OIA will review this policy periodically to determine if modifications are necessary to promote increased efficiency while maintaining high standards for OIA's litigation practice.

This recommendation can be closed when we receive the updated Cyber team chapter of the OIA Deskbook reflecting that these steps have been implemented.

- 5. Develop a plan to evaluate replacing OIA's Oracle database, including requests for ALS funds to meet OIA's primary technology requirement, the modernization of OIA's case tracking and management system.**

Resolved. CRM concurred with our recommendation. CRM stated in its response that the Office of Administration and OIA will work together to develop a plan to evaluate OIA's Oracle database that will satisfy the recommendation. CRM stated that it is completing a large division-wide case tracking system update in 2021 that will provide almost all sections with vital enhancements. CRM stated that limited IT staff and funding are focused on this ongoing effort, while also balancing specific and important section IT needs, such as OIA's Cloud Act system currently under development. Assuming all timelines are met, the Assistant Attorney General will determine if the replacement of OIA's Oracle database will be the priority system development for 2022, contingent on funding.

This recommendation can be closed when we receive CRM's plan for evaluating replacing OIA's Oracle database and documentation supporting whether OIA's Oracle database is determined to be the priority system for 2022.

- 6. Coordinate with CRM ITM to ensure OIA has access to CRM's Oracle Apex platform and support the automation of OIA's team trackers and leadership dashboards.**

Resolved. CRM concurred with our recommendation. CRM stated in its response that CRM Information Technology Management staff have been working with OIA on this issue and continue to work with them to support automation of OIA's team trackers and leadership dashboards.

This recommendation can be closed when we receive evidence that OIA has access to CRM's Oracle Apex platform and that CRM Information Technology Management (ITM) provide support to OIA to

automate its team trackers and leadership dashboards, as needed.

7. Coordinate with OIA to develop a plan to improve its training and outreach efforts including considering the creation of an external site of resources for foreign authorities.

Resolved. CRM concurred with our recommendation. CRM stated in its response that OIA has a dual-faceted training and outreach plan that includes specific training and outreach events as well as publicly-available information and any plan to expand training and outreach efforts would require additional resources. CRM also stated that OIA has assessed what information can be provided to foreign partners publicly and has included that information on its public website.

CRM did not provide OIA's training and outreach plan and we did not review any training and outreach plan for OIA during the audit. As part of the reform initiative justification, OIA identified the need to establish an external website of resources for foreign authorities. While CRM stated that OIA has assessed what information can be provided to foreign partners publicly and has included that information on its public website, we reviewed OIA's website and did not identify additional resources that had been added to address this area. During the audit, we identified several foreign countries, including the United Kingdom, Canada, Ireland, and the Czech Republic, that have external websites with resources for foreign authorities submitting MLA requests. CRM provided no documentation supporting a determination of why similar information cannot be made available on OIA's public website.

This recommendation can be closed when we receive OIA's training and outreach plan and evidence that additional information has been added to the public website or documentation supporting why similar resources to those included on other foreign country websites for MLA requests could not be added to OIA's site to help improve the incoming MLA requests OIA receives.