



Performance Based Staffing

Report No. OIG-AMR-102-24-02

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Memorandum from the Associate General Counsel, Division of
Operations-Management, OIG Report No. OIG-AMR-102-XX-XX, signed
March 18, 2024

EXECUTIVE SUMMARY

The National Labor Relations Board's annual appropriation remained unchanged for Fiscal Years (FY) 2014 through FY 2022. During that time period, the percentage of the appropriation used for personnel costs increased from approximately 76 percent to 79 percent. Also during that time, both the Field staffing level, as measured by full-time equivalents (FTE), and case intake decreased.

The objectives of this audit were to determine whether Field Office FTEs are assigned or allocated in accordance with Governmentwide guidance to ensure that the Agency meets its goals and objectives; evaluate the effect of the level funding appropriation on the Field Office staffing and the processing of Field Office case work; and evaluate the internal controls over the calculation of Field Office staffing.

We determined that the methodology used by the Division of Operations-Management to assign or allocate Field Office FTEs does not meet Governmentwide guidance. We also determined that the process to assign or allocate Field Office FTEs lacks an appropriate system of internal controls. As a result, the Agency is at risk of not allocating FTEs to the Field Offices in a manner that would ensure that it meets its goals and objectives. We also determined that the effect of the level appropriation over 9 fiscal years from FY 2014 to FY 2022 was that the Field Office FTEs declined; and, despite a decline in case intake, the time to issue complaints from the filing of a charge increased. We made four recommendations for corrective action.

The Management Comments noted agreement with information in the draft report generally related to the appropriation, staffing, case intake, and the impact of limited budgetary resources. Management also provided information that it determined was relevant for context. Based on the Management Comments, we reached agreement on Recommendations 1, 3, and 4. The Management Comments are included with the report as Appendix B and noted at appropriate places in the body of the report.

BACKGROUND

The National Labor Relations Board (NLRB or Agency) was established in 1935 to administer the National Labor Relations Act. The NLRB has two primary functions: (1) to investigate and resolve (through settlement, prosecution, or dismissal) allegations of unfair labor practices by employers and unions (C cases); and (2) to investigate and resolve questions concerning representation among employees to determine whether the employees wish to be represented by a union (R cases).

All NLRB proceedings originate with the filing of a charge or petition by an employee, labor union, employer, or other private party at a Field Office in one of the 26 Regions. Using the case intake data, the Division of Operations-Management performs an analysis of Regional staffing and determines the appropriate staffing level for each Region. That analysis is then considered by the Agency when making budget formulations and hiring decisions.

The Agency's annual appropriation remained unchanged for Fiscal Years (FY) 2014 through FY 2022. During that time period, the percentage of the appropriation used for personnel costs increased from approximately 76 percent to 79 percent. Also during that time, the NLRB staffing level, as measured by full-time equivalents (FTE), and case intake decreased.

This audit reviewed the process that the Division of Operations-Management uses to determine Regional staffing levels and what, if any, was the impact of a level appropriation for 9 fiscal years.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this audit was to:

- Determine whether Field Office FTEs are assigned or allocated in accordance with Governmentwide guidance to ensure that the Agency meets its goals and objectives;

- Evaluate the effect of the level funding appropriation on the Field Office staffing and the processing of Field Office case work; and
- Evaluate the internal controls over the Agency's calculation of Field Office staffing.

The scope of this audit was:

- To determine whether Field Office FTEs are assigned or allocated in accordance with Governmentwide guidance to ensure that the Agency meets its goals and objectives and evaluate the internal controls, the scope is the Field Office staffing calculation for FY 2022; and
- To evaluate the effect of the level funding appropriation on the Field Office staffing and the processing of Field Office case work, the scope is appropriated funding levels; Field Office FTE levels and case work; and Agency expenses for FY 2014 through FY 2022.

We reviewed laws and Governmentwide policies related to the expenditure of appropriated funds and the budgeting process. From the Division of Operations-Management, we obtained the guidance documentation related to Regional FTE calculations, Regional FTE calculation spreadsheets, and correspondence related to the Regional FTE calculation. We also interviewed staff in the Division of Operations-Management to learn about the Regional FTE calculation process. We recalculated the Regional FTEs. We compared the Division of Operations-Management's FTE information to the data from the Agency's payroll system. We also compared the Agency's FTE calculation methodology to the Office of Management and Budget (OMB) guidance.

We obtained the FY 2014 through FY 2022 appropriation data and calculated the real value of the appropriations for the scope period.

We reviewed NxGen Case Management System (NxGen) reports to determine which data fields would be used to determine case processing trends. We obtained, from the Office of Chief Information Officer, an extract of NxGen data for the scope period. We determined whether the data in the

NxGen data fields related to case processing trends was accurate. To do so, we used a generally accepted sampling criteria to achieve a 90 percent confidence level. The 90 percent confidence level is consistent with U.S. Government Accountability Office (GAO) guidance and our expected deviation rate. We also conducted tests to determine if the NxGen data was complete.

To determine the effect of level funding during the scope period we analyzed Regional Office case workload and trends. For C cases, we analyzed trends in charge dispositions, post-complaint actions, and C case hearing sessions opened. For R cases, we analyzed the trends in cases with elections held and disposed of by issuing certification and R case hearing sessions opened.

We also obtained a list of employees from the Office of Human Resources and the payroll and benefit expenses from the Agency's financial system. We computed the FTEs by compiling a list of employees with payroll and position data. Because Regional Compliance personnel were reassigned to the Division of Operations-Management for pay period 202013 through pay period 202208 as a Centralized Compliance Unit, for the Regional FTE calculations, we assigned those hours to the Region in which the employees were actually working. We also compared the payroll and benefit expenses between the Regional employees and the Agency to identify the trends.

We interviewed Regional personnel to learn about the impact of the staffing decisions on Regional staff and case processing. We also obtained and reviewed the guidance issued by the Agency related to restricting spending during the scope period. We reviewed documentation related to the Agency's use of the Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) programs. We also reviewed data reported in the Agency's Federal Employee Viewpoint Surveys (FEVS).

We reviewed the GAO's *Standards for Internal Control in the Federal Government*, dated September 2014, to identify the relevant internal control standards related to the audit objectives. We then evaluated the FTE calculation process and procedures to determine whether they met the GAO's internal control standards.

We conducted this performance audit in accordance with generally accepted government auditing standards during the period from October 14, 2022 through March 04, 2024. 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.

FINDINGS SUMMARY

We determined that the methodology used by the Division of Operations-Management to assign or allocate Field Office FTEs does not meet Governmentwide guidance. We also determined that the process to assign or allocate Field Office FTEs lacks an appropriate system of internal controls. As a result, the Agency is at risk of not allocating FTEs to the Field Offices in a manner that would ensure that it meets its goals and objectives.

We also determined that the effect of the level appropriation over 9 fiscal years from FY 2014 to FY 2022 was that the Field Office FTEs declined; and, despite a decline in case intake, the time to issue complaints from the filing of a charge increased.

ALLOCATION OF FULL-TIME EQUIVALENTS

Calculation of Field Staffing Needs

For purposes of budgeting and staff calculations, the Government uses what is known as FTE employment rather than employees. An FTE employment means the total number of regular straight-time hours worked by employees, not including overtime or holidays hours worked, divided by the number of compensable hours in the applicable year.

The latest Regional staffing charts for the scope period was dated July 25, 2022, and was through June 30, 2022. The Division of Operations-Management used a multi-tab spreadsheet to calculate the Regional staffing needs based on what was described as a rolling average 3-year case

intake that is calculated with data taken from NxGen reports. The analysis does not differentiate between C and R cases. The calculated staffing levels were then compared to the actual staffing levels, as determined by the Division of Operations-Management, to make Regional staffing decisions and budget requests.

To determine staffing needs, the spreadsheet used formulas to calculate the staffing as follows:

- 1 Board Agent per 45 cases of rolling average intake, plus 1 Board Agent per Region for compliance;
- 1 supervisor for every 5 Board Agents;
- 2 Managers, 2 non-unit Administrative Professionals, and 1 Regional Director per Region; and
- 1 Unit Administrative Professional for every 5 professionals (Board Agents, Supervisors, and Managers) and 1 additional Unit Administrative Professional for compliance.

We reviewed the spreadsheet and generally found that the formulas were used to implement the stated methodology; however, we found that three Regions had formula errors:

- Region 14 – the calculation for FY 2018 case intake was the same formula as used for Region 18 and therefore referenced the wrong data cells;
- Region 16 – the calculation for determining FY 2018 case intake used the FY 2022 case intake data resulting in an overstatement. Additionally, R cases were not included; and
- Region 27 – the calculation for FY 2021 fourth quarter case intake used R case intake from Region 21.

The impact of the formula errors is shown in the table below:

Region	Calculated 3-Year Average Cases	Corrected 3-Year Average Cases	Difference
14	665.33	679.67	14.33
16	968.67	884.67	-84.00
27	447.33	443.33	-4.00

For Regions 14 and 27, the differences in Regions' FTE between the original Division of Operations-Management calculation and the corrected calculation was less than ± 0.5 Professional FTE and ± 0.1 Administrative FTE. For Region 16, the correction resulted in a decrease of 1.83 Board Agents FTEs, which would have also resulted in a decrease of 0.37 supervisors and 0.44 Unit administrative FTEs. It is likely that the errors occurred because the formulas were manually copied from one cell to another.

We also compared the Division of Operations-Management's current Field Office staffing calculation as of June 30, 2022, to an FTE calculation based on payroll data from the Office of Human Resources. As a result of that comparison, we found differences that are likely errors:

Region	Position Type	Division of Operations-Management Data	Payroll Data	Difference
2	Board Agents	17.05	19.50	(2.45)
5	Supervisors	4	2	2
10	Board Agents	27	25	2
12	Board Agents	21.0	23.4	(2.4)
18	Board Agents	15	16.6	(1.6)
19	Board Agents	19.8	17.3	2.5
20	Board Agents	15.8	17.0	(1.2)
29	Supervisors	3.6	5.0	(1.4)
32	Board Agents	12.3	10.0	2.3

The differences are likely the result of the Division of Operations-Management manually collecting and maintaining the data rather than using the Agency's automated payroll data system. Given the internal controls involved in the payroll process, we would expect the payroll data to be a more accurate source of staffing.

Adjustments for COVID-19 Period

To consider the effect of the COVID-19 pandemic case intake, the Division of Operations-Management recommended that the Agency "continue to use a rolling three-year average but account for the known anomaly of a sustained drop in filing attendant to the COVID-19 pandemic." To determine the period, the Division of Operation-Management evaluated the COVID-19 infections rates, monthly Gross Domestic Product, and the initial claims for unemployment. The Agency then made a

determination to remove the five quarters from April 1, 2020 to June 30, 2021, from the Field Office staffing analysis and replace them with earlier quarters, resulting in the following time periods being used to calculate a 36-month rolling average:

As of June 30, 2022 calculation	April 1, 2018 – March 31, 2020 (24 months) July 1, 2021 – June 30, 2022 (12 months)
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Below is the quarterly case intake for the periods April 1, 2018 to June 30, 2022, with the COVID-19 pandemic period highlighted and bolded and the five quarters added to the Field Office staffing calculation just highlighted.

Dates	Quarter	Intake	Change from Prior Quarter
4/1/2018 - 6/30/2018	FY 18 Q3	5,443	4.61%
7/1/2018 - 9/30/2018	FY 18 Q4	5,215	-4.19%
10/1/2018 - 12/31/2018	FY 19 Q1	5,037	-3.41%
1/1/2019 - 3/31/2019	FY 19 Q2	5,234	3.91%
4/1/2019 - 6/30/2019	FY 19 Q3	5,404	3.25%
7/1/2019 - 9/30/2019	FY 19 Q4	4,966	-8.11%
10/1/2019 - 12/31/2019	FY 20 Q1	4,781	-3.73%
1/1/2020 - 3/31/2020	FY 20 Q2	4,594	-3.91%
4/1/2020 - 6/30/2020	FY 20 Q3	3,805	-17.17%
7/1/2020 - 9/30/2020	FY 20 Q4	4,452	17.00%
10/1/2020 - 12/31/2020	FY 21 Q1	3,920	-11.95%
1/1/2021 - 3/31/2021	FY 21 Q2	4,083	4.16%
4/1/2021 - 6/30/2021	FY 21 Q3	4,276	4.73%
7/1/2021 - 9/30/2021	FY 21 Q4	4,441	3.86%
10/1/2021 - 12/31/2021	FY 22 Q1	4,489	1.08%
1/1/2022 - 3/31/2022	FY 22 Q2	4,960	10.49%
4/1/2022 - 6/30/2022	FY 22 Q3	5,262	6.09%

Adjusting for the COVID-19 pandemic period was not an unreasonable management decision and was in accordance with OMB’s Circular A-11 guidance that the Agency should make reasonable assumptions with regard to workload. The methodology used, however, was not grounded in a proper analysis.

The average case intake during the COVID-19 pandemic period was 4,107, the replacement case intake average quarterly intake was 5,267, and the three quarters prior to the pandemic period were showing a decline in cases. Given those circumstances, projecting an average case intake increase for five quarters on the magnitude of 14.6 percent

over the quarter immediately prior to the pandemic was questionable. Although it is not possible to determine what would have occurred but for the pandemic, a more detailed and documented analysis of the likely case intake trends should have been undertaken to ensure greater precision in determining the allocation of resources.

Compliance with Governmentwide Requirements

The Agency's methodology for determining Field Office staffing was described in a document entitled "FAQs About the Staffing Chart." The document was not dated. Because the document references the first five quarters of the COVID-19 pandemic, we determined that the March 2021 version of OMB's Circular A-11 applied.

The Agency's document did not meet the seven requirements of the Circular A-11 criteria.

- Base estimates for staffing requirements on the assumption that improvements in skills, organization, procedures, and supervision will produce a steady increase in productivity. Personnel should be reassigned, to the maximum extent, to meet new program requirements.
 - The 45 cases per Board Agent standard did not include assumptions that improvements in skills, organization, procedures, or supervision would produce steady increases in productivity or explain why such assumptions were not applicable.
- Use personnel currently funded to the maximum extent in staffing new programs and expansions of existing programs.
 - Because the NLRB's jurisdiction is based on a statute, the NLRB is unlikely to have new programs. Increases in intake of C and R cases, however, would represent an expansion in program operations. The methodology assumes that increases in case intake requires additional personnel.

- Reductions generally should be planned where the workload is stable.
 - The case load standard does not provide for reductions in staffing for a stable workload, nor does it explain why such assumptions are not applicable.
- Where appropriate, use calculations converting workload to required personnel that include an estimate of available workhours per employee, excluding annual leave, sick leave, administrative leave, training, and other non-work time from these calculations. Base exclusions for annual and sick leave on current experience of actual leave taken rather than leave earned.
 - The calculation is not based on available workhours per employee.
- Base estimates of available time on current data, reflect steps taken to improve the ratio of available time to total time, and recognize differences in available time by organization, location, or activity.
 - The calculation is not based on available workhours per employee.
- Employment levels should reflect budget proposals and assumptions with regard to workload, efficiency, proposed legislation, interagency reimbursable arrangements, and other special staffing methods.
 - The employment level calculation reflects assumptions about Field Office workload. The calculation does not reflect assumptions of efficiency, as the methodology assumes a Board Agent processes the same number of cases in a year, does not consider special staffing needs, and does not differentiate between difficult cases and easier cases.
- Base estimates of personnel resources on the total number of regularly scheduled straight-time hours (worked or to be worked) in the fiscal year.

- The calculation methodologies for proposed and current staffing are based on the number of cases received rather than regularly scheduled straight-time hours.

We confirmed with the Office of the Chief Financial Officer that the Division of Operations-Management provides the number of needed positions to the Budget Branch. The Budget Branch then formulates the budget request based on Agency priorities and the information provided by the program offices. Because the Budget Branch relies on the Division of Operations-Management for the staffing analysis, it should meet OMB's Circular A-11 requirements.

Management Comments

Management Comments state that the Division of Operations-Management concluded, based on years of experience, that 45 cases per full-time Board Agent, excluding Compliance Officer, was the most effective and efficient way to determine the number of staff needed for each Region. The comments also described a method for calculating FTEs that does not include counting employees' time in a paid leave status, and notes that the Agency's payroll records may not reflect employees on paid and unpaid leave or temporally reassigned.

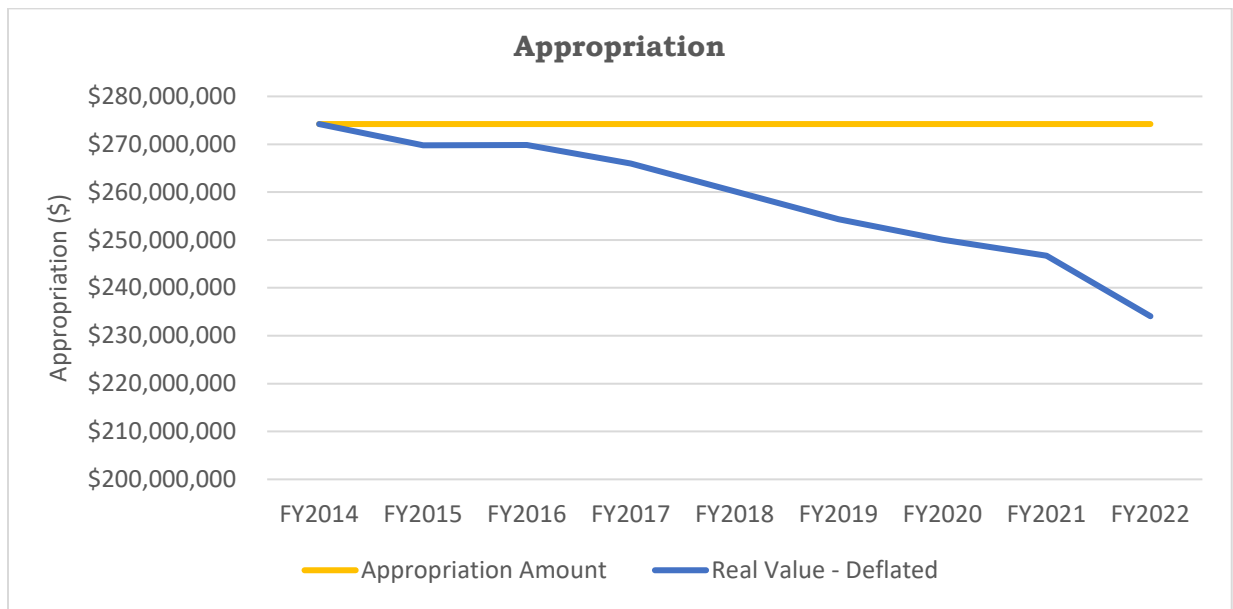
Office of Inspector General Response

Our report does not question the appropriateness of a 45 case per Board Agent standard. The finding relates our review of documentation provided by management and the lack of documentation of how the Agency determined 45 case was an appropriate standard within the framework of OMB's Circular A-11 requirements. The methodology described in the Management Comments for calculating FTEs is incorrect in that OMB's guidance states that the FTE calculation includes annual leave, sick leave, compensatory time off and other approved absences. Also, the Agency's financial system has the detail information necessary to accurately calculate FTEs.

LEVEL FUNDING FY 2014 TO FY 2022

For the period beginning FY 2014 through FY 2022, the NLRB received an appropriation for each fiscal year in the amount of \$274,224,000.

To understand the value of an amount of funding over time, the general practice is to deflate the amount using the Consumer Price Index. We deflated the appropriation calculated using the Consumer Price Index. The FY 2022 appropriation value, in 2014 real terms dollars, was \$234.1 million, resulting in a difference from the appropriation amount of \$40.1 million:

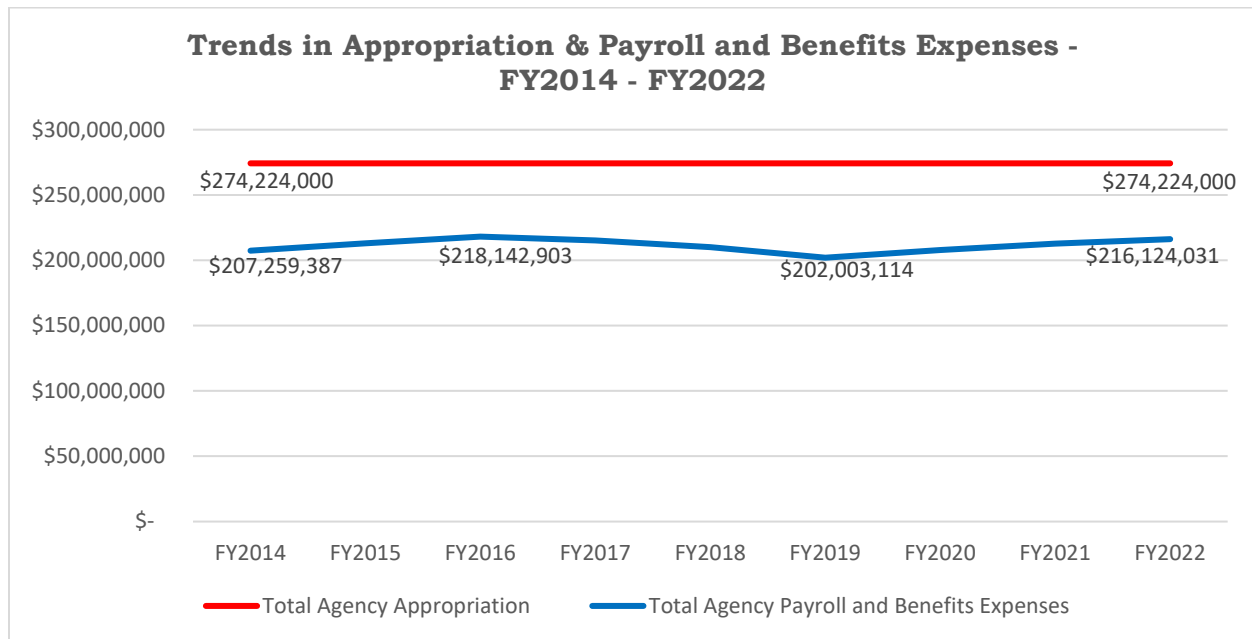


The amount of funding necessary, in FY 2022, to maintain the same level of spending adjusted for inflation would be \$321.2 million, or approximately \$47 million in increase funding.

Based on this analysis, although the amount of the annual appropriation was consistent of the 9-year period, the value of the appropriation declined. As a result, the Agency would have to adjust its expenditures to avoid an Anti-deficiency Act violation to continue to operate through the period authorized by the appropriation.

Payroll and Expense as Compared to FTEs

As shown in the chart below, the payroll and benefits are the primary Agency expenditure. Overall, during the 9-year period, the percentage of the Agency's obligations for payroll and benefits expenses increased from 75.58 percent to 78.81:



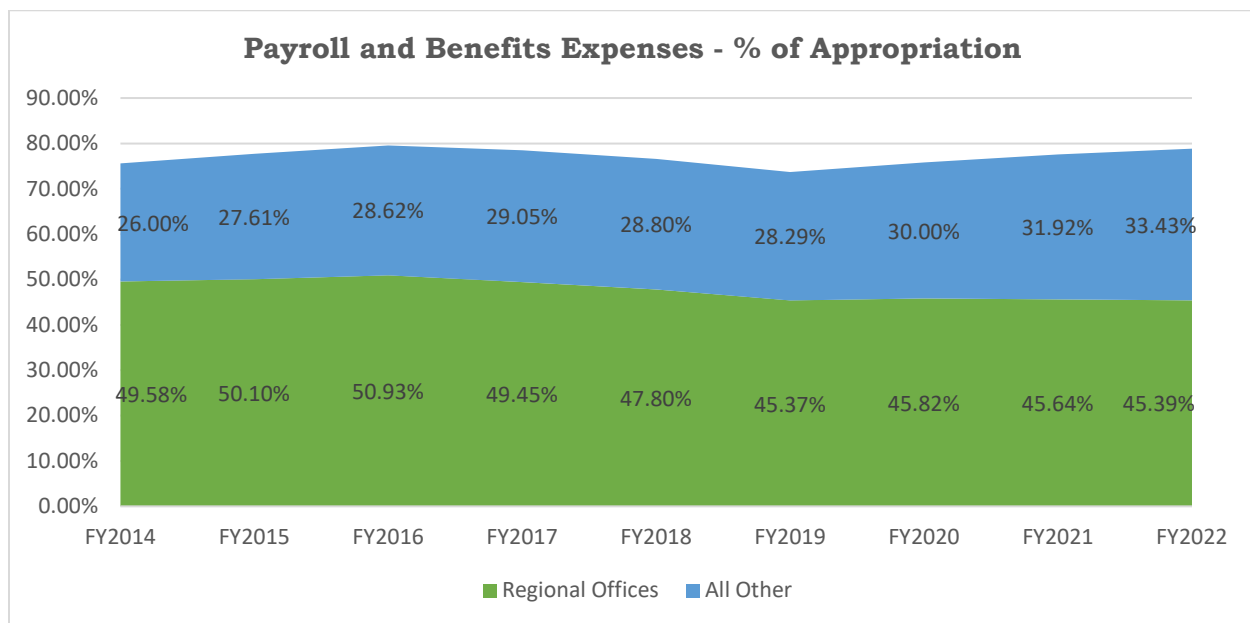
To better understand the payroll and benefit expenses, we also calculated the FTE levels for both the Agency and the Regions. As a starting point, the first quarter 2014 Agency FTE level was 1568 and for the last quarter of 2022 the FTE level was 1200. Based on that calculation we determined that the Agency had an overall decline in FTEs of 368, or 23 percent.

For the Regions, we calculated that the first quarter 2014 FTE level was 1,087 and for the last quarter of 2022 the FTE level was 709. Based on that calculation we determined that the Regions had an overall decline in FTEs of 378, or 35 percent.

We also determined that although the overall Agency FTE declined, there was a 10 FTE gain for all other positions that were not assigned to the Regions:

FTE				
Category	FY 2014-Q1	FY 2022-Q4	Inc (Dec)	Percent
Overall	1568	1200	(368)	-23%
Regional Offices	1087	709	(378)	-35%
All Other	481	491	10	2%

We also compared the payroll and benefits expenses for the Regions to all the other payroll and benefits expenses. Based on that comparison, we determined that over the 9-year scope period, the Regional payroll and benefit expenses had an 8.46 percent reduction while all other payroll and benefit expenses increased by 28.56 percent. The effect of the changes in payroll and benefits on the overall Agency expenditures is shown in the chart below:



This analysis supports a finding that in order to maintain its expenditures at a level authorized by the annual appropriation, over the 9-year period, the Agency reduced expenditures for Regional payroll and benefit expenses by reducing the FTE levels while expenses related to payroll and benefits for all other positions increased and the amounts for any other expenditures and lapsed funds generally remained consistent.

With regard to lapsed funding, with the exception of FY 2017 through FY 2019, the amounts were nominal.

Management Comments

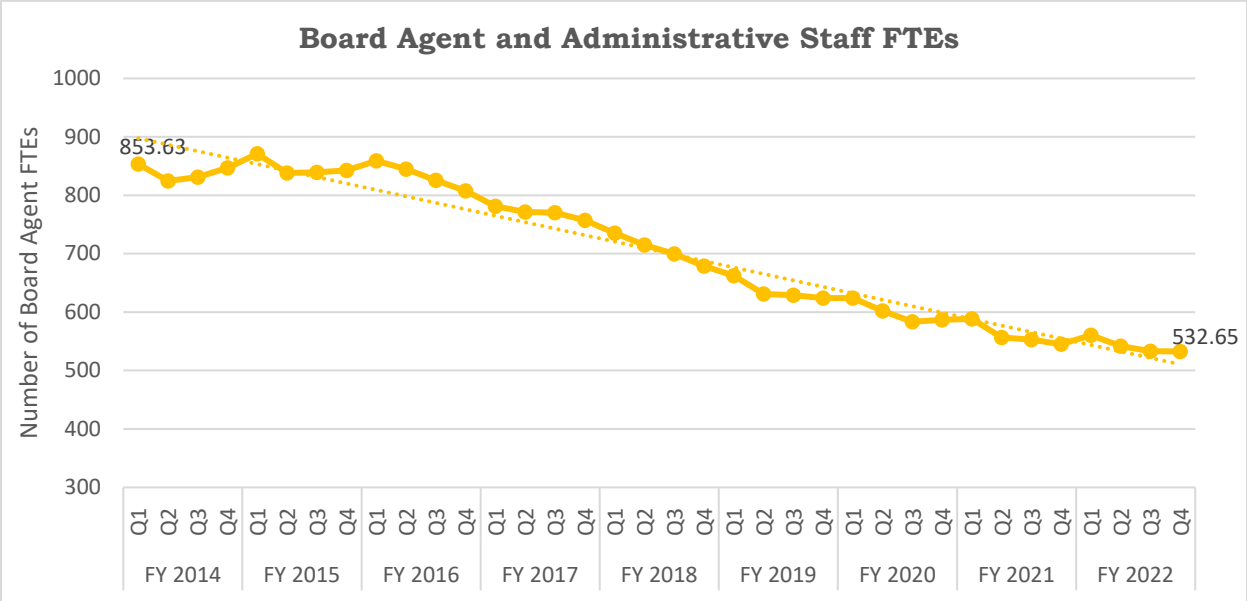
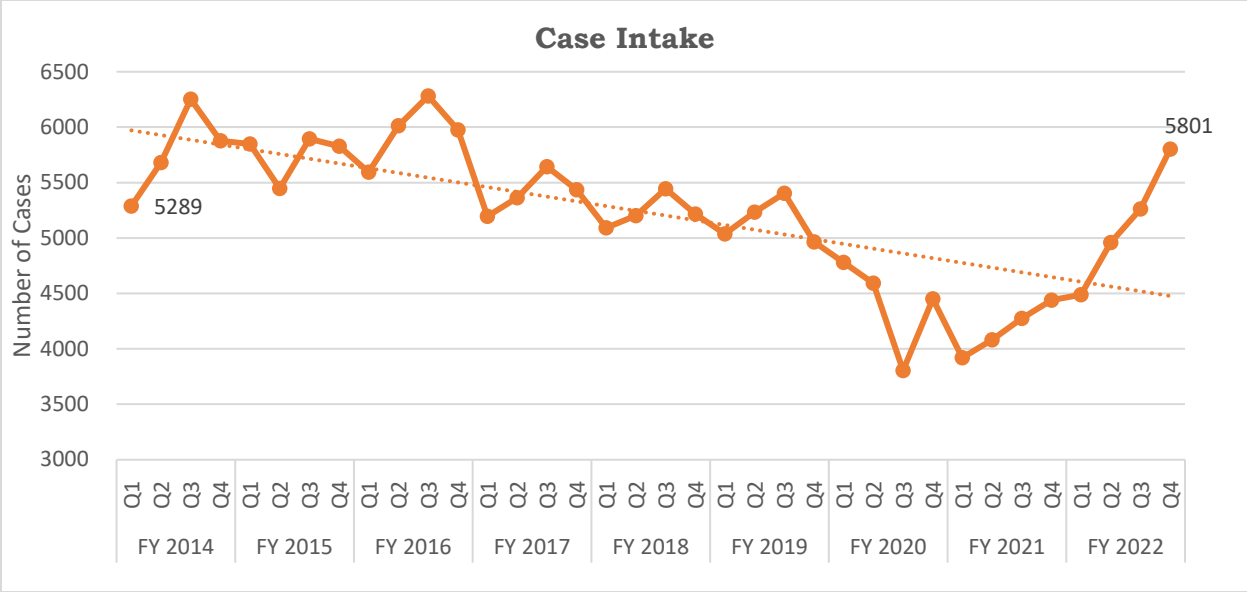
With respect to the comparison of the Field and all other staffing, the Management Comments included information on activities performed by the Headquarters staff that supports or otherwise are resources for the Regional case process function.

Office of Inspector General Response

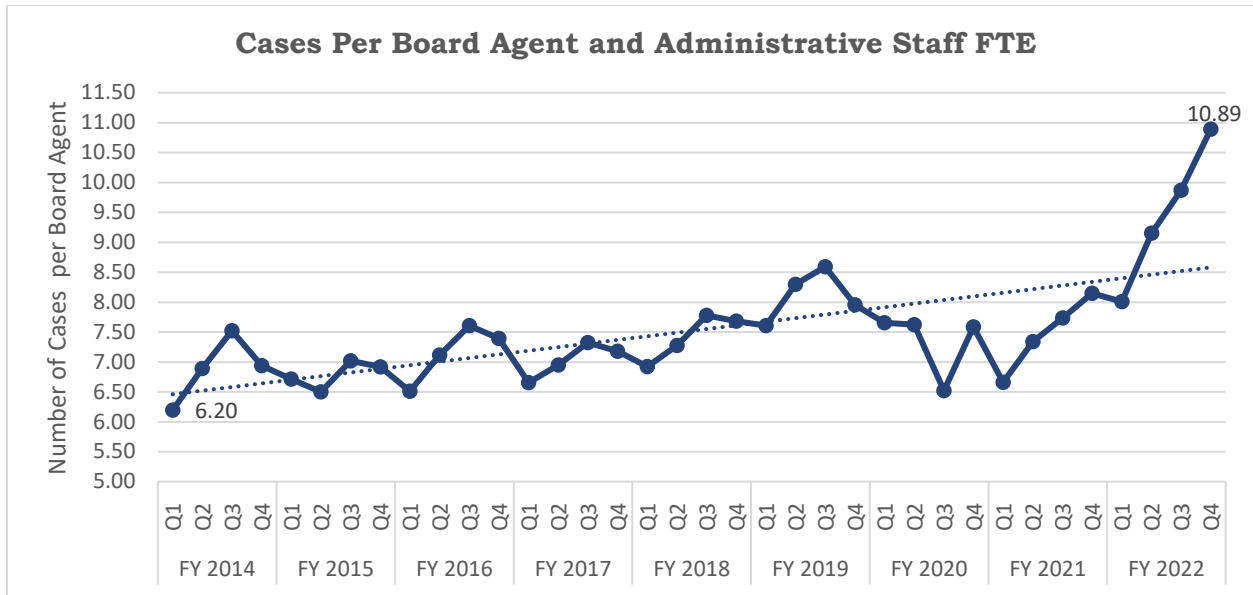
The comparison of the Field Office staffing to all other staffing expenses is provided to ensure that the audit met the objective to evaluate the effect of the level funding appropriation on Field Office staffing. The decision on how to allocate budgetary resources was a management decision that was not related to the objective, the finding should not be read for any purpose beyond the stated objective. As such, the information in the comments was not within the purview of the audit's objectives, we express an opinion regarding the information provided by management.

Regional Case Intake and FTEs

As shown in the two following charts, over the 9-year period, both the quarterly case intake as well as the Regional Board Agent and Administrative Professional FTEs declined. We used the Board Agent and Administrative Professionals as an indicator of case processing capacity because C cases and R cases are primarily processed by individuals in those positions.



The case intake as measured by the quarterly intake per Board Agent and Administrative Professionals, however, had an increasing trend, as shown by the dotted line, over the same period:



When we analyzed the trend for the individual Regions, we found that 17 Regions had an increasing trend of one or more case per Board Agent and Administrative Professional FTE and 9 Regions had a change of less than one case either increasing or decreasing per FTE.

Regional Payroll and Benefits and Cases Intake

For all positions in the Regions over the 9-year period, the total annualized Regional FTE decreased from 1,067 in FY 2014 to 719 in FY 2022, a decrease of 33 percent. For the same period of time, however, the total payroll and benefits expenses, rounded, per FTE increased from \$127,423 to \$173,163, an increment of \$45,739, or 36 percent. Overall, the Regional case intake decreased from 23,100 in FY 2014 to 20,512 in FY 2022, or 11 percent.

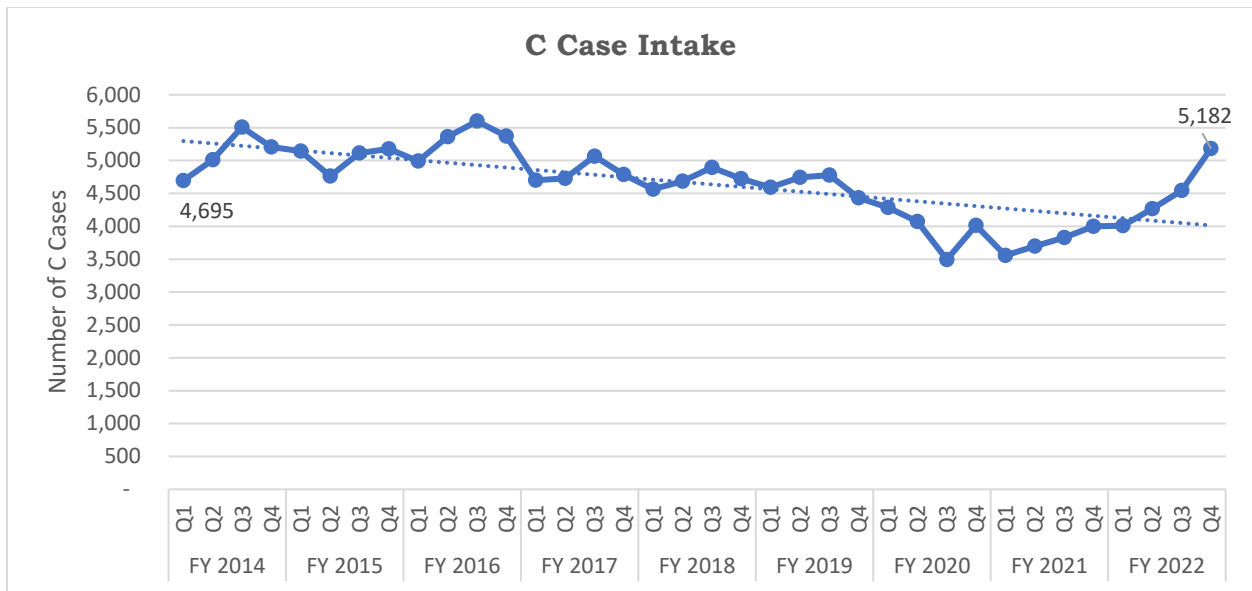
Despite an annualized decline of 33 percent in FTEs and an 11 percent decline in case intake, because of the total Regional payroll and benefits expenses increased by 36 percent, the FTE costs per case, not including any overhead, also increased:

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Regional Offices Case Intake	23,100	23,018	23,861	21,637	20,954	20,641	17,632	16,720	20,512
Total Payroll and Benefits Expenses per case received	\$5,885.70	\$5,968.09	\$5,853.31	\$6,267.13	\$6,255.91	\$6,028.17	\$7,126.47	\$7,485.12	\$6,067.77

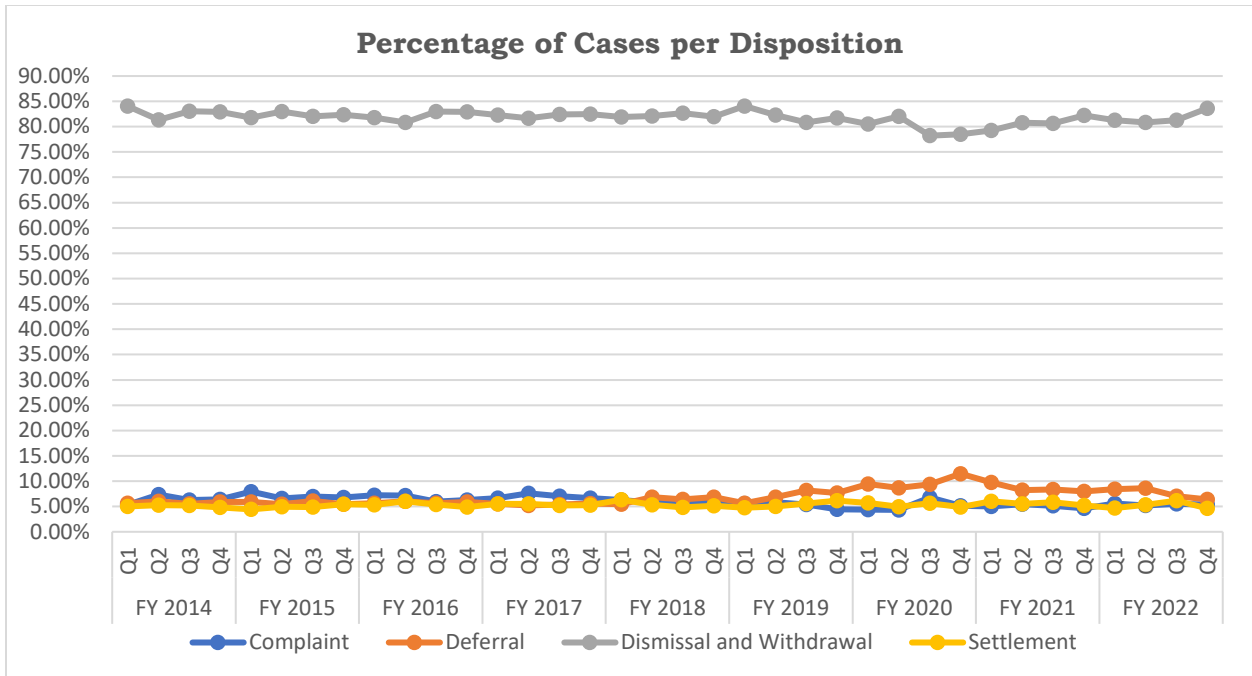
Trends in Case Processing

Initial Charge Dispositions

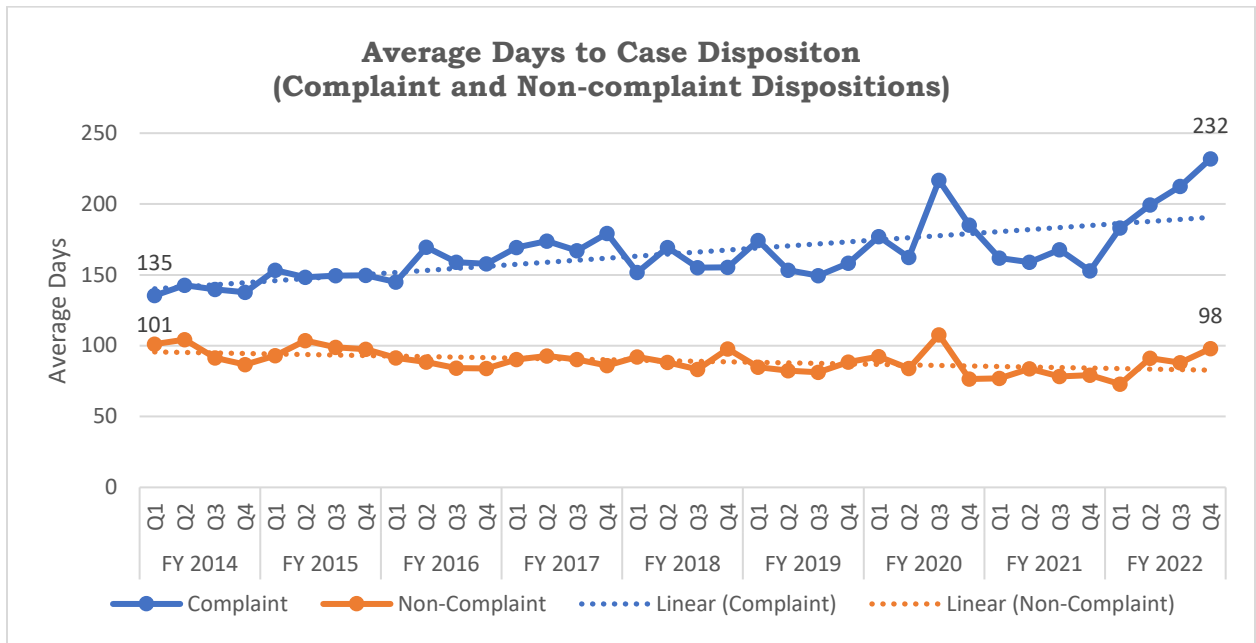
Using a linear trend line, the dotted line in the chart below, we observed a decrease in C case intake over the 9-year period. Beginning in the second quarter FY 2022, however, the C case intake increased above the trend line to a quarterly amount that was near other peaks in C case intake. We also observed that C case intake began to increase in the first quarter FY 2021 - a point that was generally the low point in case intake for the scope period:



When analyzing the trend in charge dispositions, we observed that the percentage of charges disposed of by a particular disposition generally remained consistent through the 9-year period. There was an increase in disposition by deferral beginning in fourth quarter FY 2019, but that trend appeared to be resolved by the end of the scope period:



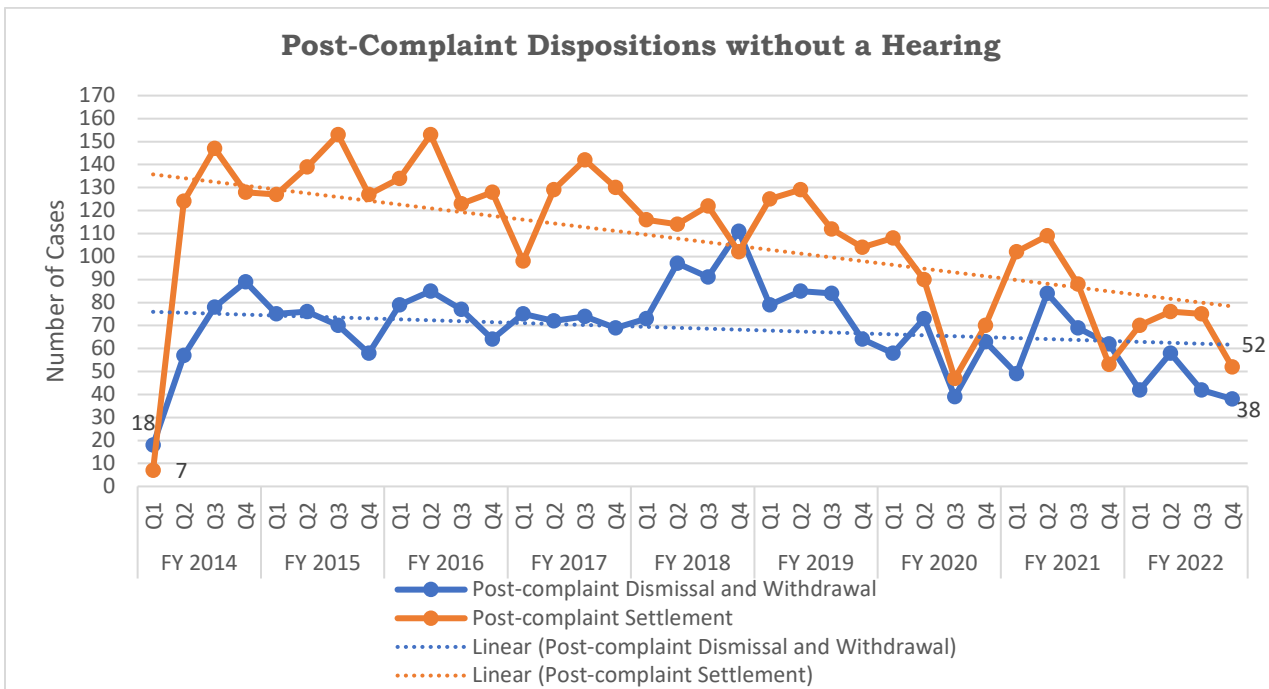
During the 9-year scope period, we observed that the quarterly average days to dispose of a case by complaint increased from 135 to 232 days. When we combined the non-complaint dispositions and compared disposition times to complaint dispositions, we observed that the complaint dispositions had a steady increase in average disposition days while the non-complaint dispositions had a modest trending decrease in time to disposition:



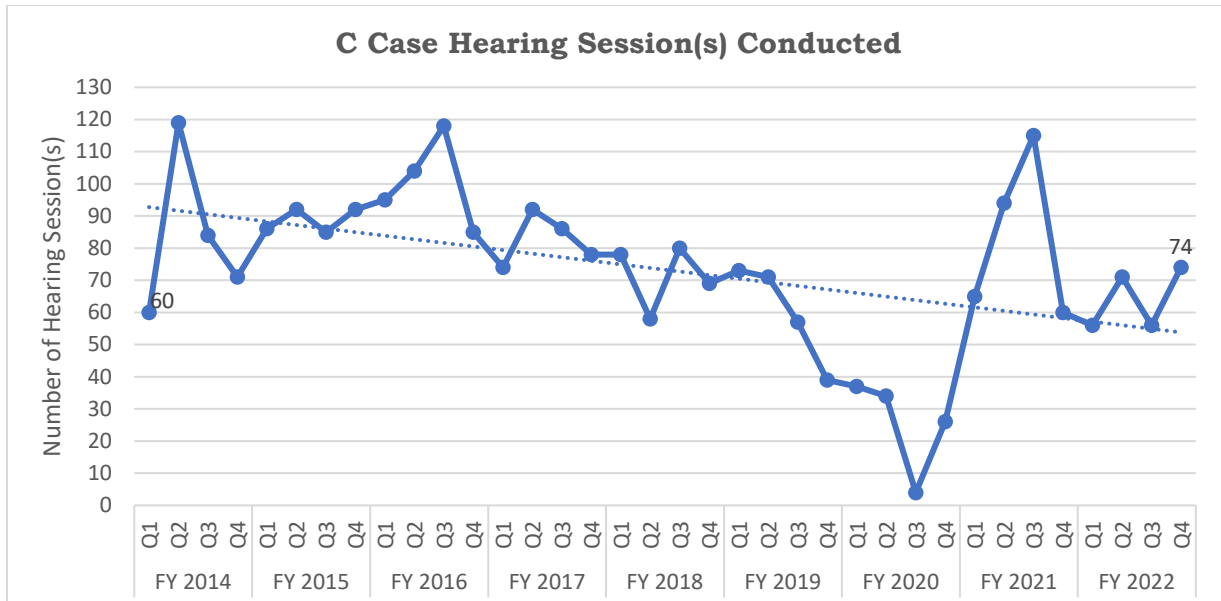
Based on the declining Board Agent and Administrative Professional FTEs, C case intake trends, and C case disposition trends, we determined that the declining FTEs resulted in an increase in time to issue a complaint despite a decline in C case intake.

Post-Complaint Actions

During the 9-year scope period, we observed that there was a consistent trending decline in the number of complaint cases without a hearing that resulted in a post-complaint dismissal, withdrawal, or settlement dispositions without a hearing:



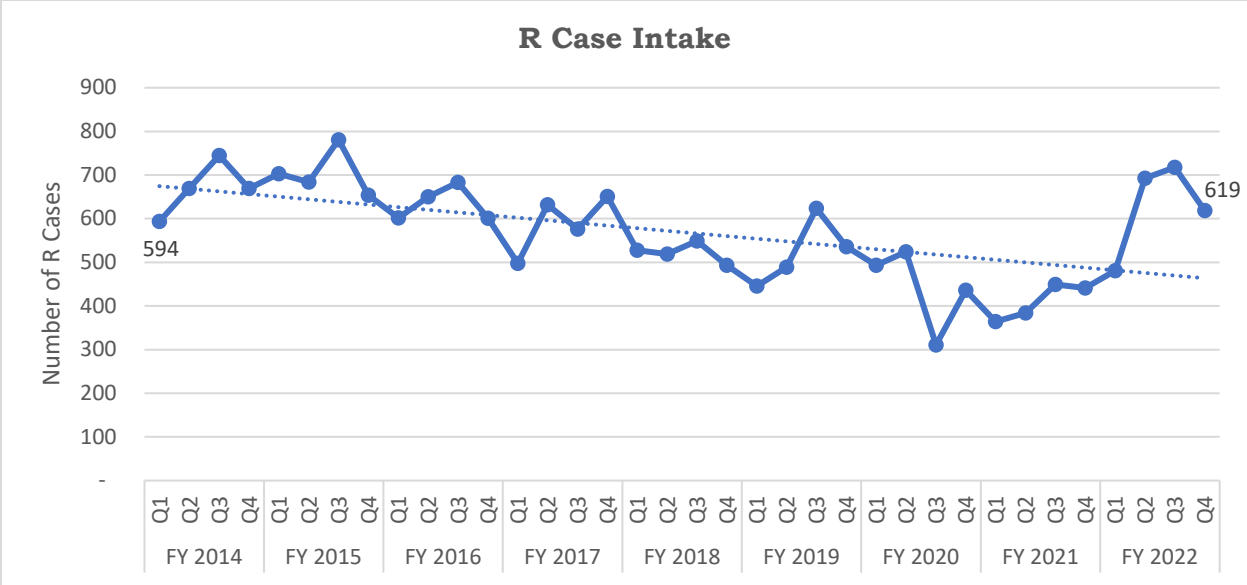
The NxGen C case hearing sessions data includes complaint and compliance hearings. Except for five quarters – including a period at the beginning of the COVID-19 pandemic, the C case hearing had a declining trend:



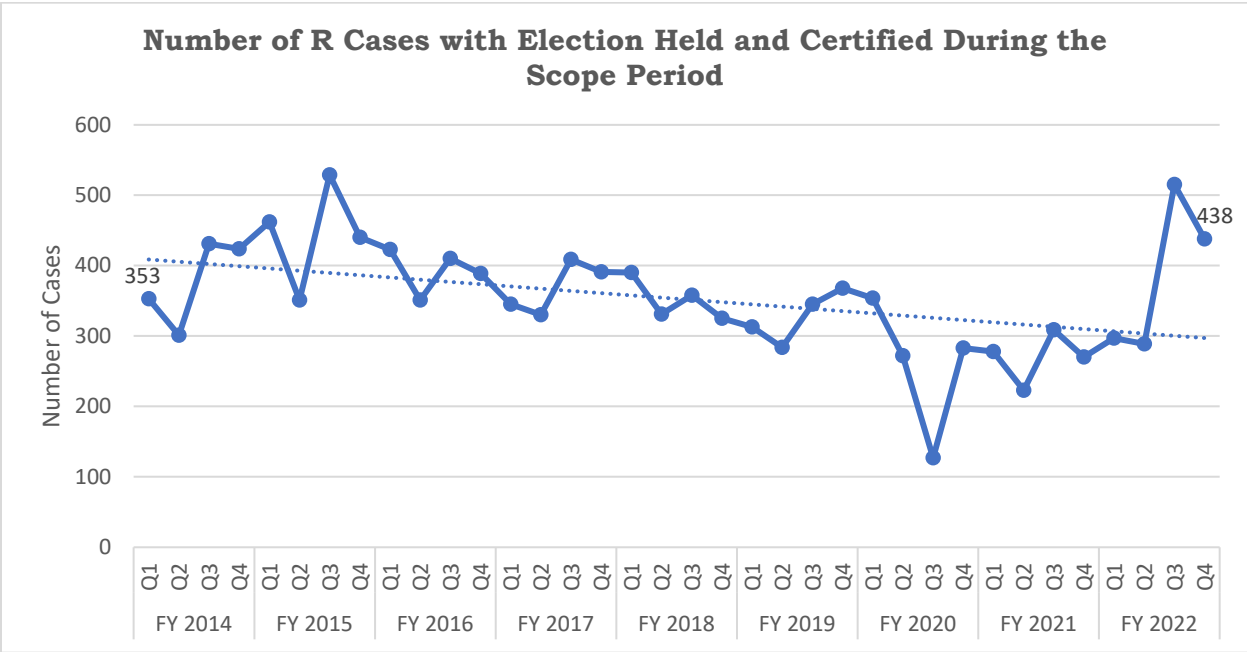
The C case hearing trend indicates that the hearing sessions generally followed a declining trend consistent with case intake. While the first quarter FY 2014 had fewer hearings, that was likely the result of the Government closure for the first 16 days of the quarter. Also, the sharp decrease in cases in second quarter FY 2020 followed by a sharp increase was likely due to the pandemic.

R Case Processing

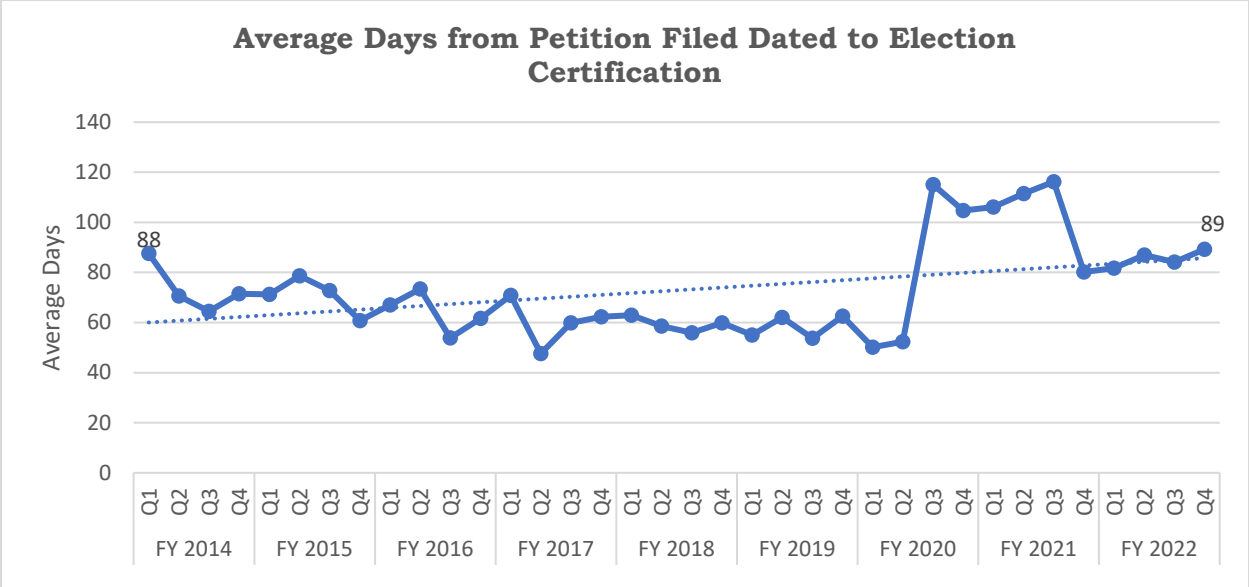
As with the C cases, generally the R case intake declined over the 9-year period of the level appropriation. We observed that there was a corresponding decline in the elections results certified:



We observed a correlation between the R case intake and number of cases with elections held and certified during the scope period:

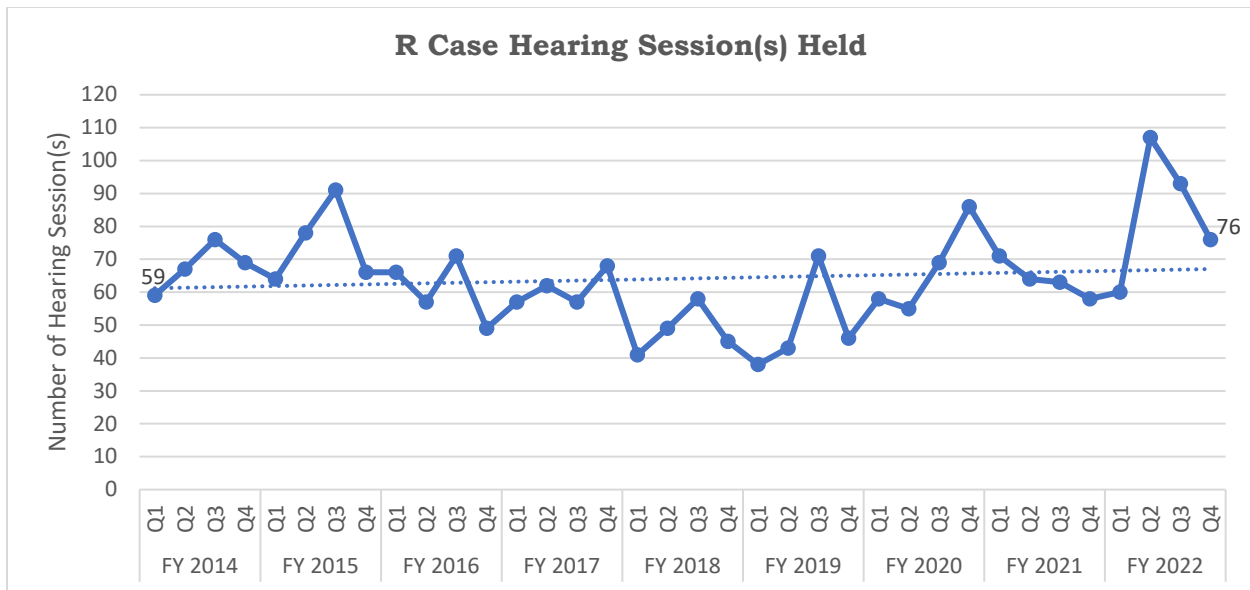


We generally observed a decrease in the time from the petition filed date to election certification between the third quarter FY 2015 and first quarter FY 2020. At the beginning of the COVID-19 pandemic period, we observed a sharp increase that then appears to level at the higher average.



With regard to average days for the filing of the petition to certification of the election, while there was an overall increasing trend, it may be due in part to the regulatory time processing requirements for R cases. Those requirements first went into effect in FY 2015 and then were amended to increase the time limits in FY 2020.

Because the R case intake generally had a decreasing trend until the beginning of second quarter FY 2022 during the scope period, we would expect to see a decrease in the hearing session held and a correlation between the two. Using a linear trend line, however, we observed that despite a decline in R case intake there was a slightly increasing trend in the hearing sessions held during the 9-year period:



Hearings require additional work for Regional staff; therefore, the decreasing R case intake does not appear to have resulted in a comparable decline in work.

Non-Case Processing Trend Considerations

According to documentation provided by the Agency, at various times during the scope period, spending restrictions were put in place that may have affected case processing. For example, in FY 2016, the Division of Operations-Management requested that the Regions maximize the use of video conferences for pre-trial preparation and witness preparation and testimony; and use alternative techniques to limit travel. In FY 2018, the Regions were again asked to reduce expenses including limiting Board Agent travel. The Agency also provided documentation that, in FY 2020, it established the Centralized R-Case Decision Writing Program to address a significant volume of pre-election R case decisions.

In FY 2018, the Agency used the VERA/VISP programs to reduce the FTE level. That process, however, was not related to the level funding. Initially, the request to use the programs was based on the anticipated reduction in funding. When the reduction did not occur, the Agency proceeded with the programs to reduce the FTE level to “reshape the workforce and allow for the strategic replacement of surplus positions” and to comply with OMB Memorandum 17-22 – *Comprehensive Plan for Reforming the Federal Government*

and Reducing the Federal Civilian Workforce. As seen in the above data in FY 2019, following VERA/VISP, there was a greater percentage of funds for other than payroll and benefits and other Agency expenses. The trend, however, returned to prior levels in the following fiscal years.

When we interviewed Regional management, they explained that the loss of personnel through the VERA/VISP program coincided with an increase in case intake and that the two events had a negative impact on employee morale. They also explained that due to funding issues, employee training was not always available, senior positions were not filled, and mission-related travel was restricted.

When we also interviewed employees, they explained that, at various times, they were told that funding issues prevented Regions from having sufficient supplies and equipment – particularly when laptops or monitors broke; required the cancellation of training through the Headquarters and Field exchange programs; was the reason for the closure of occupational health units and a lack of training for CPR; and caused vacancies in supervisory and management positions – as a result supervisory assistance was not always available when needed and there were delays in reviews and approvals of case-related work. They also explained that as the result of the increasing caseload, employees were suffering “burnout” trying to handle a significant increase in the caseload and they were less efficient at meeting case processing standards that remained consistent despite the increasing caseloads.

We also reviewed the Agency results for the FEVS. We generally found that at the beginning of the period, the responses related to workload were generally on the positive side and became more negative by the end of the scope period. We also observed that the shift was greater for Regional personnel.

Workload			
Category	2014	2022	Inc or -Dec
Agency - POS %	59.53%	47.10%	-12.43%
Regional Offices - POS %	53.85%	26.10%	-27.75%
Agency - NEG %	23.75%	42.60%	18.85%
Regional Offices - NEG %	28.79%	64.40%	35.61%

Effect of Level Funding on Field Office Staffing and Case Work

The effect of the level funding appropriation on the Field Office staffing was a reduction in Regional FTEs with an overall increase in the number of cases per Board Agent and Administrative Professional. Also, at various times during the scope period, the Agency took steps to restrict case processing expenditures.

For the C cases, we determined that during the period of level funding, there was an increase in time to issue complaints while the number of charges decreased. The decrease in Board Agent and Administrative Professional FTEs does not, however, appear to have had a significant impact on the processing of R cases. This may in part be due to the fact that R cases have regulatory time processing requirements while C cases do not. As a result, Regional Directors have less discretion in allocating personnel resources between C and R cases. We also observed that, over time, employee morale declined.

INTERNAL CONTROLS

From GAO's *Standards for Internal Control in the Federal Government* we selected the internal control attributes and standards that are applicable to the Division of Operations-Management FTE calculation process. Using those standards, we determined the process to assign or allocate Field Office FTEs lacks an appropriate system of internal controls, as identified in the internal control matrix provided at Appendix A. Also, as identified above, we found that the Field Office FTE calculation methodology did not meet OMB Circular A-11 guidance. As a result of those determinations, we also found that the Agency is at risk of not allocating FTEs to the Field Offices in a manner that would ensure that it meets the Agency's goals and objectives.

With regard to our review of case processing trends, when conducting data reliability testing, we found conflicting criteria for NxGen data entry regarding the charge withdrawal action disposition date and the petition file date. We also found a lack of data in NxGen to confirm the transfer of cases between Regions.

RECOMMENDATIONS

We recommend that the Division of Operations-Management:

1. Coordinate with the Office of the Chief Financial Officer to ensure its methodology to develop Field Office staffing requirements meets OMB requirements;
2. Evaluate its method of determining Regional staffing levels and consider whether a method that evaluates the level of work associated with the cases in addition to the case intake is more appropriate and what, if any, impact the ratios of R cases to C cases may affect the level of work;
3. Develop a process to assess field staffing data that includes data quality checks; and
4. Develop an internal control process to address the findings at Appendix A and related NxGen data issues.

APPENDIX A

GAO - STANDARDS	CONCLUSION	RESULTS
3.05 Management periodically evaluates the organizational structure so that it meets the entity's objectives and has adapted to any new objectives for the entity, such as a new law or regulation.	MEETS	According to the Division of Operations-Management, a staffing calculation is completed and published on a quarterly basis. The calculation is developed in coordination with the General Counsel's Office.
3.09 Management develops and maintains documentation of its internal control system.	DOES NOT MEET	Management does not have a policy that documents a staffing calculation internal control system. The document provided by the Division of Operations-Management "FAQs About the Staffing Chart" is not a control system. It describes a methodology for calculating Field Office staffing; however, it does not document the timing, responsibilities, reviews, and approvals.
3.10 Effective documentation assists in management's design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel.		
4.05 Management recruits, develops, and retains competent personnel to achieve the entity's objectives.	DOES NOT MEET	The "FAQs About the Staffing Chart" does not describe how the staffing charts are used to recruit, develop, and retain competent personnel.
<i>10.03 Reviews by Management at the functional or activity level:</i> Management compares actual performance to planned or expected results throughout the organization and analyzes significant differences.	MEETS	For the Fiscal Year (FY) 2022 Field Office full-time equivalents (FTE) calculation, management compared the number of FTEs needed based on case intake with the staffing currently on board.
<i>10.03 Management of Human Capital:</i> Effective management of an entity's workforce, its human capital, is essential to achieving results and an important part of internal control. Only when the right personnel for the job are on board and are provided the right training, tools, structure, incentives, and responsibilities is operational success possible. As part of its human capital planning, management also	PARTIALLY MEETS	The "FAQs About the Staffing Chart" clearly identifies the human capital needed for the designated work; however, the calculation process does not meet the Office of Management and Budget guidance.

APPENDIX A

GAO - STANDARDS	CONCLUSION	RESULTS
<p>considers how best to retain valuable employees, plan for their eventual departure, and maintain a continuity of needed skills and abilities.</p>		
<p><i>10.03 Controls over information processing:</i> A variety of control activities are used in information processing. Examples include edit checks of data entered; accounting for transactions in numerical sequences; comparing file totals with control accounts; and controlling access to data, files, and programs.</p> <p><i>10.03 Accurate and timely recording of transactions:</i> Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.</p>	<p>DOES NOT MEET</p>	<p>Management uses a manual process without internal controls to determine current Field Office staffing and does not utilize payroll information from the Office of Human Resources – a system with internal controls. We found:</p> <ul style="list-style-type: none"> • Differences between the staffing in the Field Office staffing calculation and the staffing based on the payroll system; • Formula errors in the Field Office FTE calculation spreadsheet that resulted in incorrect calculations for three Regions; and • Field Office organizational charts were not accurate.
<p><i>10.03 Appropriate documentation of transactions and internal control:</i> Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form.</p>	<p>PARTIALLY MEETS</p>	<p>For the Field Office FTE calculation, management does not document and maintain a proper internal control system. We found that management maintains the Field Office FTE calculation with spreadsheets and the FY 2022 Field Office FTE calculation was approved by the Deputy General Counsel via an email; however, management did not maintain the supporting documentation.</p>

APPENDIX A

GAO - STANDARDS	CONCLUSION	RESULTS
Documentation and records are properly managed and maintained.		
10.08 Management designs control activities for appropriate coverage of objectives and risks in the operations. Operational processes transform inputs into outputs to achieve the organization's objectives. Management designs entity-level control activities, transaction control activities, or both depending on the level of precision needed so that the entity meets its objectives and addresses related risks.	DOES NOT MEET	Management did not design control activities for the Field Office FTE calculation. There is no documentation of risk analysis, entry-level control activities, or transaction control activities.
12.03 Management documents in policies for each unit its responsibility for an operational process's objectives and related risks, and control activity design, implementation, and operating effectiveness.	DOES NOT MEET	Management did not document the responsibilities for various units involved in the Field Office FTE calculation.
12.05 Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately.	DOES NOT MEET	Management does not have Field Office FTE calculation policies and procedures to review periodically to ensure that the changes made to the control activities are updated in the policies and implemented appropriately; however, management did periodically review the methodology.
13.02 Management designs a process that uses the entity's objectives and related risks to identify the information requirements needed to achieve	PARTIALLY MEETS	To calculate Field Office FTEs, management uses case intake based on 3-year rolling average from the NxGen reports and current staff on board; however, the process does not address the related risks.

APPENDIX A

GAO - STANDARDS	CONCLUSION	RESULTS
the objectives and address the risks.		
13.04 Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent.	DOES NOT MEET	Management does not obtain relevant data from reliable internal sources. Management uses a manual process to determine current Field Office staffing and does not utilize payroll information from the Office of Human Resources. We determined that the manual process resulted in errors.
13.05 Management processes the obtained data into quality information that supports the internal control system.	DOES NOT MEET	Management did not use relevant and reliable data to process quality information. We found that the Field Office FTE calculation spreadsheet had formula errors that resulted in incorrect calculations for three Regions.
15.03 Management communicates quality information externally through reporting lines so that external parties can help the entity achieve its objectives and address related risks. Management includes in these communications information relating to the entity's events and activities that impact the internal control system.	DOES NOT MEET	The Budget Branch, Office of the Chief Financial Officer, relies on the Division of Operations- Management's Field Office FTE calculation to formulate budget requests. The Budget Branch reports the number of FTE Requested, FTE Enacted, and Actual FTE for total Agency and Casehandling Program Activity in the annual Justification of Performance Budget for the Committee on Appropriations. We found that FTE information reported was inaccurate because we found errors in the Field Office FTE calculation and the Field Office FTE calculation methodology.

UNITED STATES GOVERNMENT
National Labor Relations Board
Division of Operations-Management

Memorandum

TO: David P. Berry, Inspector General
FROM: Joan A. Sullivan, Associate General Counsel
DATE: March 16, 2024
SUBJECT: OIG Report No. OIG-AMR-102-XX-XX

Thank you for the opportunity to review and respond to the revised March 5, 2024 audit report of Performance Based Staffing of the Regional Offices (the Audit). Below you will find that we have provided some context, have addressed your four recommendations, advising where there is agreement and where there is not, and have offered the Agency's action plan for moving forward.

First, Operations appreciates and wholeheartedly agrees with the following determinations relating to our appropriations over the Audit period:

- The effect of the consistent flat-lined appropriation of \$274 million between FYs 2014 and 2022 resulted in actual cuts to the Agency funding over the years.
- The Agency should have been appropriated at least \$321.2 million in FY 2022 to maintain the same level of spending.
- During fiscal years 2014 to 2022, Field staffing declined.
- During most of the Audit period, case intake in the Field declined, but not to the same degree as the Field staffing.
- Case intake started to increase significantly in FY 2022.
- The impact of an insufficient budget adversely impacted Field office staffing and morale.
- The VERA/VSIP program implemented in FY 2018 to “reshape the workforce and allow for the strategic replacement of surplus positions” adversely impacted Field office staffing and morale.
- The impact of insufficient budget resulted in delays to C case processing caused by the decline in Field staffing without appropriate backfilling.

Second, Operations is providing the following information for additional context:

- Case intake for C and R cases have been increasing during the tenure of the current General Counsel. As noted in the Annual PARs:

- FY 2021 case intake totals 16,719 cases and includes 15,081 C cases and 1,638 R cases.
 - FY 2022 case intake totals 20,509 cases and includes 17,998 C cases and 2,511 R cases.
 - FY 2023 case intake totals 22,463 cases and includes 19,869 C cases and 2,594 R cases.
 - The FY 2023 case intake was an increase of 10 percent over FY 2022 and a filing level not seen since FY 2016.
 - In FY 2023 and FY 2022, the Agency saw an increase in ULP case filings of 10 percent and 19 percent, respectively, and in Representation case filings of 3 percent and 53 percent, respectively.
- The vast majority of the unfair labor practice and representation cases filed with the Agency annually are resolved without the necessity of formal litigation and are disposed of by the Regional offices. See the annual Performance and Accountability Reports for FY 2014-2022.
 - Based on years of experience in trying different formulas, Operations concluded that case intake divided by 45 cases per full-time Board agent, minus the Compliance Officer, who works almost exclusively on formal compliance cases instead of typical C and R case work, is the most effective and efficient way to determine the number of staff needed to handle case intake in each Region.
 - Operations then considers the staffing needs for each Region by looking at the actual full-time and part-time employees working in each Region. A full-time employee is measured as 1 FTE and a part-time employee is measured based on the fewer number of regular hours worked as compared to a full-time employee.
 - Operations also considers the staffing needs for each Region by excluding employees who are on paid or unpaid leave, as well as those on temporary re-assignments, which may or may not be reflected in payroll data.
 - There is no assurance that a Region will have a staffing complement commensurate with an established need as this depends upon the Agency's overall budgetary situation.
 - Starting in the latter part of FY 2021, the Office of the General Counsel started the first of three robust hiring surges in the Field to respond to staffing shortages.
 - During the Audit period, Operations utilized both the Interregional Assistance Program, established in 1996 through an agreement with its Field union, and the Article 35 Detail Program set forth in the CBAs in effect to provide assistance to Regions.
 - With respect to the comparison of overall Field staffing to Headquarters staffing during the Audit period, the following is noted:
 - The Agency formalized the Freedom of Information Branch in Headquarters that centralized FOIA requests for the entire Agency. This relieved the Field of performing FOIA work, but required additional professional staff in Headquarters, including those that had worked in the Field, to perform this work.

- The Agency enhanced the number of professional staff of the Ethics Office in Headquarters, including those that had worked in the Field. The Ethics Office provides a significant resource to the Field in dealing with legal and government ethical issues arising out of the handling of C and R cases at all stages.
- The Agency created an E-Litigation Branch, which, while housed in Headquarters, provides a significant resource for the field, particularly as it relates to subpoena issues.
- The Agency also employed Language Specialists and NxGen Program Assistants, who often work out of a Regional Office, but are not counted in the Regional staffing numbers as they work for the Agency more broadly.
- The Agency centralized decision-writing and compliance work in Headquarters by utilizing cadres of field employees. Compliance officers and Compliance Support Assistants were removed from Regional staffing numbers as they worked more broadly for the Agency. Decisions writers remained in the staffing numbers, although their year long absence was considered when making hiring recommendations and decisions.
- The Agency consolidated and closed some field offices, thus decreasing the overall field staff.
- The Agency implemented a VERA/VSIP program in FY 2018 that further depleted the field staff to a much greater degree than in Headquarters.

Third, the section below addresses the specific Audit recommendations as follows:

1. Coordinate with the Office of the Chief Financial Officer to ensure its methodology to develop Field Office staffing requirements meets OMB requirements.

Operations commits to collaborating with the Office of the Chief Financial Officer to ensure our methodology meets OMB requirements or to explain any deviation from that policy. We note, though, that OMB guidance differs from OMB mandates in this regard.

2. Evaluate its method of determining Regional staffing levels and consider whether a method that evaluates the level of work associated with the cases in addition to the case intake is more appropriate and what, if any, impact the ratios of R cases to C cases may affect the level of work.

ULP and representation case intake has consistently been used to assess Field staffing needs, which is calculated on a rolling basis to address fluctuations in case filings, as well as an annual and 36-month period. And, notably, you agreed that our decision to adjust for the COVID-19 pandemic period by deleting the first five quarters of the pandemic period from that 36-month period was a reasonable management decision.

Over many years, Operations had evaluated its method of determining Regional staffing level and had taken into account and had adjusted its calculations based on the following non-exhaustive factors:

- Whether a Region had a satellite office(s).
- Travel requirements of offices, both local and Regional, using travel voucher information.
- Complexity of cases, including the categorization of a case.
- Cases litigated administratively.
- Cases in which injunction proceedings are initiated.
- Cases that required subpoena enforcement proceeding.
- Cases in which exceptions were taken to the Board.
- Accounting for compensatory time earned by Board agents.
- Number of managers based on case intake, including Officers-in-Charge and Resident Officers, and supervisors, both attorney and field examiner.

And, having previously applied these various factors to assist with the staffing formula, years of experience had demonstrated that these factors did not meaningfully impact the determination of staffing needs of the different offices. And, in fact, various discussions with all Regional Directors at an RD conference during the relevant period resulted in an overwhelming consensus that 45 cases per full-time Board agent should be the standard. Accordingly, it remains Operations' position that the C and R case intake at 45 cases per full-time Board agent adequately addresses the myriad of cases and case actions worked on by Field staff and is the most efficient and effective method to evaluate staffing needs at any given time.

3. Develop a process to assess field staffing data that includes data quality checks.

Operations agrees that data quality checks are essential when assessing field staffing needs. And, when new leaders in Operations took the helm in FY 2022, we commenced a review of the process. Based on that review, we found the three formula errors you mentioned and corrected them, developed a system to note changes that may impact staffing needs, and implemented regular updates to the staffing information. We continue to assess and will implement further quality checks as deemed necessary and appropriate.

4. Develop an internal control process to address the findings at Appendix A and related NxGen data issues.

Operations commits to develop and further explain internal control processes to address the findings set forth in Appendix A and related NxGen data issues by the end of First Quarter FY 2025. In so doing, Operations will review payroll data in assessing staffing needs to consider FTEs that are not performing work for an extended period, such as deployments, worker's compensation, and disciplinary actions, and will establish a stated policy for extended absences.

Conclusion

We trust that the foregoing is responsive to the Audit findings. We remain available to discuss details of our next steps at your convenience.

JOAN SULLIVAN Digitally signed by JOAN
SULLIVAN
Date: 2024.03.18 16:43:32 -04'00'

Joan A. Sullivan
Associate General Counsel
Division of Operations-Management

cc: Peter Sung Ohr, Deputy General Counsel and Audit Follow-Up Official

Referenced links:

[NLRB PAR FY2023 508](#)
[NLRB PAR FY2022 508](#)
[NLRB PAR FY2021 508](#)
[NLRB PAR FY2020 508 *](#)
[NLRB PAR FY2019 *](#)
[NLRB PAR FY2018](#)
[NLRB PAR FY2017](#)
[NLRB PAR FY2016](#)
[NLRB PAR FY2015](#)
[NLRB PAR FY2014](#)