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

**OFFICE OF THE SOLICITOR**

VIA E-MAIL

January 12, 2021

The Federal Labor Relations Authority ("FLRA") is an independent administrative federal agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the "Statute"), 5 U.S.C. §§ 7101-7135 (2018). The Statute allows certain non-postal federal employees to organize, to bargain collectively, and to participate through labor organizations of their choice in decisions affecting their working lives.

The Solicitor's Office of the FLRA received your request under the Freedom of Information Act ("FOIA") on January 4, 2021. You requested "a digital/electronic copy of the transition briefing document(s) (late 2020) prepared by FLRA for the incoming Biden Administration."

Pursuant to § 2411.7 of the FLRA's regulations (5 C.F.R. § 2411.7), your request has been granted. We disclose all documents responsive to your request.

Pursuant to the FOIA Improvement Act of 2016, 5 U.S.C. § 552 (a)(6)(A)(i)(III), the decision of the undersigned with regards to your request may be appealed to the Chairman of the FLRA, Colleen Duffy Kiko, within 90 days of the receipt of this response. If you would like to discuss this response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you can contact our FOIA Public Liaison for assistance at:



Brandon Bradley  
Acting Chief  
Case Intake and Publication  
Federal Labor Relations Authority FOIA Public Liaison  
1400 K Street, NW, 2<sup>nd</sup> Floor  
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If you have any questions, please also feel free to contact me at [solmail@flra.gov](mailto:solmail@flra.gov). There are no charges associated with processing your request pursuant to § 2411.13(b)(2) of the FLRA's regulations.

Sincerely,

/s/ Sarah C. Blackadar  
Sarah C. Blackadar  
Attorney  
Federal Labor Relations Authority



# **PRESIDENTIAL TRANSITION BRIEFING MATERIALS**

## **2020**

1. Table of Contents

### **OVERVIEW OF THE ORGANIZATION**

2. About the FLRA
3. The Statute
4. FLRA Press Releases for FY 2020
5. FLRA Strategic Plan
6. SMART Report
7. FLRA Case Flow Chart
8. FLRA Telephone List current as of September, 2020
9. Federal Employee Viewpoint Survey - 2019
10. Nomination Hearing Transcripts

### **MOST PRESSING OPERATIONAL ITEMS**

11. Top Management Challenges

### **BUDGET OVERVIEW**

12. Congressional Budget Justifications
13. AFR, APR and PAR

### **CURRENT LEADERSHIP TEAM**

14. Current FLRA Leadership
15. Presidential Appointees Memo
16. Org Chart
17. Transition Team Contact Information

### **CONGRESSIONAL CONSIDERATIONS**

18. Top Congressional Considerations

# About the FLRA

<https://www.flra.gov/about>

The FLRA administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135.

## Introduction to the FLRA

<https://www.flra.gov/about/introduction-flra>

The FLRA is an independent administrative federal agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The Statute allows certain non-postal federal employees to organize, to bargain collectively, and to participate through labor organizations of their choice in decisions affecting their working lives.

The Statute defines and lists the rights of employees, labor organizations, and agencies to reflect the public interest's demand for the highest standards of employee performance and the efficient accomplishment of government operations. *Id.* § 7101(a)(2). Specifically, the Statute requires that its provisions "be interpreted in a manner consistent with the requirement of an effective and efficient Government." *Id.* § 7101(b).

## Mission

<https://www.flra.gov/about/mission>

The FLRA exercises leadership under the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135, to promote stable, constructive labor relations that contribute to a more effective and efficient government. The FLRA's mission is to carry out five primary statutory responsibilities as efficiently as possible, and in a manner that gives full effect to the rights afforded employees and agencies under the [Statute](#).

**Mission: Protecting rights and facilitating stable relationships among federal agencies, labor organizations, and employees while advancing an effective and efficient government through the administration of the Federal Service Labor-Management Relations Statute.**

In striving to fulfill its mission, the FLRA executes the following five primary statutory responsibilities, as set forth in the Statute:

1. [Resolving complaints of unfair labor practices \(ULPs\).](#)
2. [Determining the appropriateness of units for labor organization representation \(REP\).](#)
3. [Adjudicating exceptions to arbitrators' awards \(ARB\).](#)
4. [Adjudicating legal issues relating to the duty to bargain \(NEG\).](#)
5. [Resolving impasses during negotiations \(Impasse\).](#)

In order to perform the many and varied functions of administering and enforcing the Statute, the FLRA is organized into three distinct components: [the Authority](#), [the Office of the General Counsel](#), and [the Federal Service Impasses Panel](#). All components support and engage in collaboration and alternative dispute resolution (ADR) activities as an integral part of their programs.

# The Statute

<https://www.flra.gov/about/introduction-flra/statute>

Title VII of the Civil Service Reform Act of 1978 is also known as the [Federal Service Labor-Management Relations Statute](#) or [the Statute](#). The Statute allows certain non-postal federal employees to organize, bargain collectively, and to participate through labor organizations of their choice in decisions affecting their working lives. [The Postal Reorganization Act (P.L. 91-375, Aug. 12, 1970) governs labor-management relations in the Postal Service.] The Statute defines and lists the rights of employees, labor organizations, and agencies to reflect the public-interest demand for the highest standards of employee performance and the efficient accomplishment of government operations. See [5 U.S.C. §7101\(a\)\(2\)](#). Specifically, the Statute requires that its provisions "should be interpreted in a manner consistent with the requirement of an effective and efficient Government." [5 U.S.C. §7101\(b\)](#). The Statute defines the universe of organizations that most directly rely on the FLRA: the federal agencies that employ workers eligible to be represented by labor organizations, and the labor organizations that the FLRA has recognized as the [exclusive representatives](#) of these employees. The agencies, labor organizations, and federal employees accorded rights by the Statute, are the FLRA's "customers." Agency employers subject to the Statute include not only the Executive Branch agencies and the Executive Office of the President, but also various independent agencies and certain legislative-branch agencies, for instance, the Library of Congress and the Government Publishing Office.

## A Short History of the Statute

<https://www.flra.gov/resources-training/resources/statute-and-regulations/statute/short-history-statute>



*A well-balanced labor relations program will increase the efficiency of the Government by providing for meaningful participation of employees in the conduct of business in general and the conditions of their employment.*

*Rep. William Clay (123 Cong. Rec. E333,  
January 26, 1977)*

Federal employees first obtained the right to engage in collective

bargaining through labor organizations of their choice in 1962, when President Kennedy issued Executive Order 10988, which also authorized the use of limited advisory arbitration of grievances. In 1969, President Nixon expanded those rights through Executive Order 11491, which established an institutional framework to govern labor-management relations in the Federal Government, set forth specific unfair labor practices, and authorized the use of binding arbitration of certain disputes. Both Orders contained provisions reserving certain rights to agency management.

Executive Order 11491 also established two new entities. One, the Federal Labor Relations Council (Council), would oversee the entire program; make definitive interpretations and rulings on provisions of the Order; decide major policy issues; hear appeals, at its discretion, from decisions made by the Assistant Secretary of Labor for Labor-Management Relations on unfair labor practice charges and representation claims; resolve appeals from negotiability decisions made by agency heads; and decide exceptions to arbitration awards. The other, the Federal Service Impasses Panel, would have discretionary authority to assist parties in resolving bargaining impasses when voluntary arrangements failed.

### **Title VII of the Civil Service Reform Act**

By 1977, President Carter had determined that comprehensive reform of the civil service system – the first since the Pendleton Act of 1883 – was necessary. The Congress agreed and, after extensive hearings, passed the Civil Service Reform Act of 1978. Title VII of that Act, which specifically addressed labor-management relations and established the authority of the FLRA, engendered particularly heated debate. Eventually, a substitute amendment proposed by Rep. Morris K. Udall replaced that title of the bill before the House of Representatives. Members of Congress, previously opposed to the initial legislation that contained a broad management rights provision, supported the amendment, based on an understanding that the provision would be "narrowly construed" and would, "wherever possible, encourage both parties to work out their differences in negotiations." (Rep. Ford, 124 Cong. Rec. H9648). The House passed the "Udall Substitute," the Senate agreed to the conference report embodying that amendment, and President Carter signed Title VII, the Federal Service Labor-Management Relations Statute, into law as part of the Civil Service Reform Act on October 13, 1978, effective January 11, 1979.

The Reorganization Plan No. 2 of 1978, which took effect on January 1, 1979, 10 days before the Statute became law, effected the actual establishment of the FLRA. As one commentator described, the legislative negotiations that resulted in Title VII and

established the FLRA "so muddled the content and intent of the new agency that no one knew what it was supposed to do or how it was supposed to do it." (Patricia W. Ingraham and David H. Rosenbloom, eds., *The Promise and Paradox of Civil Service Reform*, University of Pittsburgh Press (1992) at 95 (quoting Carolyn Ban, "Implementing Civil Service Reform" (1984) at 219).) It was clear, however, that the functions of the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations were consolidated in an independent agency. As President Carter explained, the arrangement under the Executive Order was "defective because the Council members are part-time, they come exclusively from the ranks of management, and their jurisdiction is fragmented." (Message from President Jimmy Carter Transmitting Reorganization Plan No. 2 of 1978, May 23, 1978.)

While the statutory program was similar in many respects to the system that it replaced, there were programmatic and structural differences that radically changed federal-sector labor-management relations. Among the more significant changes affecting the structure and operation of the new agency were:

- Establishment of the independent and bipartisan Authority to replace the Council, whose members had been the heads of three executive agencies, and given broad powers to remedy unfair labor practices and formal rulemaking authority;
- Establishment of the independent Office of the General Counsel to investigate and prosecute unfair labor practice charges; and
- The Statute made the Authority's final orders – which it issues in unfair labor practice and negotiability decisions – subject to judicial review.

In addition, the Statute made significant substantive changes that would alter the dynamics of labor-management relations, including:

- Requiring that collective-bargaining agreements contain grievance procedures terminating in binding arbitration, and broadening the permissible scope of negotiated grievance procedures;
- Requiring that agencies grant official time to exclusive representatives for negotiating collective-bargaining agreements; and
- Changing the nature and scope of reserved management rights and the exceptions to those rights.

## FLRA Jurisdiction and Responsibilities

The jurisdiction defined for the newly created FLRA extended throughout the world to wherever federal agencies covered by the Statute are located. Subsequent legislation further expanded the list of entities within FLRA's jurisdiction. For example, the Panama Canal Act of 1979 extended the FLRA's jurisdiction to cover employees, including foreign nationals, of the Panama Canal Commission and U.S. agencies in the Panama Canal Zone, although this jurisdiction was terminated as of July 1, 1998. More recently, the Presidential and Executive Office Accountability Act extended coverage of the Statute to additional categories of employees of the Executive Office of the President.

Coverage also has been modified over the years by Presidential Orders issued pursuant to § 7103(b) based on national-security determinations. In November 1979, President Carter excluded a number of agency subdivisions, principally in the Department of Defense and Department of the Treasury. Subsequently, President Reagan suspended the program with respect to certain overseas activities, and exempted specific divisions of the Drug Enforcement Administration and the U.S. Marshall's Service from the Statute's coverage. And, in January 2002, President George W. Bush excluded several agencies and subdivisions within the Department of Justice.

Through subsequent legislation, Congress expanded the responsibilities of the FLRA's components. For example, the Foreign Service Act of 1980 established a labor-management relations program for the members of the U.S. Foreign Service. The Chair of the FLRA also heads the Foreign Service Labor Relations Board and appoints its members and the members of the Foreign Service Impasse Disputes Panel; the FLRA General Counsel serves as General Counsel to the Board; and the Chair of the Federal Service Impasses Panel serves as a member of the Foreign Service Impasse Disputes Panel. In 1982, the Federal Service Impasses Panel gained authority to rule on negotiation impasses regarding alternative work schedules. And, in 1994, Congress assigned the Authority specific responsibilities concerning the certification of bargaining units resulting from reorganizations within the Department of Agriculture.

In addition to statutory changes related to the FLRA's program responsibilities, legislation subsequent to 1978 has affected the administrative operations of the agency. For example, in 1984 Congress designated the Chair of the FLRA as the agency's Chief Executive and Administrative Officer, which led to more centralized management and operations.





**FLRA.gov**

U.S. FEDERAL LABOR RELATIONS AUTHORITY

[https://www.flra.gov/press\\_releases](https://www.flra.gov/press_releases)

## Press Releases

Your one-stop shop for Federal Labor Relations Authority press releases and news.  
To request to receive FLRAPress Releases, please email [Aloysius Hogan](mailto:Aloysius.Hogan@flra.gov).

<u>Date</u> ▼	<u>Title</u>
8/19/20	<a href="#">The FLRA Releases eFiling Training Video</a> <a href="#">PDF</a> (54 KB)
7/31/20	<a href="#">The FLRA's Updated Operating Status</a> <a href="#">PDF</a> (62 KB)
7/09/20	<a href="#">The FLRA Adopts an Addition to Its Regulations Concerning Revoking Written Assignments for the Payment of Union Dues</a> <a href="#">PDF</a> (37 KB)
6/29/20	<a href="#">The FLRA Releases Updated Organizational Chart</a> <a href="#">PDF</a> (37 KB)
6/23/20	<a href="#">The FLRA's Updated Operating Status</a> <a href="#">PDF</a> (61 KB)
6/05/20	<a href="#">FLRA REP Hearings to be Conducted by Videoconference</a> <a href="#">PDF</a> (36 KB)

<u>Date</u> ▼	<u>Title</u>
5/14/20	<a href="#"><u>The FLRA Publishes Digests of Authority Decisions, Completing Two-Year Strategic Initiative</u></a> <a href="#"><u>PDF</u></a> (61 KB)
5/11/20	<a href="#"><u>The FLRA's Updated Operating Status</u></a> <a href="#"><u>PDF</u></a> (91 KB)
4/29/20	<a href="#"><u>The FLRA on YouTube</u></a> <a href="#"><u>PDF</u></a> (211 KB)
4/17/20	<a href="#"><u>Federal Labor Relations Authority Updated Operating Status</u></a> <a href="#"><u>PDF</u></a> (128 KB)
3/31/20	<a href="#"><u>Authority Solicits Comments on a Request for a General Statement of Policy or Guidance</u></a> <a href="#"><u>PDF</u></a> (36 KB)
3/25/20	<a href="#"><u>Authority Solicits Comments on a Request for a General Statement of Policy or Guidance</u></a> <a href="#"><u>PDF</u></a> (36 KB)
3/20/20	<a href="#"><u>Federal Labor Relations Authority Operating Status</u></a> <a href="#"><u>PDF</u></a> (126 KB)
3/19/20	<a href="#"><u>The FLRA Proposes an Addition to its Regulations Concerning Revoking Written Assignments for the Payment of Union Dues</u></a> <a href="#"><u>PDF</u></a> (107 KB)
3/12/20	<a href="#"><u>President Trump Appoints Michael Lucci to the Federal Service Impasses Panel</u></a> <a href="#"><u>PDF</u></a> (36 KB)
2/14/20	<a href="#"><u>The FLRA Announces New Appointment to the Foreign Service Impasse Disputes Panel</u></a> <a href="#"><u>PDF</u></a> (100 KB)

<u>Date</u> ▼	<u>Title</u>
1/28/20	<a href="#"><u>The FLRA Reopens Comment Period on Proposed Regulation Change</u></a> <a href="#"><u>PDF</u></a> (111 KB)
1/23/20	<a href="#"><u>The FLRA Solicits Comments on a Request for a General Statement of Policy or Guidance</u></a> <a href="#"><u>PDF</u></a> (98 KB)
1/14/20	<a href="#"><u>The FLRA Seeks Comments on Proposed Regulation Change</u></a> <a href="#"><u>PDF</u></a> (106 KB)
1/14/20	<a href="#"><u>President Trump Reappoints Members to the Federal Service Impasses Panel</u></a> <a href="#"><u>PDF</u></a> (111 KB)
12/23/19	<a href="#"><u>The FLRA Proposes Revisions to its Negotiability Regulations to Improve and Expedite the Review of Negotiability Appeals</u></a> <a href="#"><u>PDF</u></a> (321 KB)
12/09/19	<a href="#"><u>President Trump Appoints Patrick Wright to the Federal Services Impasses Panel</u></a> <a href="#"><u>PDF</u></a> (109 KB)
12/05/19	<a href="#"><u>Unfair Labor Practice Case Processing in the Absence of a General Counsel</u></a> <a href="#"><u>PDF</u></a> (128 KB)
12/03/19	<a href="#"><u>Federal Service Impasses Panel Ratifies Prior Decisions</u></a> <a href="#"><u>PDF</u></a> (106 KB)
10/08/19	<a href="#"><u>President Trump Appoints Two New Members to the Federal Service Impasses Panel</u></a> <a href="#"><u>PDF</u></a> (109 KB)



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Richard P. Burkard  
202-218-7279

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
October 8, 2019

## **PRESIDENT TRUMP APPOINTS TWO NEW MEMBERS TO THE FEDERAL SERVICE IMPASSES PANEL**

The FLRA is pleased to announce that President Donald J. Trump has appointed Robert J. Gilson and Maxford Nelsen to serve as Members of the Federal Service Impasses Panel (Panel), an independent entity within the Federal Labor Relations Authority (FLRA). The Panel Chairman and Members serve on a part-time basis and assist in resolving negotiation impasses between federal agencies and labor organizations. FLRA Chairman Colleen Duffy Kiko expressed her pleasure at the appointments.

**Robert J. Gilson** will serve a five-year term expiring October 2, 2024. Mr. Gilson began his federal career with the U.S. Civil Service Commission, and has held labor and employee relations, managerial, and agency advocacy positions with the Office of Personnel Management, the Navy, the Army, the Department of Treasury, and the National Transportation Safety Board (NTSB), where he served as Chief of Labor and Employee Relations. He is proud of his role in helping to establish the NTSB Training Academy, located on the Loudoun County, Virginia Campus of the George Washington University. During his federal career, Mr. Gilson served as chief negotiator on numerous labor agreements and represented agencies before the FLRA, the Panel, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and arbitrators.

Since retiring from federal service in 2001, Mr. Gilson continued to represent federal agencies before the FLRA, the Panel, and the Federal Mediation and Conciliation Service. In recent years, he developed and delivered a number of advanced Labor and Employee Relations training courses, and has spoken at many conferences on labor and employee relations issues. He has trained thousands of federal negotiators, supervisors, and managers over the course of more than 40 years.

Mr. Gilson is the author or co-author of nine books for federal managers. Since 2004, he has also written more than 500 articles about labor and employee relations issues for FedSmith.com, a news website devoted to federal sector employment issues. Mr. Gilson holds a bachelor's degree from St. Joseph's University in Philadelphia.

**Maxford Nelsen** will also serve a five-year term expiring October 2, 2024. Mr. Nelsen is the director of labor policy for the Freedom Foundation, where he leads the organization's research, advises its strategic litigation program, and advances its government affairs efforts. His research on labor and economic policy has formed the basis of several briefs submitted to the U.S. Supreme Court. Mr. Nelsen's work has been published in local newspapers around the country as well as the *Wall Street Journal*, *Forbes*, *The Hill*, and the *National Review*. His commentary on labor policy issues has been featured in media outlets like the *New York Times*, Fox News, and the PBS News Hour. Prior to joining the Freedom Foundation, Mr. Nelsen worked for WashingtonVotes.org and

the Washington Policy Center. He graduated magna cum laude from Whitworth University with a bachelor's degree in political science. Mr. Nelsen resides in Olympia, Washington, with his wife and son.

###

*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute (the Statute).*

*The Panel resolves impasses between federal agencies and unions representing federal employees arising from negotiations over conditions of employment under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.*

*For further information regarding the Panel or these appointments, contact Kimberly Moseley, Executive Director of the Panel, at (202) 218-7790.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

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[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
December 3, 2019

## **FEDERAL SERVICE IMPASSES PANEL RATIFIES PRIOR DECISIONS**

Today, the Federal Service Impasses Panel (“FSIP”) announced it has ratified all of the final decisions and orders that it issued between September 2017 and November 25, 2019.

FSIP took this action in light of President Trump’s November 12, 2019 memorandum concurrently delegating authority to the Federal Labor Relations Authority (“FLRA”) to remove FSIP members. The President’s memorandum was designed to facilitate effective supervision of the FSIP by the FLRA, of which the FSIP is a sub-component, so as to remove any doubt regarding the constitutionality of its structure and the validity of its decisions.

In announcing the ratification, FSIP Chairman Mark A. Carter stated: “For over 40 years, FSIP has provided prompt and effective assistance in resolving federal-sector bargaining impasses. During that time, the FSIP’s Chairman and members have been subject to appointment and removal by the President alone, while its orders and decisions have been subject to review both by agency heads and the FLRA via the unfair labor practice procedure.”

“The President’s recent memorandum reaffirms that FSIP is structured as a sub-component of the FLRA that is subject to its concurrent oversight. We welcome the clarification, and have taken the step of reaffirming our decisions and orders since September 2017 in order to remove any doubt about the validity of our orders and the constitutionality of our structure.”

FSIP is a sub-component of the FLRA that resolves bargaining impasses between federal agencies and unions after mediation efforts have failed. FSIP’s members are Presidential appointees who serve on a part-time basis as needed to hear cases.

The November 25, 2019 minute of FSIP’s action ratifying its decisions can be viewed [here](#).

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# FLRA NEWS

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[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
December 5, 2019

## **UNFAIR LABOR PRACTICE CASE PROCESSING IN THE ABSENCE OF A GENERAL COUNSEL**

In light of recent media reports, Federal Labor Relations Authority (FLRA) Chairman Colleen Duffy Kiko and Deputy General Counsel Charlotte A. Dye wish to clarify the FLRA's process for making determinations on the merits in unfair labor practice charges (ULPs).

During the period in which there has been no confirmed General Counsel or Acting General Counsel (since November 17, 2017), some media outlets have stated or implied that the FLRA, or a component thereof, had determined that various unfair labor practices had occurred, when in fact no complaint has issued.

When the FLRA lacks a General Counsel, Regional Directors and other employees within the Office of the General Counsel continue the Office of the General Counsel's regular practice of conducting investigations of unfair labor practice charges to make a recommendation as to whether an unfair labor practice occurred (a determination on the merits of the charge). While Regional Directors make internal, non-binding recommendations on issuing complaints to the Office of the General Counsel, it is for the General Counsel alone to determine whether a complaint should issue based on those recommendations.

No Regional Director, in the absence of a General Counsel or Acting General Counsel, may issue unfair labor practice complaints. The General Counsel, or someone acting in the place of the General Counsel, is the only person given the authority under the Federal Service Labor-Management Relations Statute to authorize the issuance of unfair labor practice complaints. 5 U.S.C. §§ 7104(f)(2)(B), 7118(a)(1); *see also Clark v. FLRA*, 782 F.2d 701, 704 (D.C. Cir. 2015); *Turgeon v. FLRA*, 677 F.2d 937, 940 (D.C. Cir. 1982).

Even once the General Counsel has issued a complaint, it remains for an Administrative Law Judge to determine, after the Regional Office and the parties present their evidence at a trial, whether an unfair labor practice has actually occurred. The Administrative Law Judge's decision may then be appealed to the FLRA's three-member adjudicative body and then to the appropriate Federal court of appeals.

Communications from a Regional Office, including a Regional Director, do not constitute a determination that an unfair labor practice has occurred. Any media reports to the contrary are not accurate.

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

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[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
December 9, 2019

## **PRESIDENT TRUMP APPOINTS PATRICK WRIGHT TO THE FEDERAL SERVICE IMPASSES PANEL**

The FLRA is pleased to announce that President Donald J. Trump has appointed Patrick Wright to serve as a Member of the Federal Service Impasses Panel (Panel), a component within the Federal Labor Relations Authority (FLRA). The Panel Chairman and Members serve on a part-time basis and provide assistance in resolving negotiation impasses between federal agencies and labor organizations. FLRA Chairman Colleen Duffy Kiko expressed her pleasure at the appointment.

**Patrick Wright** will serve the remainder of a five-year term expiring January 10, 2024. Mr. Wright is Vice President for Legal Affairs at the Mackinac Center for Public Policy, where he directs the Mackinac Center Legal Foundation. He joined the Center in 2005 after serving for three years as a Michigan Supreme Court commissioner, a post in which he made recommendations to the court concerning which state appeals court cases it should hear. Prior to that, he spent four years as an assistant attorney general for the State of Michigan, where he gained significant litigation and appellate advocacy experience. Mr. Wright joined the state Attorney General's Office after serving as a policy advisor in the Senate Majority Policy Office of the Michigan Senate. He also spent two years as a law clerk to the Honorable H. Russell Holland, a United States district court judge in Alaska.

Aside from directly representing clients, Mr. Wright has filed numerous amicus briefs, including many to the United States Supreme Court. In addition to being featured in many state publications and on national media outlets, his work has been published in *The Wall Street Journal*, *The Washington Post*, and *The Hill*.

Mr. Wright received his law degree, with honors, from George Washington University in 1994. He received his undergraduate degree in political science from the University of Michigan in 1990. Mr. Wright lives in Midland, Michigan, with his wife and sons.

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*The Panel resolves impasses between federal agencies and unions representing federal employees arising from negotiations over conditions of employment under the Statute and the Federal*

*Employees Flexible and Compressed Work Schedules Act.*

*For further information regarding the Panel or this appointment, contact Kimberly Moseley, Executive Director of the Panel, at (202) 218-7991.*

# Proposed Rules

Federal Register

Vol. 84, No. 246

Monday, December 23, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Part 2424

#### Negotiability Proceedings

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Labor Relations Authority (FLRA) intends to revise the regulations governing negotiability appeals to better “expedite proceedings,” consistent with Congress’s direction, and with the FLRA’s goal in its strategic plan to “ensure quality, timely . . . decision-making processes.” The proposed rule is designed to streamline the adjudication process for negotiability appeals, resulting in more timely decisions for the parties.

**DATES:** Written comments must be received on or before January 22, 2020.

**ADDRESSES:** You may send comments, which must include the caption “Negotiability Proceedings,” by one of the following methods:

- *Email:* [FedRegComments@flra.gov](mailto:FedRegComments@flra.gov). Include “Negotiability Proceedings” in the subject line of the message.
- *Mail or Hand Delivery:* Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW, Washington, DC 20424–0001.

*Instructions:* Please do not email comments if you have mailed or hand delivered the same comments.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Osborne, Deputy Solicitor, at [rosborne@flra.gov](mailto:rosborne@flra.gov) or at: (202) 218–7986.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Federal Service Labor-Management Relations Statute (the Statute) authorizes the FLRA to adjudicate a number of matters related to federal sector labor-management

relations, including negotiability appeals. Specifically, the Statute provides that “if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.” 5 U.S.C. 7117(c)(1). The Statute provides further that “[t]he Authority shall expedite proceedings under this subsection to the extent practicable and shall issue . . . a written decision on the allegation and specific reasons therefor at the earliest practicable date.” 5 U.S.C. 7117(c)(6). The proposed changes are intended to allow the Authority to expedite negotiability appeal proceedings to allow for a written decision at the earliest practicable date.

#### Analysis of the Regulations

##### Section 2424.2 Definitions

Section 2424.2 clarifies the definition of a “bargaining obligation dispute” and provides an additional example of such a dispute. The section also changes the definition of Alternative Dispute Resolution to reflect the current practice. The section adds several examples of a “negotiability dispute” to provide a more complete, but not necessarily exhaustive, list. The section proposes removing the definition of “severance” because it is unclear whether providing for severance of a proposal or provision adds value to the adjudicatory process. Other changes to the regulations will allow for FLRA consideration of particular matters when those matters are submitted as distinct proposals or provisions. However, as discussed in connection with section 2424.22, the Authority is also considering a second option that would limit the opportunities for severance, rather than eliminating it completely.

Section 2424.10 is amended to change the heading to “Alternative Dispute Resolution” and is clarified to explain that the use of alternative dispute resolution is at the discretion of the FLRA.

Section 2424.11 is amended so paragraph (a) requires an exclusive representative to put in writing its request that an agency provide a written allegation concerning the duty to bargain. Paragraph (b) is amended to

obligate an agency to respond within ten (10) days to an exclusive representative’s written request for a written allegation concerning the duty to bargain. The section clarifies that if an exclusive representative chooses to file a petition based on an unrequested written allegation concerning the duty to bargain, then the petition must be filed within fifteen (15) days after the date of service of the unrequested written allegation.

Section 2424.21 is amended to state that if an agency fails to respond to a written request for a written allegation within ten (10) days of the request, then the exclusive representative may file a petition within the next sixty (60) days. If the agency serves a written allegation on the exclusive representative more than ten (10) days after receiving a written request for such allegation, and a petition has not yet been filed, then the petition must be filed within fifteen (15) days of the service of that allegation. If the exclusive representative files a petition after the expiration of the ten (10) day period, and the agency subsequently serves a written allegation on the exclusive representative, then the FLRA will consider the appeal based upon the petition filed prior to the allegation but may allow the exclusive representative to amend the petition. However, the exclusive representative may not file an additional petition. The FLRA is seeking to prevent negotiability disputes from lingering unresolved for a potentially unlimited period of time, to avoid the inefficiencies of adjudicating stale disputes, and to reduce the potential surprise of a negotiability petition being filed long after a written request for an allegation of nonnegotiability was served. The FLRA seeks comments on whether the proposed language would meet those objectives, and the FLRA welcomes comments with alternative proposals to meet those objectives.

Section 2424.22 adds a new paragraph to allow for division of matters into proposals or provisions. Although the FLRA is proposing the revised subsection wording in this notice, the FLRA is also considering another possible option. It requests comments on the advantages and disadvantages of both options:

Option 1. Eliminating severance altogether and replacing it with the proposed wording in this notice.

Option 2. Allowing only one point in the filing process at which an exclusive representative may request severance. Under this option, the FLRA seeks comments on: (a) When during the filing process this opportunity to request severance should occur; and (b) the advantages and disadvantages of automatically granting all timely severance requests in order to reduce the burden of litigating and resolving these requests. If the FLRA were to automatically grant all timely requests, then: (1) The exclusive representative would bear the burden of requesting severance in a manner that allowed each severed portion to stand alone, and the burden of explaining the meaning and operation of each portion; (2) even if the exclusive representative failed to meet those burdens, the FLRA would automatically grant severance as requested; and (3) where the exclusive representative failed to meet those burdens, after automatically granting severance, the FLRA would find the severed portions outside the duty to bargain, based on the failure to provide an adequate record.

Section 2424.22 also requires greater specificity in what must be included in a petition and requires the submission of relevant documents. The section is also amended to require that an exclusive representative respond in a petition to any specific arguments that are set forth in an agency's written allegation concerning the duty to bargain or an agency head's disapproval of an agreement.

Section 2424.23 is amended to clarify that the decision to hold a post-petition conference is at the discretion of the FLRA and that, regardless of whether one does occur, the parties must observe all filing deadlines. The FLRA seeks comments on the most appropriate juncture, within the stages of pleading, for the post-petition conference to occur, in cases where a conference is held. The section is also amended to clarify that the FLRA may take other appropriate action, in the exercise of its discretion, to aid in decision making, regardless of whether a post-petition conference occurs.

Section 2424.24 clarifies the content of the agency's statement of position, requires greater specificity about certain matters within the statement of position, and requires the submission of relevant documents.

Section 2424.25 clarifies what is to be included in the exclusive representative's response and removes surplus language. This section is amended to limit the content of the response to matters raised for the first time in the agency's statement of

position. Because changes to section 2424.22 would require the exclusive representative to address, in its petition, specific arguments in an agency's written allegation concerning the duty to bargain or an agency head's disapproval of an agreement, the exclusive representative could not wait until filing its response under section 2424.25 to address those matters. Any facts or arguments that should be included in the petition in accordance with the changes to section 2424.22, but are not included in the petition, would be barred from consideration in the exclusive representative's response under section 2424.25.

Section 2424.26 is amended to shorten the time period for the agency's submission of a reply to the exclusive representative's response to ten (10) days and specifies the content to be included. The section also reorganizes the content requirements.

Section 2424.27 removes the time period for filing additional submissions authorized in the discretion of the FLRA. When authorizing additional submissions, the FLRA will establish the deadline for their submission.

Section 2424.30, in paragraph (a), clarifies when the deadline begins to run for refiling a petition that was previously dismissed without prejudice by the FLRA in the case of a related grievance that was administratively resolved. The FLRA requests comments on whether the proposed clarification accurately captures all of the scenarios under which a grievance mentioned in this subsection could be administratively resolved. Subsection (b) of the section clarifies the process by which the FLRA will resolve matters under various factual scenarios.

Section 2424.31 is amended to include a new heading that more accurately reflects its contents, and to make other minor wording changes.

Section 2424.32 is amended to highlight that the parties' failures to explain their positions thoroughly could lead to an adverse ruling, and that assessing the consequences of such a failure (e.g., waiver, concession) is within the discretion of the FLRA.

Section 2424.40 is amended to make conforming changes to reflect the proposed removal of severance. The section also proposes altering the content of an FLRA order where it finds a duty to bargain by deleting the reference to a "request" to bargain concerning the proposal. The FLRA seeks comments on whether the "request" wording serves a useful purpose. The wording may imply that the burden is on an exclusive representative to re-start negotiations

following a negotiability decision, and that the agency is not obligated to take any action until the exclusive representative requests that the agency do so.

Section 2424.41 proposes altering the description of noncompliance with an FLRA order by deleting wording that is already present in section 2424.40. As with the proposed change to section 2424.40, the FLRA seeks comments on whether this wording serves a useful purpose or whether it is duplicative of the wording in 2424.40. In addition, this section proposes adding a deadline of thirty (30) days for an exclusive representative to report the failure to comply with an order, following the expiration of the 60-day period under 5 U.S.C. 7123(a).

Section 2424.50 is amended to explain the criteria in the section are illustrative and there may be other, or more appropriate, examples of an agency rule or regulation for which there is a compelling need. The FLRA solicits specific examples of an agency rule or regulation for which there is a compelling need and appropriate illustrative criteria that would establish a compelling need for the rule or regulation.

#### **Executive Order 12866**

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

#### **Executive Order 13132**

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

#### **Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FLRA has determined that this rule, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to federal agencies, federal employees, and labor organizations representing those employees.

#### **Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, Feb. 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.



**Executive Order 13132, Federalism**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

**Executive Order 12988, Civil Justice Reform**

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Paperwork Reduction Act of 1995**

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

**List of Subjects in 5 CFR Part 2424**

Negotiability Proceedings.

Federal Labor Relations Authority.

Rebecca Osborne,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, FLRA proposes to amend 5 CFR part 2424 as follows:

**PART 2424—[AMENDED]**

■ 1. The authority citation for part 2424 continues to read as follows:

**Authority:** 5 U.S.C. 7134.

■ 2. Revise Section 2424.1 to read as follows:

**§ 2424.1 Applicability of this part.**

This part applies to all petitions for review filed on or after [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

■ 3. Amend § 2424.2 by:

■ a. Revising paragraphs (a), (b), (c)(2) and (c)(3);

■ b. Adding paragraphs (c)(4) through (8); and

■ c. Revising paragraphs (e) and (f);

■ d. Removing paragraph (h);

■ e. Redesignating paragraph (i) as (h); and

■ f. Revising newly redesignated paragraph (h).

The revisions and additions to read as follows:

**§ 2424.2 Definitions.**

\* \* \* \* \*

(a) *Bargaining obligation dispute* means a disagreement between an exclusive representative and an agency concerning whether, in the specific circumstances involved in a particular case, the parties are obligated by law to bargain over a proposal that otherwise may be negotiable. Examples of bargaining obligation disputes include disagreements between an exclusive representative and an agency concerning agency claims that:

(1) A proposal concerns a matter that is covered by a collective bargaining agreement;

(2) Bargaining is not required because there has not been a change in bargaining unit employees' conditions of employment; and

(3) The exclusive representative is attempting to bargain at the wrong level of the agency.

(b) *Alternative Dispute Resolution* refers to the Federal Labor Relations Authority's efforts to assist parties in reaching agreements to resolve disputes.

(c) \* \* \*

(2) Directly affects bargaining-unit employees' conditions of employment;

(3) Enforces an "applicable law," within the meaning of 5 U.S.C. 7106(a)(2);

(4) Concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);

(5) Constitutes a "procedure" or "appropriate arrangement" within the meaning of 5 U.S.C. 7106(b)(2) and (3), respectively;

(6) Is consistent with an Executive Order;

(7) Is consistent with a Government-wide rule or regulation; and

(8) Is negotiable notwithstanding agency rules or regulations because:

(i) The proposal or provision is consistent with agency rules or regulations for which a compelling need exists under 5 U.S.C. 7117(a)(2);

(ii) The agency rules or regulations violate applicable law, rule, regulation, or appropriate authority outside the agency;

(iii) The agency rules or regulations were not issued by the agency or by any primary national subdivision of the agency;

(iv) The exclusive representative represents an appropriate unit including not less than a majority of the employees in the rule- or regulation-issuing agency or primary national subdivision; or

(v) No compelling need exists for the rules or regulations to bar negotiations.

\* \* \* \* \*

(e) *Proposal* means any matter offered for bargaining that has not been agreed to by the parties. If a petition for review concerns more than one proposal, then the term "proposal" includes each proposal concerned.

(f) *Provision* means any matter that has been disapproved by the agency head on review pursuant to 5 U.S.C. 7114(c). If a petition for review concerns more than one provision, then the term "provision" includes each provision concerned.

\* \* \* \* \*

(h) *Written allegation concerning the duty to bargain* means an agency allegation that the duty to bargain in good faith does not extend to a proposal.

■ 4. Revise § 2424.10 to read as follows:

**§ 2424.10 Alternative Dispute Resolution.**

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request that the Office of Case Intake and Publication refer them to alternative dispute resolution. As resources permit, and in the discretion of the Authority, the FLRA may attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call or write the Office of Case Intake and Publication at (202) 218-7740, 1400 K Street NW, Washington, DC 20424-0001.

■ 5. Revise § 2424.11 to read as follows:

**§ 2424.11 Requesting and providing written allegations concerning the duty to bargain.**

(a) *General.* An exclusive representative may file a petition for

review after receiving a written allegation concerning the duty to bargain from the agency. An exclusive representative also may file a petition for review if it requests in writing that the agency provide it with a written allegation concerning the duty to bargain and the agency does not respond to the request within ten (10) days.

(b) *Agency allegation in response to request.* The agency has an obligation to respond within ten (10) days to a written request by the exclusive representative for a written allegation concerning the duty to bargain. The agency's allegation in response to the exclusive representative's request response must be in writing and must be served in accord with § 2424.2(g).

(c) *Unrequested agency allegation.* If an agency provides an exclusive representative with an unrequested written allegation concerning the duty to bargain, then the exclusive representative may either file a petition for review under this part, or continue to bargain and subsequently request in writing a written allegation concerning the duty to bargain, if necessary. If the exclusive representative chooses to file a petition for review based on an unrequested written allegation concerning the duty to bargain, then the time limit in § 2424.21(a)(1) applies.

■ 6. Amend § 2424.21 by revising paragraph (b) amending paragraph (b) introductory text and paragraph (b)(1) to read as follows:

**§ 2424.21 Time limits for filing a petition for review.**

\* \* \* \* \*

(b) If the agency has not served a written allegation on the exclusive representative within ten (10) days after the agency's principal bargaining representative has received a written request for such allegation, as provided in § 2424.11(a), then:

(1) The petition may be filed within sixty (60) days after the expiration of the ten (10) day period, subject to the following:

(i) If the agency serves a written allegation on the exclusive representative more than ten (10) days after receiving a written request for such allegation, and the exclusive representative *has not* previously filed a petition under this paragraph, then the petition must be filed within fifteen (15) days after the date of service of that allegation on the exclusive representative;

(ii) If the agency serves a written allegation on the exclusive representative more than ten (10) days after receiving a written request for such

allegation, and the exclusive representative *has* previously filed a petition under this paragraph, then the Authority will consider the appeal filed on the date of the previous petition. The exclusive representative may not file an additional petition, but the Authority may allow amendments to the previous petition based on the written allegation.

\* \* \* \* \*

■ 7. Revise § 2424.22 to read as follows:

**§ 2424.22 Exclusive representative's petition for review; purpose; divisions; content; service.**

(a) *Purpose.* The purpose of a petition for review is to initiate a negotiability proceeding and provide the agency with notice that the exclusive representative requests a decision from the Authority that a proposal or provision is within the duty to bargain or not contrary to law, respectively.

(b) *Divisions.* The petition will be resolved according to how the exclusive representative divides matters into proposals or provisions. If the exclusive representative seeks a negotiability determination on particular matters standing alone, then the exclusive representative must submit those matters as distinct proposals or provisions.

(c) *Content.* You must file a petition for review on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your petition electronically through use of the eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov). That website also provides copies of petition forms. You must date the petition, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file the petition, you must ensure that it includes the following:

(1) The exact wording and explanation of the meaning of the proposal or provision, including an explanation of special terms or phrases, technical language, or other words that are not in common usage, as well as how the proposal or provision is intended to work;

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely in your argument or that you reference in the proposal or provision, and a copy of any such material that the Authority cannot easily access (which you may upload as attachments if you file the petition electronically through use of the FLRA's eFiling system);

(3) An explanation of how the cited law, rule, regulation, section of a collective bargaining agreement, or

other authority relates to your argument, proposal, or provision;

(4) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review; and

(5) Documents relevant to the statement, including a copy of any related unfair labor practice charge, grievance, request for impasse assistance, or other petition for review.

(d) *Response.* Where the agency's written allegation concerning the duty to bargain, or the agency head's disapproval, relies on a specific law, rule, regulation, section of a collective bargaining agreement, or other authority to support the agency's bargaining-obligation or negotiability claims, the exclusive representative must respond to those specific claims in the petition for review.

(e) *Service.* The petition for review, including all attachments, must be served in accord with § 2424.2(g).

■ 8. Amend § 2424.23 by:

■ a. Revising paragraphs (a), (b)(4), and (c); and

■ b. Adding paragraphs (d) and (e).

The additions and revisions to read as follows:

**§ 2424.23 Post-petition conferences; conduct and record.**

(a) *Scheduling a post-petition conference.* The FLRA may, in its discretion, schedule a post-petition conference to be conducted by an FLRA representative by telephone, in person, or through other means. Unless the Authority or an FLRA representative directs otherwise, parties must observe all time limits in this part, regardless of whether a post-petition conference is conducted or may be conducted.

(b) \* \* \*

(4) Status of any proposal or provision that is also involved in an unfair labor practice charge under part 2423 of this subchapter, in a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter.

\* \* \* \* \*

(c) *Discretionary extension of time limits.* The FLRA representative may, on determining that it will effectuate the purposes of the Federal Service Labor—Management Relations Statute, 5 U.S.C. 7101 *et seq.*, and this part, extend the time limits for filing the agency's

statement of position and any subsequent filings.

(d) *Record of the conference.* After the post-petition conference has been completed, the representative of the FLRA will prepare and serve on the parties a written statement that includes whether the parties agree on the meaning of the disputed proposal or provision, the resolution of any disputed factual issues, and any other appropriate matters.

(e) *Hearings.* Instead of, or in addition to, conducting a post-petition conference, the Authority may exercise its discretion under § 2424.31 to hold a hearing or take other appropriate action to aid in decision making.

■ 9. Amend § 2424.24 by:

■ a. Revising the heading of the section;

■ b. Revising paragraphs (a) and (b);

■ c. Revising the introductory text of paragraph (c)(2);

■ d. Revising paragraphs (c)(3) and (c)(4);

■ e. Removing paragraph (d); and

■ f. Redesignating paragraph (e) as paragraph (d).

**§ 2424.24 Agency's statement of position; purpose; time limits; content; service.**

(a) *Purpose.* The purpose of the agency's statement of position is to inform the Authority and the exclusive representative why a proposal or provision is not within the duty to bargain or contrary to law, respectively, and whether the agency disagrees with any facts or arguments made by the exclusive representative in the petition.

(b) *Time limit for filing.* The agency must file its statement of position within thirty (30) days after the date the head of the agency receives a copy of the petition for review.

(c) \* \* \*

(2) Set forth in full your position on any matters relevant to the petition that you want the Authority to consider in reaching its decision, including: A statement of the arguments and authorities supporting any bargaining obligation or negotiability claims; any disagreement with claims that the exclusive representative made in the petition for review; specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your statement of position electronically through use of the FLRA's eFiling system). Your statement of position must also include the following:

\* \* \* \* \*

(3) Status of any proposal or provision that is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review; and

(4) If they have not already been provided with the petition, documents relevant to the updates, including a copy of any related unfair labor practice charge, grievance, request for impasse assistance, or other petition for review.

(d) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

■ 10. Revise § 2424.25 to read as follows:

**§ 2424.25 Response of the exclusive representative; purpose; time limits; content; service.**

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the union disagrees with any facts or arguments made for the first time in the agency's statement of position.

(b) *Time limit for filing.* Within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

(c) *Content.* You must file your response on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your response electronically through use of the eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov). That website also provides copies of response forms. You must limit your response to the matters that the agency raised in its statement of position. You must date your response, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your response, you must ensure that it identifies any disagreement with the agency's bargaining-obligation or negotiability claims. You must: State the arguments and authorities supporting your opposition to any agency argument; include specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or

other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your response electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your petition for review. If not included in the petition for review, then you must state the arguments and authorities supporting your position on all of the relevant bargaining-obligation and negotiability matters identified in § 2424.2(a) and (c), respectively.

(d) *Service.* A copy of the response of the exclusive representative, including all attachments, must be served in accord with § 2424.2(g).

■ 11. Revise § 2424.26 to read as follows:

**§ 2424.26 Agency's reply; purpose; time limits; content; service.**

(a) *Purpose.* The purpose of the agency's reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative's response.

(b) *Time limit for filing.* Within ten (10) days after the date the agency receives a copy of the exclusive representative's response to the agency's statement of position, the agency may file a reply.

(c) *Content.* You must file your reply on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your reply electronically through use of the eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov). That website also provides copies of reply forms. You must limit your reply to matters that the exclusive representative raised for the first time in its response. You must date your reply, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your reply, you must ensure that it identifies any disagreement with the exclusive representative's assertions in its response, including your disagreements with assertions about the bargaining-obligation and negotiability matters identified in § 2424.2(a) and (c). You must: State the arguments and authorities supporting your position; include specific citation to, and explanation of the relevance of, any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your



reply electronically through use of the FLRA's eFiling system). You are not required to repeat arguments that you made in your statement of position.

(d) *Service*. A copy of the agency's reply, including all attachments, must be served in accord with § 2424.2(g).

■ 12. Revise § 2424.27 to read as follows:

**§ 2424.27 Additional submissions to the Authority.**

The Authority will not consider any submission filed by any party other than those authorized under this part, provided however that the Authority may, in its discretion, grant permission to file an additional submission based on a written request showing extraordinary circumstances by any party. All documents filed under this section must be served in accord with § 2424.2(g).

■ 13. Revise § 2424.30 to read as follows:

**§ 2424.30 Procedure through which the petition for review will be resolved.**

(a) *Exclusive representative has filed related unfair labor practice charge or grievance alleging an unfair labor practice*. Except for proposals or provisions that are the subject of an agency's compelling need claim under 5 U.S.C. 7117(a)(2), the Authority will dismiss a petition for review when an exclusive representative files an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance alleging an unfair labor practice under the parties' negotiated grievance procedure, and the charge or grievance concerns issues directly related to the petition for review filed pursuant to this part. The dismissal will be without prejudice to the right of the exclusive representative to refile the petition for review after the unfair labor practice charge or grievance has been resolved administratively, including resolution pursuant to an arbitration award that has become final and binding. No later than thirty (30) days after the date on which the unfair labor practice charge or grievance is resolved administratively, the exclusive representative may refile the petition for review, and the Authority will determine whether resolution of the petition is still required. For purposes of this subsection, a grievance is resolved administratively when:

(1) The exclusive representative withdraws the grievance;

(2) The parties mutually resolve the grievance;

(3) An arbitrator has issued an award resolving the grievance, and the 30-day period under 5 U.S.C. 7122(b) has

passed without an exception being filed; or

(4) An arbitrator has issued an award resolving the grievance, a party has filed an exception to that award, and the Authority has issued a decision resolving that exception.

(b) *Exclusive representative has not filed related unfair labor practice charge or grievance alleging an unfair labor practice*. The petition will be processed as follows:

(1) *No bargaining obligation dispute exists*. The Authority will resolve the petition for review under the procedures of this part.

(2) *A bargaining obligation dispute exists*. The exclusive representative may file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure concerning the bargaining obligation dispute, and, where the exclusive representative pursues either of these courses, the Authority will proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance concerning the bargaining obligation dispute, then the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

■ 14. Amend § 2424.31 by revising the introductory text and paragraph (c) to read as follows:

**§ 2424.31 Hearings and other appropriate action.**

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its designated representative, may, in its discretion:

\* \* \* \* \*

(c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) or (c)(5); or

\* \* \* \* \*

■ 15. Revise § 2424.32 to read as follows:

**§ 2424.32 Parties' responsibilities; failure to raise, support, or respond to arguments; failure to participate in conferences or respond to Authority orders.**

(a) *Responsibilities of the exclusive representative*. The exclusive

representative has the burden of explaining the meaning, operation, and effects of the proposal or provision; and raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively.

(b) *Responsibilities of the agency*. The agency has the burden of explaining the meaning, operation, and effects of the proposal or provision, if the agency disagrees with the exclusive representative's explanations; and raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respectively.

(c) *Responsibilities to sufficiently explain*. Each party has the burden to give sufficiently detailed explanations to enable the Authority to understand the party's position regarding the meaning, operation, and effects of a proposal or provision. A party's failure to provide such explanations may affect the Authority's decision in a manner that is adverse to the party.

(d) *Failure to raise, support, and respond to arguments*. (1) Failure to raise and support an argument may, in the Authority's discretion, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive representative in the petition for review, or made in its response to the agency's statement of position, may not be made in this or any other proceeding; and

(ii) Arguments that could have been but were not raised by an agency in the statement of position, or made in its reply to the exclusive representative's response, may not be raised in this or any other proceeding.

(2) Failure to respond to an argument or assertion raised by the other party may, in the Authority's discretion, be treated as conceding such argument or assertion.

(e) *Failure to participate in conferences; failure to respond to Authority orders*. Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (d) of this section, take any other action that, in the Authority's discretion, it deems appropriate, including dismissal of the petition for review (with or without prejudice to the exclusive



representative's refiling of the petition for review), and granting the petition for review and directing bargaining and/or rescission of an agency head disapproval under 5 U.S.C. 7114(c) (with or without conditions).

■ 16. Amend § 2424.40 by revising paragraphs (b) and (c) to read as follows:

**§ 2424.40 Authority decision and order.**

\* \* \* \* \*

(b) *Cases involving proposals.* If the Authority finds that the duty to bargain extends to the proposal, then the Authority will order the agency to bargain concerning the proposal. If the Authority finds that the duty to bargain does not extend to the proposal, then the Authority will dismiss the petition for review. If the Authority finds that the proposal is bargainable only at the election of the agency, then the Authority will so state. If the Authority resolves a negotiability dispute by finding that a proposal is within the duty to bargain, but there are unresolved bargaining obligation dispute claims, then the Authority will order the agency to bargain in the event its bargaining obligation claims are resolved in a manner that requires bargaining.

(c) *Cases involving provisions.* If the Authority finds that a provision is not contrary to law, rule, or regulation, or is bargainable at the election of the agency, then the Authority will direct the agency to rescind its disapproval of such provision in whole or in part as appropriate. If the Authority finds that a provision is contrary to law, rule, or regulation, the Authority will dismiss the petition for review as to that provision.

■ 17. Revise § 2424.41 to read as follows:

**§ 2424.41 Compliance.**

The exclusive representative may report to the appropriate Regional Director an agency's failure to comply with an order issued in accordance with § 2424.40. The exclusive representative must report such failure within thirty (30) days following expiration of the 60-day period under 5 U.S.C. 7123(a), which begins on the date of issuance of the Authority order. If, on referral from the Regional Director, the Authority finds such a failure to comply with its order, the Authority will take whatever action it deems necessary to secure compliance with its order, including enforcement under 5 U.S.C. 7123(b).

■ 18. Amend § 2424.50 by revising the introductory text to read as follows:

**§ 2424.50 Illustrative criteria.**

A compelling need exists for an agency rule or regulation concerning

any condition of employment when the rule or regulation was issued by the agency or any primary national subdivision of the agency, and the agency demonstrates that either the rule or regulation meets one or more of the following illustrative criteria, or the Authority determines that other circumstances establish a compelling need for the rule or regulation:

\* \* \* \* \*

Approved: December 12, 2019.

**Colleen Duffy Kiko,**

*Chairman, Federal Labor Relations Authority.*

[FR Doc. 2019-27193 Filed 12-20-19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### 15 CFR Part 7

[Docket No. 191217-0118]

**RIN 0605-AA51**

#### Securing the Information and Communications Technology and Services Supply Chain

**AGENCY:** U.S. Department of Commerce.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On November 27, 2019, the U.S. Department of Commerce (the Department) published a proposed rule to implement regulations pursuant to the Executive order of May 15, 2019, entitled "Securing the Information and Communications Technology and Services Supply Chain," that would govern the process and procedures that the Secretary of Commerce (Secretary) will use to identify, assess, and address certain information and communications technology and services transactions that pose an undue risk to critical infrastructure or the digital economy in the United States, or an unacceptable risk to U.S. national security or the safety of United States persons. The Department opened a public comment period through December 27, 2019. Through this document, the Department is extending the period for public comment until January 10, 2020.

**DATES:** The comment period for the proposed rule published on November 27, 2019 (84 FR 65316), is extended. Comments and information regarding this proposed rule must be received by close of business on January 10, 2020.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- *By the Federal eRulemaking Portal:* <http://www.regulations.gov> at docket number DOC-2019-0005.

- *By email directly to:* [ICTsupplychain@doc.gov](mailto:ICTsupplychain@doc.gov). Include "RIN 0605-AA51" in the subject line.

- *By mail or hand delivery to:* Henry Young, U.S. Department of Commerce, ATTN: RIN 0605-AA51, 1401 Constitution Avenue NW, Washington, DC 20230.

- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. For those seeking to submit confidential business information (CBI), please submit such information by email or mail or hand delivery as instructed above. Each CBI submission must also contain a summary of the CBI in sufficient detail to permit a reasonable understanding of the substance of the information for public consumption. Such summary information will be posted on [regulations.gov](http://regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Henry Young, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-0224. For media inquiries: Rebecca Glover, Director, Office of Public Affairs, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4883.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 27, 2019, the Department published a proposed rule to implement regulations pursuant to Executive Order 13873, "Securing the Information and Communications Technology and Services Supply Chain" (84 FR 22689) that would govern the process and procedures that the Secretary of Commerce (Secretary) will use to identify, assess, and address certain information and communications technology and services transactions that pose an undue risk to critical infrastructure or the digital economy in the United States, or an unacceptable risk to U.S. national security or the safety of United States persons. The document requested comments on or before December 27, 2019. Through this document, the Department is extending the period for public comment until January 10, 2020, to give interested members of the public additional time to submit comments. All other information and instructions to commenters provided in the original document remain unchanged.



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Richard P. Burkard  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
January 14, 2020

## **PRESIDENT TRUMP REAPPOINTS MEMBERS TO THE FEDERAL SERVICE IMPASSES PANEL**

The FLRA is pleased to announce that President Donald J. Trump has reappointed Karen Czarnecki and David Osborne as Members of the Federal Service Impasses Panel (Panel), a component within the Federal Labor Relations Authority (FLRA). The Panel Chairman and Members serve on a part-time basis and provide assistance in resolving negotiation impasses between federal agencies and labor organizations. FLRA Chairman Colleen Duffy Kiko expressed her pleasure at the Members' reappointments to a second term.

**Karen Czarnecki** will serve a five-year term expiring January 10, 2025. She previously served as a Member of the Panel from July 27, 2017 through January 10, 2020. Ms. Czarnecki is the Vice President of Outreach for the Mercatus Center at George Mason University. She previously served as the Director of Education at the Law & Economics Center (LEC) at George Mason University School of Law, where she oversaw three divisions responsible for legal education programs for federal and state court judges, state attorneys general, and Congressional staff. Prior to her work at the LEC, she was a Congressional Chief of Staff and a communications advisor. From 2001 to 2009, Ms. Czarnecki was a senior executive at the U.S. Department of Labor where she served as Director of the Office of the 21st Century Workforce, Deputy Assistant Secretary for Intergovernmental Affairs, and Acting Assistant Secretary in the Office of Disability Employment Policy. Earlier in her career, Ms. Czarnecki worked at the American Legislative Exchange Council, the Heritage Foundation, and in the White House's Office of the Vice President. She is currently an adjunct professor at George Mason University, where she teaches a public policy seminar as part of the Institute on Comparative Political and Economic Systems for The Fund for American Studies. She is also a member and former co-chair of the Board of Regents for The Fund for American Studies. Ms. Czarnecki earned her B.A. and J.D. from The Catholic University of America.

**David Osborne** will also serve a five-year term expiring January 10, 2025. He previously served as a Member of the Panel from July 27, 2017 through January 10, 2020. Mr. Osborne is President and General Counsel of the Fairness Center, a nonprofit public-interest law firm offering free legal services to those hurt by public employee union officials. He helped to launch the Center in 2014, and he provides advice and counsel to clients and directs and manages the firm. Before joining the Center, Mr. Osborne practiced law in Florida, where he had previously served as a judicial clerk to a Florida Supreme Court justice. He received his J.D. degree from the Florida State University College of Law, graduating magna cum laude. He enrolled in law school after working as official staff for a Member of Congress from Orlando, Florida. Mr. Osborne is a member of the Pennsylvania, Connecticut, and Florida state bars, and he has been admitted to the United States Supreme Court, Third Circuit Court of Appeals, and all three Pennsylvania district courts. He is based in central Pennsylvania, where he is also president of the Harrisburg Chapter of the Federalist Society and a State Advisory Committee Member for the U.S. Commission on Civil Rights.

###

*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute (the Statute).*

*The Panel resolves impasses between federal agencies and unions representing federal employees arising from negotiations over conditions of employment under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.*

*For further information regarding the Panel or these appointments, contact Kimberly Moseley, Executive Director of the Panel, at (202) 218-7790.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Richard P. Burkard  
202-218-7279

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
January 14, 2020

## **THE FLRA SEEKS COMMENTS ON PROPOSED REGULATION CHANGE**

On December 23, 2019, the Federal Labor Relations Authority (the FLRA) published a Notice in the Federal Register announcing intended revisions to the regulations governing negotiability appeals to better “expedite proceedings,” consistent with Congress’s direction, and with the FLRA’s goal in its strategic plan to “ensure quality, timely . . . decision-making processes.” The proposed revisions in the Federal Register are designed to streamline the adjudication process for negotiability appeals, resulting in more timely decisions for the parties. Written comments on the proposed revisions must be received on or before January 22, 2020, which is only eight days away. The FLRA encourages all interested persons to submit comments on the proposed revisions. Instructions for submitting comments are included in the Notice:

<https://www.govinfo.gov/content/pkg/FR-2019-12-23/pdf/2019-27193.pdf>.

###

*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, D.C. 20424

Contact: Richard P. Burkard  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
January 23, 2020

## **AUTHORITY SOLICITS COMMENTS ON A REQUEST FOR A GENERAL STATEMENT OF POLICY OR GUIDANCE**

The Federal Labor Relations Authority (Authority) solicits written comments on a request from the U.S. Department of Agriculture (USDA) for a general statement of policy or guidance (general statement) concerning expiring collective bargaining agreements that state that they will remain in force until the parties reach new agreements. USDA has requested, under Section 2427.2(a) of the Authority's rules and regulations (5 C.F.R. § 2427.2(a)), that the Authority issue a general statement of policy or guidance addressing when an agency head may, under Section 7114(c) of the Federal Service Labor-Management Relations Statute (the Statute), review the legality of an expiring collective-bargaining agreement that continues in force during renegotiations.

In its request, USDA asks the Authority to issue a general statement holding that:

1. When a party requests to renegotiate an expiring agreement that contains a provision stating that the agreement remains in force until a new agreement is reached, an agency head may review the legality of the expiring agreement as early as Section 7114(c) of the Statute would allow the agency head to do so if the expiring agreement were automatically renewed; and
2. An expiring agreement that remains in force until the parties reach a new agreement is effectively renewed automatically every day, so, for as long as the expiring agreement continues in force during renegotiations, a new agency-head-review period begins each day.

Interested persons are asked to address the following questions, which are set forth in a "Notice of Opportunity to Comment on a Request for a General Statement of Policy or Guidance on Expiring Collective Bargaining Agreements," appearing in today's Federal Register:

Is the issuance of a general statement of policy or guidance in this case warranted, under the standards set forth in § 2427.5 of the Authority's Regulations (5 C.F.R. § 2427.5)?

If a general statement is warranted, what should the Authority's policy or guidance be?

The Federal Register notice can be found [here](#). The Authority will consider written comments that are received on or before February 24, 2020, by email, courier or postal mail, or hand delivery. Further filing instructions may be found in the Federal Register notice. For additional information, contact Emily Sloop, Chief, Case Intake and Publication, at (202) 218-7740.

###

*The FLRA administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. The FLRA is charged with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, D.C. 20424

Contact: Richard P. Burkard  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
January 28, 2020

## **THE FLRA REOPENS COMMENT PERIOD ON PROPOSED REGULATION CHANGE**

On December 23, 2019, the Federal Labor Relations Authority (the FLRA or the Authority) published a Notice in the Federal Register announcing intended revisions to the regulations governing negotiability appeals to better “expedite proceedings,” consistent with Congress’s direction, and with the FLRA’s goal in its strategic plan to “ensure quality, timely . . . decision-making processes.” The proposed revisions in the Federal Register are designed to streamline the adjudication process for negotiability appeals, resulting in more timely decisions for the parties.

One of the proposed changes to the regulations involved the definition of “compelling need” as set forth in section 2424.50 of title 5 of the Code of Federal Regulations. The Federal Register Notice pointed out that the criteria in the section are illustrative and there may be other, or more appropriate, examples of an agency rule or regulation for which there is a compelling need. The FLRA solicited specific examples of an agency rule or regulation for which there is a compelling need and appropriate illustrative criteria that would establish a compelling need for the rule or regulation.

Written comments on the proposed revisions were initially due on or before January 22, 2020.

On June 4, 2019, in accordance with § 2427.2 of the Authority’s Regulations, the Office of Personnel Management (OPM) requested a general statement of policy or guidance clarifying what circumstances meet the criteria in 5 C.F.R. § 2424.50 for determining when a “compelling need” exists for an agency rule or regulation. In its request, OPM asked that the Authority issue a general statement of policy or guidance that would clarify, through the use of examples, what circumstances meet the illustrative criteria under § 2424.50. In the alternative, OPM requested that the Authority supplement its regulations to include such guidance after providing notice and the opportunity for public comment.

On January 22, 2020, in Case No. 0-PS-35, the Authority denied OPM’s request, stating that the question raised in the request is more appropriately resolved by other means – namely, through the forthcoming issuance of revised Authority Regulations following notice and the opportunity for public comment.

However, to ensure that interested parties have sufficient time to comment on that matter, as well as all of the matters addressed in the proposed regulation changes, the FLRA is reopening the period for submission of comments on all of the proposed regulations until February 11, 2020.



The FLRA encourages all interested persons to submit comments on the proposed revisions. Instructions for submitting comments are included [here](#).

The Federal Register Notice extending the comment period is [here](#).

###

*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*





# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, D.C. 20424

Contact: Eric Prag  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
February 14, 2020

## **FLRA ANNOUNCES NEW APPOINTMENT TO THE FOREIGN SERVICE IMPASSE DISPUTES PANEL**

Colleen Duffy Kiko, Chairman of the Federal Labor Relations Authority (FLRA), in her capacity as Chairperson of the [Foreign Service Labor Relations Board](#) (FSLRB), announces the appointment of Ambassador Richard Terrell Miller to serve as a Member on the Foreign Service Impasse Disputes Panel (FSIDP). Ambassador Miller will serve on a part-time basis, as complaints or disputes involving the Foreign Service arise. His appointment is effective for a three-year term expiring on February 12, 2023.

Ambassador Miller is currently Director of the Center for International Trade and Economics at The Heritage Foundation where he manages the preparation of the organization's flagship publication, the *Index of Economic Freedom*. He has also served as Director of the Center for Data Analysis and the Center for Free Markets and Regulatory Reform.

Prior to joining The Heritage Foundation, Ambassador Miller served in the U.S. Foreign Service for over 30 years with overseas assignments in Italy, France, Barbados, and New Zealand. He served twice at the U.S. Mission to the United Nations in New York, most recently as U.S. Ambassador on the United Nations' Economic and Social Council, where he managed negotiations relating to development, human rights, women's issues, trade, refugees, health, labor, and corruption, among others. From 1986 to 1990, Ambassador Miller headed the U.S. Observer Mission at the United Nations' Organization for Education, Science and Culture. In Washington, he has served as Deputy Assistant Secretary for Economic and Global Issues in the Bureau of International Organizations, with responsibilities that included oversight of the International Labor Organization and as Executive Assistant to the Under Secretary for Arms Control and Disarmament. He was Director or Deputy Director of State Department offices dealing with international economics, human rights and women's issues, agricultural and textile trade, and maritime and land transport. A native of San Antonio, Texas, Ambassador Miller is married with three children.

###

*The Foreign Service Impasse Disputes Panel was created by the [Foreign Service Act of 1980](#), [22 U.S.C. §§ 4101-4118](#) to assist in resolving impasses arising in the course of collective bargaining under the Act over conditions of employment affecting Foreign Service personnel working for the U.S. Agency for Global Media (formerly the Broadcasting Board of Governors), the U.S. Agency for International Development, and the Departments of State, Agriculture, and Commerce.*

*The Federal Labor Relations Authority administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute (Statute).*

*The Federal Service Impasses Panel (Panel) resolves impasses between federal agencies and unions representing federal employees arising from negotiations over conditions of employment under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.*

*For further information regarding the Panel or this appointment, contact Kimberly Moseley, Executive Director of the Panel, at (202) 218-7790.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Eric Prag  
202-218-7922

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
March 12, 2020

## **PRESIDENT TRUMP APPOINTS MICHAEL LUCCI TO THE FEDERAL SERVICE IMPASSES PANEL**

The Federal Labor Relations Authority (FLRA) is pleased to announce that President Donald J. Trump has appointed Michael Lucci as a Member of the Federal Service Impasses Panel (Panel), an independent entity within the FLRA. The Panel Chairman and Members serve on a part-time basis and provide assistance in resolving negotiation impasses between federal agencies and labor organizations. FLRA Chairman Colleen Duffy Kiko expressed her pleasure with Mr. Lucci's appointment.

Michael Lucci will serve a five-year term on the Panel. He is currently a labor, tax, and economic policy expert working with an array of state and national policy organizations. Previously, Mr. Lucci served as Illinois Governor Bruce Rauner's Deputy Chief of Staff for Policy from 2017-2019. He led Governor Rauner's policy team and advised the Governor on more than 1,000 bill actions. Prior to that appointment, he was Vice President of Policy at the Illinois Policy Institute where he focused on labor and economic reforms. Mr. Lucci's career has involved work in finance, as an options trader, and education, as a math instructor. He received his B.A. from the University of Notre Dame where he was a varsity oarsman on the crew team and he later completed self-directed coursework in economics at the University of Chicago and at Northwestern University. Mr. Lucci lives in Alexandria, Virginia.

###

*The Federal Labor Relations Authority administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute (Statute).*

*The Federal Service Impasses Panel (Panel) resolves impasses between federal agencies and unions representing federal employees arising from negotiations over conditions of employment under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.*

*For further information regarding the Panel or this appointment, contact Kimberly Moseley, Executive Director of the Panel, at (202) 218-7790.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, D.C. 20424

Contact: Aloysius Hogan  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
March 19, 2020

## **THE FLRA PROPOSES AN ADDITION TO ITS REGULATIONS CONCERNING REVOKING WRITTEN ASSIGNMENTS FOR THE PAYMENT OF UNION DUES**

Today, the Federal Labor Relations Authority (the Authority) published a [Notice](#) in the Federal Register announcing a proposed addition to its regulations to govern the process for federal employees to revoke written assignments for the payment of union dues under 5 U.S.C. § 7115(a). The Authority first signaled its intention to promulgate such a regulation in its decision in [OPM](#), Case No. 0-PS-34, which issued on February 14, 2020.

The proposed addition set forth in the Federal Register is designed to provide employees the fullest freedom in the exercise of their rights under the Federal Service Labor Management Relations Statute, including their rights under 5 U.S.C. §§ 7102 and 7115, in matters directly affecting their pay. As explained in the Federal Register [Notice](#), the Authority's proposed additional regulation states that, after the expiration of the one-year period during which an assignment may not be revoked under 5 U.S.C. § 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses.

Written comments on the proposed addition must be ***received*** on or before April 9, 2020.

The FLRA encourages all interested persons to submit comments on the proposed addition. Instructions for submitting comments are included in the [Notice](#).

###

*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
March 25, 2020

## **AUTHORITY SOLICITS COMMENTS ON A REQUEST FOR A GENERAL STATEMENT OF POLICY OR GUIDANCE**

The Federal Labor Relations Authority (Authority) solicits written comments on a request from the National Right to Work Legal Defense Foundation (the Foundation) for a general statement of policy or guidance (general statement) concerning official time for certain lobbying activities. The Foundation has requested, under Section 2427.2(a) of the Authority's rules and regulations (5 C.F.R. § 2427.2(a)), that the Authority issue a general statement of policy or guidance concerning whether Section 7131 of the Federal Service Labor-Management Relations Statute (the Statute) permits parties to bargain over, or union representatives to use, official time for lobbying activities that are subject to Federal law.

In its request, the Foundation asks the Authority to issue a general statement holding that Congress did not expressly authorize the use of appropriated funds for union lobbying activities through the Statute, and, therefore, the Statute does not permit parties to bargain over, or union representatives to use, official time for lobbying activities that are subject to 18 U.S.C. 1913.

Interested persons are asked to address the following questions, which are set forth in a "Notice of Opportunity to Comment on a Request for a General Statement of Policy or Guidance on Official Time for Certain Lobbying Activities," appearing in today's Federal Register:

Is the issuance of a general statement of policy or guidance in this case warranted, under the standards set forth in § 2427.5 of the Authority's Regulations (5 C.F.R. § 2427.5)?

If a general statement is warranted, what should the Authority's policy or guidance be?

The Federal Register notice can be found [here](#). The Authority will consider written comments that are received on or before April 24, 2020, by email or postal mail. Further filing instructions may be found in the Federal Register notice. For additional information, contact Emily Sloop, Chief, Case Intake and Publication, at (202) 218-7740.

###

*The Federal Labor Relations Authority administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. The Authority is charged with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
March 31, 2020

## **AUTHORITY SOLICITS COMMENTS ON A REQUEST FOR A GENERAL STATEMENT OF POLICY OR GUIDANCE**

The Federal Labor Relations Authority (Authority) solicits written comments on a request from the U.S. Office of Personnel Management (OPM) for a general statement of policy or guidance (general statement) concerning “zipper clauses” as a subject of bargaining. OPM has requested, under Section 2427.2(a) of the Authority’s Regulations (5 C.F.R. § 2427.2(a)), that the Authority issue a general statement of policy or guidance holding that “zipper clauses”—which are provisions that would foreclose or limit mid-term bargaining during the term of a collective-bargaining agreement—are a mandatory subject of bargaining.

In its request, OPM asks the Authority to issue a general statement holding that zipper clauses are a mandatory topic of bargaining and, therefore, parties may bargain to impasse regarding both reopener and zipper clauses.

Interested persons are asked to address the following questions, which are set forth in a “Notice of Opportunity To Comment on a Request for a General Statement of Policy or Guidance on Whether ‘Zipper Clauses’ Are Mandatory Subjects of Bargaining,” appearing in today’s Federal Register:

1. Whether issuance of a general statement of policy or guidance is warranted, under the standards set forth in Section 2427.5 of the Authority’s Regulations (5 C.F.R. § 2427.5)?
2. If so, what the Authority’s policy or guidance should be?

The Federal Register notice can be found [here](#). The Authority will consider written comments that are received on or before April 30, 2020, by email or postal mail. Further filing instructions may be found in the Federal Register notice. For additional information, contact Emily Sloop, Chief, Case Intake and Publication, at (202) 218-7740.

###

*The Federal Labor Relations Authority administers the labor-management relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. The Authority is charged with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute. The Authority’s mission is “Protecting rights and facilitating stable relationships among federal agencies, labor organizations, and employees while advancing an effective and efficient government through the administration of the statute.”*



# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
April 17, 2020

## FLRA's UPDATED OPERATING STATUS

At this time, the FLRA remains fully operational.

To ensure the health and safety of agency employees and the parties who practice before us, the vast majority of FLRA employees are teleworking during the COVID-19 pandemic. In order to maximize telework flexibilities, each office continues to receive filings by mail, facsimile, and the e-Filing system. The agency previously announced that it would **not accept in-person filings as of 5:00 p.m. Friday, March 20, 2020 through April 30, 2020. The agency now extends the prohibition on in-person filings through May 31, 2020. If that period of time needs to be further extended, another announcement will be made.** At this time, all statutory and regulatory requirements for filing and service continue in full effect and all parties and customers are encouraged to utilize the FLRA's eFiling system accessible at <https://efile.flra.gov/>. Parties are also encouraged to subscribe to the FLRA's free Really Simple Syndication ("RSS") feeds, which provide an easy way for keeping up with news and information from the FLRA. Information on how to subscribe may be located at <https://www.flra.gov/feeds>.

### Case Processing in the Authority

Consistent with applicable regulations, and during this specific period of time, parties may receive acknowledgement of case filings ("acknowledgement notices") from the Authority's Office of Case Intake and Publication (CIP) via electronic mail ("email"), rather than via certified mail. *See* 5 C.F.R. § 2429.24(k). Additionally, other outgoing CIP orders and Authority decisions may be served on parties via facsimile, rather than via certified mail. A courtesy copy of said orders and decisions may also be sent to parties via email, at the email address already provided by parties using eFiling per 5 C.F.R. § 2429.24(j). Authority decisions are also posted online at <https://www.flra.gov/decisions/authority-decisions>. Please provide updated contact information for filed cases, including facsimile numbers and email addresses, directly to CIP. Pursuant to Authority Regulations, you may **not** file documents with the Authority via email.

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
April 29, 2020

## The FLRA on YouTube

Today, the Federal Labor Relations Authority unveiled the **FLRA YouTube channel**, consisting currently of five training videos covering unfair labor practice topics referenced in the Federal Service Labor-Management Relations Statute (the Statute). These videos supplement the FLRA's external training events.

The new channel serves to modernize the Agency's customer interactions and delivers on the Agency's second strategic goal from the 2018-2022 Strategic Plan promising to "develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor management relations."

The five training videos cover the following topics:

- Unlawful Interference – Section 7116(a)(1) of the Statute
- Violations by Unions – Duty of Fair Representation and To Bargain in Good Faith
- Discrimination – Section 7116(a)(2) and (4) of the Statute
- Meetings and Bypasses – Formal Meetings, Investigatory Examinations, and Bypasses
- Information Requests – Section 7114(b)(4) of the Statute

The channel can be found [here](#). Once on the channel, please click on the button as pictured here to subscribe to the FLRA channel.



The Agency plans to continue producing new videos (several are in progress) to adapt to its customers' evolving needs.

###

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
May 11, 2020

## FLRA's UPDATED OPERATING STATUS

At this time, the FLRA remains fully operational.

To ensure the health and safety of agency employees and the parties who practice before us, the vast majority of FLRA employees are teleworking during the COVID-19 pandemic. In order to maximize telework flexibilities, each office continues to receive filings by mail, facsimile, and the e-Filing system. The agency previously announced that it would **not accept in-person filings as of 5:00 p.m. Friday, March 20, 2020 through May 31, 2020. The agency now extends the prohibition on in-person filings through June 30, 2020. If that period of time needs to be further extended, another announcement will be made.** At this time, all statutory and regulatory requirements for filing and service continue in full effect and all parties and customers are encouraged to utilize the FLRA's eFiling system accessible at <https://efile.flra.gov/>. Parties are also encouraged to subscribe to the FLRA's free Really Simple Syndication ("RSS") feeds, which provide an easy way for keeping up with news and information from the FLRA. Information on how to subscribe may be located at <https://www.flra.gov/feeds>.

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
May 14, 2020

## **FLRA PUBLISHES DIGESTS OF AUTHORITY DECISIONS, COMPLETING TWO-YEAR STRATEGIC INITIATIVE**

Today, the Federal Labor Relations Authority (FLRA) announces the culmination of a two-year initiative. As of 2020, the FLRA now posts each new decision with an accompanying digest. FLRA case digests that summarize each of the full-length, merits decisions can be [viewed online](#).

While the digests are not part of the official decisions, Chairman Colleen Duffy Kiko explained, "We hope these summaries will be a valuable tool for researchers and members of the Federal labor-management community to identify more quickly and efficiently the decisions that interest them." The FLRA expects that case-summary digests will provide customers with additional, easy-to-understand guidance and information regarding precedent.

Further, the Authority has compiled these digests on the [Quarterly Digest Reports page](#). The Authority pursues this digest initiative as part of its commitment in its Strategic Plan for Fiscal Years 2018 through 2022 "to develop tools and resources" to assist the parties. The Quarterly Digest Reports are online for the last calendar year and through the current first quarter of calendar year 2020.

The FLRA's Strategic Plan also includes a renewed emphasis on clearly articulated written work products. As part of this effort, the FLRA has particularly focused in the first few paragraphs of each Authority decision as a place to provide a brief synopsis of the most pertinent principles in the decision. This uniform structure should help customers understand a decision's significance or relevance to them without needing to read the entire decision. Parties are reminded, however, that the descriptions contained in the digests are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.

For updates on other FLRA-related news and to receive notifications when new Authority decisions are posted, the FLRA encourages subscription to its Really Simple Syndication ([RSS](#)) Feeds.

###

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
June 5, 2020

## **FLRA REP HEARINGS TO BE CONDUCTED BY VIDEOCONFERENCE**

The Office of the General Counsel (OGC), Federal Labor Relations Authority (FLRA), announces an interim policy on conducting representational hearings by videoconference.

In order to be responsive to the parties during the time Federal agencies are maximizing telework due to the COVID-19 pandemic, the OGC has issued interim guidance to its Regional Directors on conducting representation hearings by videoconference. The OGC is taking this extraordinary step to ensure, during the COVID-19 pandemic, that critical representational work continues.

The guidance applies to the time period during which Federal employees continue to maintain social distance and should be considered a limited supplement to, rather than a replacement of, a Region's normal representation case processing methods, including in-person hearings.

All procedural and substantive rights apply to videoconference hearings, as to hearings conducted in-person, subject only to the limitations of the physical arrangement.

Some representation cases will not be appropriate for hearing by videoconference and Regional Directors retain discretion to determine, on a case-by-case basis, whether hearings by videoconference are necessary to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute.

This step advances FLRA Strategic Goal #1, "We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated," and Strategic Goal #2, "We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships."

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
June 23, 2020

## FLRA's UPDATED OPERATING STATUS

At this time, the FLRA remains fully operational.

To ensure the health and safety of agency employees and the parties who practice before us, the vast majority of FLRA employees are teleworking during the COVID-19 pandemic. In order to maximize telework flexibilities, each office continues to receive filings by mail, facsimile, and the e-Filing system. The agency previously announced that it would not accept in-person filings as of 5:00 p.m. Friday, March 20, 2020 through June 30, 2020. **The agency now extends the prohibition on in-person filings through July 31, 2020.** If that period of time needs to be extended further, another announcement will be made. At this time, all statutory and regulatory requirements for filing and service continue in full effect and all parties and customers are encouraged to utilize the FLRA's eFiling system accessible at <https://efile.flra.gov/>. Parties are also encouraged to subscribe to the FLRA's free Really Simple Syndication ("RSS") feeds, which provide an easy way for keeping up with news and information from the FLRA. Information on how to subscribe may be located at <https://www.flra.gov/feeds>.

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
June 29, 2020

## FLRA RELEASES UPDATED ORGANIZATIONAL CHART

The Federal Labor Relations Authority (Authority) has updated its [organizational chart](#) to reflect more accurately the Authority's structure under the Federal Service Labor-Management Relations Statute (Statute) that it administers.

Under the Statute, the Authority is composed of three Presidentially-appointed and Senate-confirmed members, no more than two of whom can be from the same political party. 5 U.S.C. § 7104(a). The President designates one member to serve as the Authority's Chairman and "chief executive and administrative officer" (CEO/CAO). 5 U.S.C. § 7104(b).

The new chart accurately reflects that under the Statute, agency support functions are the responsibility of the Chairman as the Authority's CEO/CAO. In designating the Chairman as CEO/CAO, Congress sought to ensure that a single person had responsibility for the management of the Authority's internal administrative matters, including personnel management, fiscal management, and general administrative support services.

In addition, the new chart accurately reflects that the Federal Service Impasses Panel (Panel) "is an entity within the Authority" that "provide[s] assistance in resolving negotiation impasses." 5 U.S.C. § 7119(c)(1). Consistent with the Panel's placement within the Authority, the Statute confers upon the Authority broad supervisory powers over the Panel and its work. *See* 5 U.S.C. § 7105(a). Under the Statute, the Authority's supervisory powers include issuing Policy Statements that are binding on the Panel; reviewing Panel decisions in negotiability, unfair labor practice, and arbitration proceedings; and staying Panel rulings where necessary. Accordingly, the updated Authority organizational chart correctly reflects the Panel's role under the Authority's leadership and supervision.

Finally, the new organizational chart includes the recently-created Office of Legislative Affairs and Program Planning and properly places the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel within the jurisdiction of the Authority's Chairman, as required under the Foreign Service Act of 1980, [22 U.S.C. §§ 4101-4118](#).

###

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

[www.flra.gov](http://www.flra.gov)

FOR IMMEDIATE RELEASE  
July 9, 2020

## **The FLRA Adopts an Addition to Its Regulations Concerning Revoking Written Assignments for the Payment of Union Dues**

Today, the Federal Labor Relations Authority (the Authority) published a [Final Rule](#) to govern the process for federal employees to revoke written assignments for the payment of union dues under 5 U.S.C. § 7115(a). The new rule will appear as § 2429.19 of the Authority's Regulations and will apply to all written assignments that are authorized on or after the Final Rule's effective date.

The new rule states that "after the expiration of the one-year period during which an assignment may not be revoked under 5 U.S.C. § 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses." The employing agency must process the employee's dues-revocation made after the first year "as soon as administratively feasible."

The Authority's reasons for adopting the rule are set forth in the Supplementary Information section that accompanies the Final Rule in [today's Federal Register](#). Previously, in the March 19, 2020, issue of the [Federal Register](#), the Authority solicited comments on a proposed version of the new rule. The Authority also solicited public comments on the issue in July 12, 2019 [Federal Register](#).

In announcing the new rule, FLRA Chairman Colleen Duffy Kiko stated, "In many of the public comments we received, federal employees and agencies expressed frustration at how difficult and time-consuming the dues-revocation process had become. Because of the new rule, employees will no longer need to make their revocation decisions during confusingly defined and narrow window periods abutting their anniversary dates. The plain language of 5 U.S.C. § 7115(a) never required this state of affairs, and hard-working federal employees deserved more clarity. This regulation does not prevent any employee from voluntarily continuing their dues withholding should they so desire."

###

*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*





# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
July 31, 2020

## FLRA's UPDATED OPERATING STATUS

At this time, the FLRA remains fully operational.

To ensure the health and safety of agency employees and the parties who practice before us, most FLRA employees are teleworking during the COVID-19 pandemic. In order to maximize telework flexibility, our office continues to receive filings by mail, facsimile, and the e-Filing system. The agency previously announced it would not accept in-person filings as of 5:00 p.m. Friday, March 20, 2020 through July 31, 2020. **The agency now extends the prohibition on in-person filings indefinitely.** Should this change, an announcement will be made.

In addition, the Federal Service Impasses Panel (FSIP) indefinitely suspends the requirement in its regulations [5 C.F.R. §§ 2471.5(a)(2) & (b)(2) and 2472.6(a)(2) & (b)(2)] that a party must obtain the permission of the other party before serving documents electronically on that person. Due to the COVID-19 pandemic, electronic transmission shall be considered equivalent service to "registered mail, certified mail, regular mail, or commercial delivery" for purposes of these subsections.

At this time, all other statutory and regulatory requirements for filing and service continue in full effect and all parties and customers are encouraged to utilize the FLRA's eFiling system at <https://efile.flra.gov/>.

Parties are also encouraged to subscribe to the FLRA's free Really Simple Syndication ("RSS") feeds, which provide an easy way for keeping up with news and information from the FLRA. Information on how to subscribe is located at <https://www.flra.gov/feeds>.

### Case Processing in the Authority

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# FLRA NEWS

FEDERAL LABOR RELATIONS AUTHORITY - WASHINGTON, DC 20424

Contact: Aloysius Hogan  
202-218-7927

<https://www.flra.gov>

FOR IMMEDIATE RELEASE  
August 19, 2020

## The FLRA Releases eFiling Training Video

Today, the Federal Labor Relations Authority released [an animated training video](#) explaining the Agency's eFiling process. To file a case, please go to the FLRA [eFiling page](#).

This release is the first in a series of animated videos serving to further educate our customers on the many different aspects of federal-sector labor law.

The eFiling video covers:

- How to file a case
- Where to file
- Who is eligible to file
- Case Types – Arbitration, Negotiability, Representation, Unfair Labor Practice, Negotiation Impasse
- How to check case status.

[FLRA's YouTube channel](#) serves to modernize the Agency's customer interactions and delivers on the Agency's second strategic goal from the 2018-2022 strategic plan promising to "develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relations."



###

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# **FEDERAL LABOR RELATIONS AUTHORITY**

## **STRATEGIC PLAN 2018-2022**





Federal Labor Relations Authority  
2018-2022 Strategic Plan

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## Contents

Message from the Chairman.....	1
Executive Summary .....	2
Mission and Responsibilities.....	4
Organizational Structure .....	6
Stakeholder Engagement.....	8
Vision and Values.....	9
Strategic Goals.....	11
STRATEGIC GOAL 1: WE WILL ENSURE QUALITY, TIMELY, IMPARTIAL, AND CONSISTENT INVESTIGATIVE AND DECISION-MAKING PROCESSES WITH DETERMINATIONS THAT ARE CLEARLY ARTICULATED. ....	12
STRATEGIC GOAL 2: WE WILL DEVELOP AND PROVIDE TOOLS AND RESOURCES TO ENABLE THE PARTIES TO PREVENT OR MORE EFFECTIVELY AND EFFICIENTLY RESOLVE THEIR LABOR-RELATIONS DISPUTES AND IMPROVE THEIR LABOR- MANAGEMENT RELATIONSHIPS. ....	15
STRATEGIC GOAL 3: WE WILL MANAGE OUR RESOURCES EFFECTIVELY AND EFFICIENTLY, AND RECOGNIZE THAT OUR DEDICATED WORKFORCE IS CRITICAL TO THE RESOLUTION OF LABOR-RELATIONS DISPUTES. ....	20
Major Management Priorities and Challenges .....	26
Evidence Building.....	26
Appendix (Abbreviations).....	28



Federal Labor Relations Authority  
2018-2022 Strategic Plan

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## Message from the Chairman



This is the 40th anniversary of enactment of the Federal Service Labor-Management Relations Statute. What we refer to simply as “the Statute” was passed in 1978 and implemented the following year. It evolved from President Richard M. Nixon’s 1969 Executive Order on Labor-Management Relations in the federal sector (E.O. No. 11491), and had its genesis in President John F. Kennedy’s 1962 Executive Order on Employee-Management Cooperation in the Federal Service (E.O. 10988).

Anniversaries are important. They present opportunities to appreciate and reflect on what led up to this day. Of equal importance is that anniversaries can remind us to reconnect, recommit, and refocus on what really matters. They help us build on the past and set out a path for the future.

Congress envisioned the Statute as the primary means by which the Federal Labor Relations Authority would protect the rights of, and facilitate the collective-bargaining relationships among federal agencies, labor organizations, and employees. This remains the source of the FLRA’s mission, which is as relevant today as it was on the day that Congress enacted the Statute. More than ever, the FLRA should chart the course of federal-sector labor-management relations through impartial, clear, and timely actions based on the Statute. We can do so by utilizing our unique expertise in federal-sector labor law to effectively resolve labor-management disputes, and doing so in a transparent manner that respects the legitimate interests of key stakeholders.

So, on this 40th anniversary of the Statute, let us reflect and be inspired by that which came before us. Let us also renew our focus on the legislative foundation that enables the FLRA to serve as a responsible leader in this arena. And let us rely on the Statute as the beacon to guide us towards a bright future in which we reconnect, recommit, and refocus on the important mission of this agency. To this, I am firmly committed.

Colleen Duffy Kiko, Chairman  
Federal Labor Relations Authority





## Executive Summary

The Federal Labor Relations Authority (the FLRA) is an independent administrative agency created by Title VII of the Civil Service Reform Act of 1978. The FLRA has three independent statutory components—the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel—each with unique adjudicative or prosecutorial roles.

The FLRA's mission statement is: *Protecting rights and facilitating stable relationships among federal agencies, labor organizations, and employees while advancing an effective and efficient government through the administration of the Statute.* The FLRA does so by carrying out five primary statutory functions: We resolve complaints of unfair labor practices (ULPs); determine the appropriateness of bargaining units, and supervise or conduct secret-ballot elections for labor-organization representation; adjudicate exceptions to grievance-arbitration awards; adjudicate legal issues relating to the duty to bargain; and resolve impasses during negotiations.

The FLRA's vision, which drives achievement of its mission, is: *Charting the course of federal-sector labor-management relations through impartial, clear, and timely actions by dedicated and accountable employees.*

Three strategic goals, each supported by several strategic objectives, guide the FLRA's pursuit of its vision and achievement of its mission.

The FLRA developed this strategic plan against a canvas of strengths and challenges that can affect overall mission delivery. The source of the FLRA's internal strengths is its skilled workforce guided by the Agency's values of transparency and accountability, along with its increasing focus on the innovative use of information technology (IT) and data-driven analysis. Challenges arise from budget uncertainty and Presidential-appointee vacancies. The goals and objectives in this plan support the FLRA's mission in light of these strengths and challenges.



## FLRA Strategic Goals

Strategic Goal #1	Strategic Goal #2	Strategic Goal #3
We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated.	We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships.	We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the prevention and resolution of labor-relations disputes.

## Strategic Objectives

<p>a. Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.</p> <p>b. Ensure excellence in investigations and clearly articulated written work products by establishing and surpassing case-processing quality goals that build upon the Agency's longstanding traditions of impartiality and consistent determinations that are effectively enforced.</p>	<p>a. Maintain and expand educational resources on <a href="http://www.flra.gov">www.flra.gov</a>.</p> <p>b. Identify and offer targeted assistance to parties with significant labor-management challenges.</p> <p>c. Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.</p>	<p>a. Ensure that the FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.</p> <p>b. Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.</p> <p>c. Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.</p>
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## Mission and Responsibilities

The FLRA is an independent administrative federal agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The purpose of the Statute is to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures that are designed to meet the special requirements and needs of the Government. The provisions of the Statute are to be interpreted in a manner consistent with the requirement of an effective and efficient Government. *Id.* § 7101(b).

**FLRA MISSION: “Protecting rights and facilitating stable relationships among federal agencies, labor organizations, and employees while advancing an effective and efficient government through the administration of the Federal Service Labor-Management Relations Statute.”**

The FLRA applies its federal-sector expertise to execute its mission primarily by carrying out the following statutory responsibilities:

1. Conduct hearings and resolve complaints of ULPs under § 7118 of the Statute. *Id.* § 7105(a)(2)(G). The FLRA is responsible for investigating, prosecuting, and adjudicating claims that an agency or a labor organization has failed to uphold its legal obligations under the Statute.
2. Determine the appropriateness of units for labor organization representation under the Statute, and supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees in an appropriate unit. *Id.* § 7105(a)(2)(A). The FLRA also resolves disputes about which employees may be included in bargaining units under the Statute. *Id.* § 7105(a)(2)(B).
3. Resolve exceptions to grievance-arbitration awards under § 7122 of the Statute. *Id.* § 7105(a)(2)(H). The FLRA adjudicates appeals – known as exceptions – to arbitration awards that result from grievances filed by employees, labor organizations, or agencies under parties’ negotiated grievance procedures. The FLRA reviews those awards to assess whether they are contrary to any law, rule, or regulation, or are deficient on other grounds similar to those applied by federal courts in private-sector labor-management disputes.
4. Resolve issues relating to the duty to bargain in good faith under § 7117(c) of the Statute. *Id.* § 7105(a)(2)(E). The FLRA resolves negotiability disputes that arise during



bargaining under two circumstances – when an agency claims that a contract proposal is outside the duty to bargain and when an agency head disapproves a negotiated agreement claiming that it contains provisions that are contrary to law, rule, or regulation.

5. Provide assistance in resolving negotiation impasses between federal agencies and exclusive representatives. *Id.* § 7119.

In addition, Congress directed the FLRA to prescribe criteria and resolve issues relating to the granting of national consultation rights under § 7113 of the Statute; prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under § 7117(b) of the Statute; prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under § 7117(d) of the Statute; and take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute.

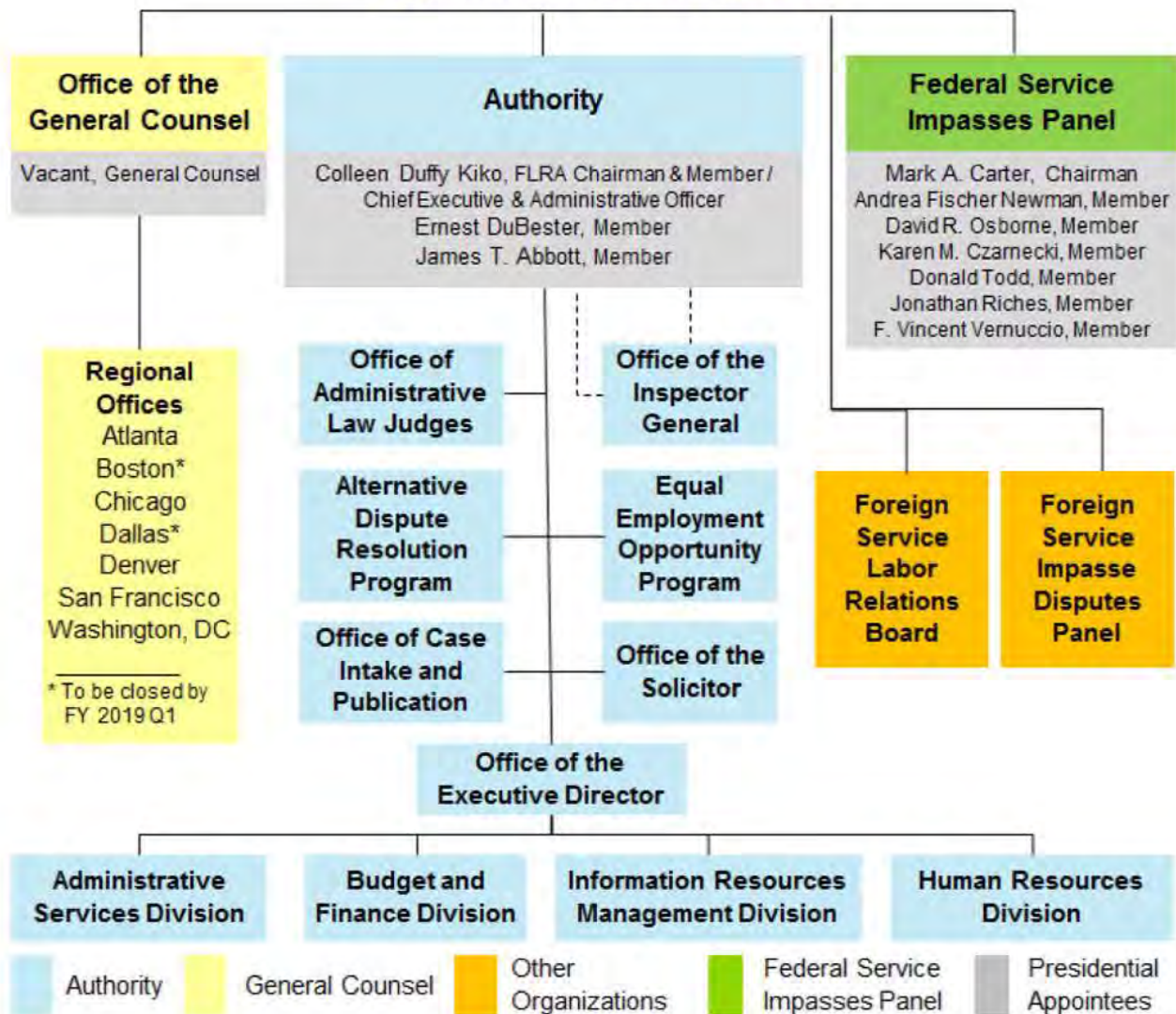
The FLRA is to “provide leadership in establishing policies and guidance” related to matters under the Statute. *Id.* § 7105(a)(1). The FLRA satisfies this directive primarily through its written determinations, but also by offering training and other services. Together, this is how the FLRA plans to achieve its mission.







## Organizational Structure



Headquartered in Washington, D.C., the FLRA has three statutory components – the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel (the FSIP) – each with unique adjudicative or prosecutorial roles.

The Authority – the FLRA’s adjudicatory body – is led by three presidentially nominated and Senate-confirmed Members. The Authority is responsible for adjudicating ULP complaints heard by the Office of Administrative Law Judges,<sup>1</sup> exceptions to arbitrators’ grievance-arbitration awards, disputes over the negotiability of collective-bargaining

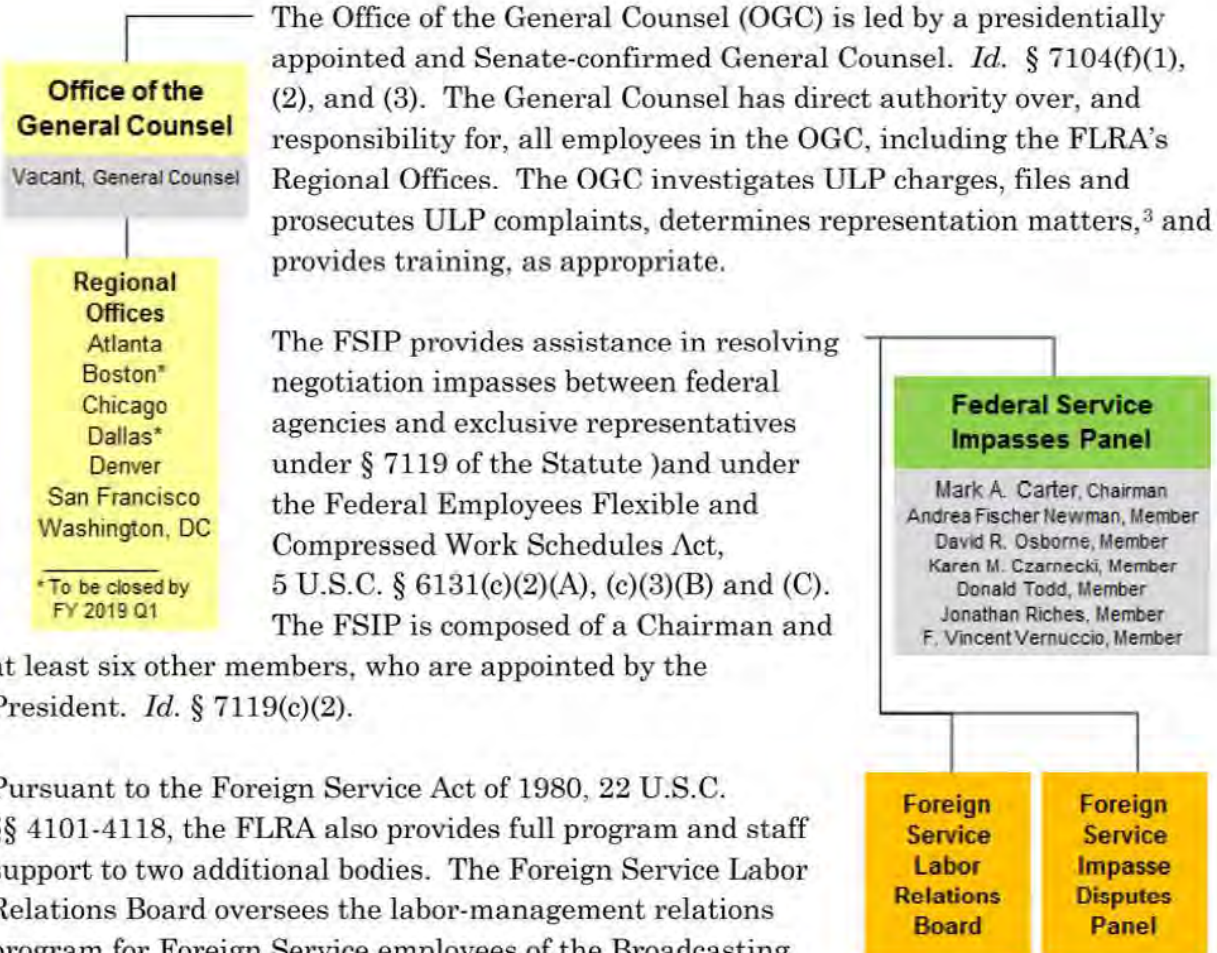
<sup>1</sup> The Authority has delegated to the Office of Administrative Law Judges its authority under § 7118 of the Statute to determine whether any person has engaged in or is engaging in a ULP. 5 U.S.C. § 7105(e)(2).





language, and disputes concerning bargaining-unit determinations.<sup>2</sup> Pursuant to § 7104(b) of the Statute, the President designates one Member to serve as Chairman of the FLRA. The Chairman is the Agency's chief executive and administrative officer.

Other programs and offices under the jurisdiction of the Chairman include the Office of the Solicitor, the Office of Case Intake and Publication, and the Alternative Dispute Resolution and Equal Employment Opportunity Programs. Standing as an independent entity within the Authority is the Office of Inspector General.



Pursuant to the Foreign Service Act of 1980, 22 U.S.C. §§ 4101-4118, the FLRA also provides full program and staff support to two additional bodies. The Foreign Service Labor Relations Board oversees the labor-management relations program for Foreign Service employees of the Broadcasting Board of Governors, the U.S. Agency for International Development, and the Departments of State, Agriculture, and Commerce. The Foreign Service Impasse Disputes Panel assists in resolving bargaining impasses arising in the course of collective bargaining between the exclusive representative and those same Foreign Service agencies.

<sup>2</sup> The Authority has delegated to the regional directors its authority to determine whether a group of employees is an appropriate unit; to conduct investigations and to provide for hearings; to determine whether a question of representation exists and to direct an election; and to supervise or conduct secret-ballot elections and certify the results thereof. 5 U.S.C. § 7105(e)(1).

<sup>3</sup> The Authority has delegated these duties to the regional directors. See n.2.





## Stakeholder Engagement

The FLRA enlisted the ideas, expertise, and assistance of both internal and external stakeholders when developing this strategic plan.

FLRA staff from every Agency component, every region of the country, and every level, actively participated in developing all substantive elements of this strategic plan. As a result, more than one-third of the FLRA workforce played an active role in developing and drafting the new mission statement, vision and value statements, strategic goals and objectives, strategies, and performance goals. When the new FLRA mission statement was unveiled to Agency staff, ninety percent (90%) responded in a survey saying, "Yes, the work I do on a daily basis helps achieve this mission." Strategic plan reviewers and editors were careful to preserve stakeholder input to the maximum extent possible.

The FLRA obtained input from more than 450 external stakeholders during the development of this strategic plan. A draft of the entire *Strategic Goals* section of this document was posted online for external stakeholders to review and assess. About three-quarters of the participating external stakeholders self-identified as federal employees and offered input that could be tabulated. Just over half of the federal-employee respondents were labor-organization representatives and about one-third were management representatives. Other stakeholder respondents included those who filed cases with the FLRA, former federal employees, former union representatives, and attorneys.

The FLRA also polled internal stakeholders concerning substantive portions of this document. Eighty-three percent (83%) of internal-stakeholder respondents affirmed that the strategic goals in this strategic plan are important or "essential" to the Agency's mission. An even higher percentage of internal-stakeholder respondents opined that the strategic objectives and strategies in this document will help to achieve those goals. More than ninety percent (90%) of external federal-employee respondents agreed.

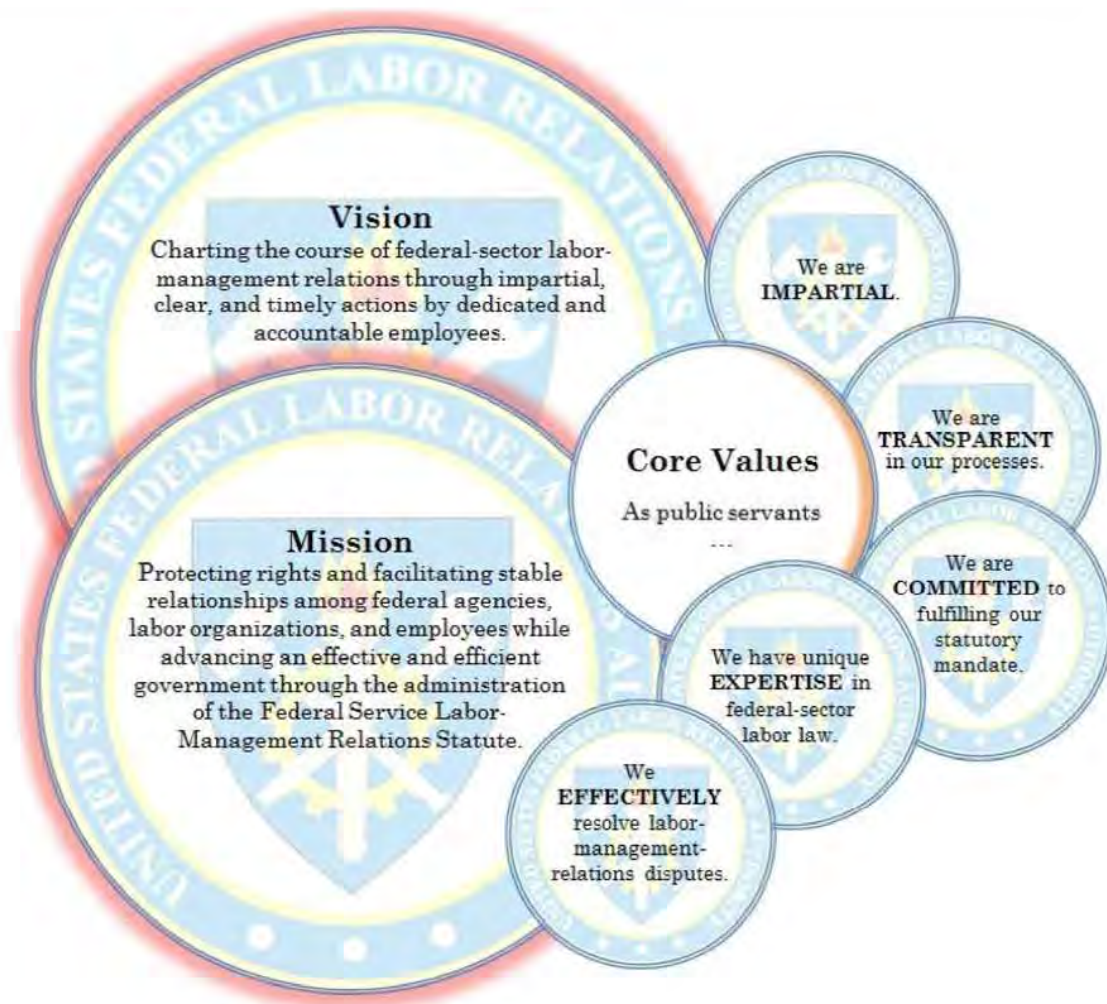
In addition to tabulated input, internal and external stakeholders offered more than 500 narrative comments after reviewing substantive portions of this document. In light of the entirety of stakeholder input, FLRA leadership concluded that this strategic plan will appropriately guide the Agency for the next several years. The broad range of stakeholder input also will help Agency staff to implement this plan in a way that helps stakeholders perceive that the FLRA is successfully achieving its mission.

Reviewers from the Office of Management and Budget suggested refinement in one area, which was adopted. The OMB reviewers otherwise favorably reviewed the FLRA's new strategic plan. The strategic plan document was finalized after submitting it to congressional reviewers for input and recommendations.





## Vision and Values



The FLRA's vision statement expresses our aspirations, our hopes, and what we believe we can do in ways that no other agency can. This vision drives us and guides us to achieve the goals and objectives designed to accomplish our mission.

### *Charting the course of federal-sector labor-management relations ...*

The FLRA's vision statement begins with the unique characteristic that distinguishes the FLRA from all other entities. Congress established the FLRA to administer the Statute and provide leadership in establishing policies and guidance relating to federal-sector labor-management relations. In this role, we strive to offer the very best leadership for all stakeholders in the outcome of our work.



*... through impartial, clear, and timely actions ...*



FLRA Chairman  
Colleen Duffy Kiko

The FLRA primarily offers such leadership and guidance through impartial, clear, and timely actions that are necessary and appropriate to effectively administer the provisions of the Statute. In federal-sector labor-management relations, this includes determining appropriate units for labor-organization representation, determining exclusive recognition of labor organizations, and resolving ULP allegations, exceptions to grievance-arbitration awards, issues relating to the duty to bargain in good faith, and negotiation impasses.

*... by dedicated and accountable employees.*

We are proud to be a committed and responsible workforce that consistently

acts in a manner that reflects the public interest's demand for the highest standards of employee performance and the efficient accomplishment of government operations.

The FLRA's core values contain lasting beliefs and shared ideals that help guide our actions. As public servants,

1. ***We are IMPARTIAL.***
2. ***We are COMMITTED to fulfilling our statutory mandate.***
3. ***We are TRANSPARENT in our processes.***
4. ***We have unique EXPERTISE in federal-sector labor law.***
5. ***We EFFECTIVELY resolve labor-management-relations disputes.***

These values help enable the FLRA vision statement and give deeper meaning to our goals and objectives.





## Strategic Goals

### FLRA Strategic Goals

Strategic Goal #1	Strategic Goal #2	Strategic Goal #3
We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated.	We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships.	We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the prevention and resolution of labor-relations disputes.

### Strategic Objectives

<p>a. Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.</p> <p>b. Ensure excellence in investigations and clearly articulated written work products by establishing and surpassing case-processing quality goals that build upon the Agency's longstanding traditions of impartiality and consistent determinations that are effectively enforced.</p>	<p>a. Maintain and expand educational resources on <a href="http://www.flra.gov">www.flra.gov</a>.</p> <p>b. Identify and offer targeted assistance to parties with significant labor-management challenges.</p> <p>c. Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.</p>	<p>a. Ensure that the FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.</p> <p>b. Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.</p> <p>c. Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.</p>
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**STRATEGIC GOAL 1: WE WILL ENSURE QUALITY, TIMELY, IMPARTIAL, AND CONSISTENT INVESTIGATIVE AND DECISION-MAKING PROCESSES WITH DETERMINATIONS THAT ARE CLEARLY ARTICULATED.**

This strategic goal concerns the core statutory activities of the FLRA. The Statute charges the FLRA with responsibility for protecting rights and facilitating stable labor-management relationships in the federal sector. To achieve that mandate, the FLRA must provide the federal labor-management community with quality, timely, impartial, and consistent investigations and determinations. Further, the FLRA must convey those determinations clearly and enforce them effectively. This goal must be achieved throughout all FLRA components to attain the level of success that should be expected of the Agency.

## Strategic Objectives

*a. Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.*

Parties often have time-sensitive interests at stake in matters pending before the FLRA. Delays in the resolution of those matters can impede the ability of the parties to fulfill their missions effectively and efficiently. So, to properly serve the federal labor-management community and accomplish the FLRA's own mission, the Agency must satisfy internal case-processing productivity goals that enable it to investigate and resolve cases in a timely fashion.

Parties are best served when they have a clear understanding of how long it might take the FLRA to process cases. The FLRA therefore will set its standards for timeliness in a way that gives parties a reasonable expectation as to the duration of the FLRA determination process. This requires the use of simple, straightforward metrics for understanding how long it might take to resolve a given matter before the Agency.





## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Update the methods to measure productivity and the metrics to measure overall timeliness of matters pending before the FLRA.
- 2) Regularly measure productivity and the overall status of case-processing timeliness in each FLRA component, and update strategies as necessary to address unforeseen or unplanned events.
- 3) Update realistic metrics and methods that the Agency uses to track the internal progress of matters before the FLRA to make them clear, relevant, meaningful, and widely known to the federal labor-management community.

## Contributing Components

- All FLRA components.

## Performance Goals

- 1) Use updated metrics to measure productivity and overall timeliness of matters pending before the FLRA.
- 2) Regularly measure productivity and overall case-processing timeliness in each FLRA component; modify strategies as necessary to address unforeseen or unplanned events.
- 3) Track and publically report progress of matters before the FLRA that the federal labor-management community considers clear, relevant, widely known, and meaningful.







***b. Ensure excellence in investigations and clearly articulated written work products by establishing and attempting to surpass case-processing quality goals that build upon the Agency's longstanding traditions of impartiality and consistent determinations that are clearly articulated.***

Excelling at the FLRA's core functions requires the Agency to perform thorough investigations and produce clearly articulated written products. From informal communications, to FLRA determinations, to information on the FLRA website, the FLRA's written work is one of the primary means by which the Agency communicates with parties and the federal labor-management community.

The FLRA's ability to achieve its mission depends on its ability to issue impartial and consistent determinations that are clearly articulated. Even *the appearance* of partiality can cause parties to lose trust in the FLRA's determinations, and ultimately, in the FLRA as an institution.

## **Strategies**

The FLRA will use the following strategies to achieve this objective:

- 1) Periodically update the metrics that the FLRA uses to assess quality of investigations and written work products.
- 2) Periodically update methods that the FLRA uses to maintain and improve the quality of FLRA investigations and written work products, including FLRA staff training and internal educational resources.
- 3) Periodically assess external perceptions of the FLRA's impartiality and factors that affect those perceptions; take action, if deemed appropriate, to ensure external perceptions of FLRA impartiality.

## **Contributing Components**

- All FLRA components.

## **Performance Goals**

- 1) Conduct high-quality investigations and produce high-quality written work products.





- 2) Implement effective methods to maintain and improve the quality of FLRA investigations and written work products, including FLRA staff training and internal educational resources.
- 3) Ensure external stakeholder confidence in the FLRA's impartiality.

**STRATEGIC GOAL 2: WE WILL DEVELOP AND PROVIDE TOOLS AND RESOURCES TO ENABLE THE PARTIES TO PREVENT OR MORE EFFECTIVELY AND EFFICIENTLY RESOLVE THEIR LABOR-RELATIONS DISPUTES AND IMPROVE THEIR LABOR-MANAGEMENT RELATIONSHIPS.**

The FLRA is specifically empowered and obligated to “provide leadership in establishing policies and guidance” related to matters arising under the Statute. 5 U.S.C. § 7105(a)(1). Educating parties regarding statutory obligations promotes the FLRA’s mission of

protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient government. The FLRA accomplishes this goal first through its written determinations and by providing parties with quality educational resources through



the FLRA’s website; by identifying, and offering targeted assistance to, parties with significant labor-management challenges; and by offering external training to federal agencies and labor organizations regarding their rights and obligations under the Statute.



## Strategic Objectives

### *a. Maintain and expand educational resources on [www.flra.gov](http://www.flra.gov).*

Offering high-quality educational resources through the FLRA website is a key component of promoting stability in the federal labor-management community. Parties who are better informed about rights and obligations under the Statute are less likely to pursue frivolous matters or defenses, and they are more likely to approach their labor-management relations in a manner that is consistent with the Statute.

In April 2016, the FLRA launched a totally redesigned website featuring all-new substantive content, a convenient training-registration tool, a visually engaging design, simplified global navigation, and improved usability and search functions. The Agency will continue to build on this achievement by exploring ways to supplement and enhance the educational resources on its website, such as expanding parties' access to statutory and other training, including the development of online training modules that replicate the in-person trainings that the FLRA currently provides. It will also include opportunities for parties to access live statutory training sessions on the FLRA website by utilizing technology and techniques that encourage interaction with remote participants.

## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Review and regularly update the educational resources currently posted on the FLRA website to ensure that they accurately reflect governing case law and procedures.
- 2) Develop online training modules that the parties can utilize in addition to live, in-person training, including resources that educate the parties on the labor-management aspects of situations commonly arising in government operations (e.g., agency reorganizations, office moves, furloughs).
- 3) Develop, post, and maintain current case digests on the FLRA website that briefly summarize recent Authority decisions.



FLRA Member  
Ernest DuBester





## Contributing Components

- All FLRA components.

## Performance Goals

- 1) Routinely review and update educational resources on the FLRA website.
- 2) Develop a growing library of online training modules on the FLRA website.
- 3) Develop and maintain case digests of new Authority decisions on the FLRA website.

### ***b. Identify and offer targeted assistance to parties with significant labor-management challenges.***

In situations where parties experience labor-management challenges, targeted assistance can promote stable labor-management relationships by educating the parties regarding their statutory rights and obligations. It can also promote effective and efficient government by assisting parties in addressing their disputes without necessarily resorting to formal filings.

Targeted assistance can take many forms, including offering training to parties on particular topics that have given rise to frequent ULP charges, negotiability disputes, or arbitration exceptions. Other types of assistance might be most appropriate for parties experiencing broader labor-management challenges. For parties involved in complex representational matters, targeted assistance can include conducting conferences with the parties to assist them in identifying and, if feasible, resolving relevant issues.





## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Develop, implement, and assess methods to identify and evaluate parties with significant labor-management challenges that could benefit most from an offer of targeted assistance.
- 2) Identify other agencies, such as the Federal Mediation and Conciliation Service, to which the FLRA may refer the parties for assistance, when appropriate.
- 3) On a cross-component basis, and resources permitting, develop targeted-assistance programs and related materials; offer them to parties experiencing significant labor-management challenges to help protect rights and facilitate stable labor-management relationships; and assess the effectiveness of these programs.

## Contributing Components

- All FLRA components.

## Performance Goals

- 1) Identify and evaluate parties with significant labor-management challenges.
- 2) Refer appropriate parties to suitable resources.
- 3) Implement highly effective targeted assistance programs and associated materials.



### *c. Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.*

Agency components have traditionally provided training on statutory principles governing ULPs, representational issues, negotiability disputes, and arbitration exceptions. Providing such external training to federal agencies and labor organizations regarding their rights and obligations under the Statute directly promotes the FLRA's mission of protecting rights and facilitating stable labor-management relationships while advancing an effective





and efficient government. For this reason, it is essential that the FLRA maintain and, where possible, expand these external training programs.

## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Continue to develop and deliver high-quality in-person training opportunities, including basic and advanced statutory training, and training on unit determination and representational matters, negotiation impasses, federal-sector grievance-arbitration appeals, and negotiability matters.
- 2) Develop, maintain, and improve additional ways to offer external training, including real-time participation from remote locations, recorded modules available through the FLRA website, videos hosted on remote sites like YouTube, podcasts that users can download, recordings of segments of in-person training, audio recordings, and other participant-friendly best practices as they become available.
- 3) Develop, deliver, and assess the effectiveness of training regarding procedures for filing and processing FLRA cases.

## Contributing Components

- All FLRA components.

## Performance Goals

- 1) Exceed an annual target number of highly rated in-person training programs for a target number of participants concerning the full range of statutory matters.
- 2) Find additional ways to deliver real-time and pre-recorded external trainings that have been successfully developed and implemented utilizing appropriate technology and participant-friendly best practices.
- 3) Exceed an annual target number of highly rated training programs for a target number of participants regarding procedures for filing and processing FLRA cases.





**STRATEGIC GOAL 3: WE WILL MANAGE OUR RESOURCES EFFECTIVELY AND EFFICIENTLY, AND RECOGNIZE THAT OUR DEDICATED WORKFORCE IS CRITICAL TO THE RESOLUTION OF LABOR-RELATIONS DISPUTES.**

We honor the trust that the public has placed in us to use Agency resources wisely on behalf of the American taxpayer. Recognizing that trust, the FLRA has always focused its resources on carrying out its mission. We will continue to do so.

The core of the FLRA's mission is to resolve labor-relations disputes. The FLRA will continue to achieve that goal by employing committed, experienced professionals.



The FLRA developed a cross-component working group to meet the goals articulated in Executive Order No.

13781 (March 13, 2017), *Comprehensive Plan for Reorganizing the Executive Branch*, and Office of Management and Budget (OMB) Memorandum M-17-22 (April 12, 2017), *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*. Guided by internal and external input, this working group offered FLRA leadership a set of recommendations to improve the efficiency, effectiveness, and accountability of Agency operations. The FLRA expects to maximize its resources by reducing travel, training, and mail costs through the increased use of teleconferencing, utilization of in-house and interagency training, and implementation of fully electronic case files.

The FLRA will continue to explore ways to manage its workforce effectively and efficiently. A key component of that commitment is to continue developing our IT systems, with the goal of enabling FLRA employees to spend more time on mission-critical, substantive work. The FLRA will also reexamine its performance-management systems to ensure that they align with the goals in this plan, that individual employee standards reflect organizational goals, and that the Agency appropriately recognizes employee achievements in support of these goals. Finally, the FLRA will continue to encourage employee growth, development, and innovation.





## Strategic Objectives

### *a. Ensure that the FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.*

At the foundation of this strategic plan is the FLRA's renewed commitment to developing the most effective ways to evaluate Agency performance, as well as the contributions of the Agency's components and individual employees. To do this, employee performance-management targets will be adapted to support Agency goals. This will help ensure that the evaluation of FLRA employees will include consideration of how well they assist the Agency to achieve its strategic and performance goals.

## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Continually evaluate FLRA performance-management systems to achieve, and recognize contributions towards, the Agency's strategic goals.
- 2) Provide in-house training to help the FLRA workforce gain a better understanding of the connections between individual employee performance goals and the Agency's strategic goals and objectives.
- 3) Encourage and solicit employee innovation to achieve the Agency's strategic goals.



## Contributing Components

- All FLRA components.

## Performance Goals

- 1) FLRA employees perceive that the Agency's performance-management systems, and their individual performance plans, directly align with achieving this strategic plan.
- 2) FLRA employees have a clear understanding of how their individual achievement contributes to achievement of Agency priorities and successful implementation of FLRA strategic goals.



- 3) FLRA employees perceive that their performance recognition and rewards are also directly linked to their contribution to the successful achievement of the FLRA's strategic goals.

***b. Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.***

The FLRA's IT systems have provided, and will continue to provide, a key means by which the FLRA will more effectively and efficiently deliver quality services and increase internal efficiencies. For example, the Agency has connected all FLRA offices in ways that improve internal communication, and FLRA staff works more efficiently by using a cloud-based document management system that allows for simplified document management and internal collaboration.

The Agency also recently launched a new and improved version of its eFiling system that provides a more intuitive, user-friendly customer experience. This improved eFiling experience allows the parties to submit ULP, representation, arbitration, and negotiability filings in an electronic format and easily access FLRA services, which enables FLRA employees to take timely and quality actions. The Agency is currently using the same software and agile methodology to develop a more user-friendly electronic case-management system. The FLRA will integrate these three systems—document management, eFiling, and case management—to fully implement electronic case file capability throughout the Agency.



FSIP Chairman  
Mark A. Carter

Thereafter, as resources permit, the FLRA will continue to enhance and leverage these technological capabilities. For example, the logical next step after fully implementing electronic case files is to encourage the widest uses of eFiling and to serve FLRA-generated case documents on the parties electronically—saving time, human-capital resources, and postage costs.

## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Improve and enhance the FLRA electronic case-management system and integrate it with the electronic document management system and eFiling system in order to





fully implement electronic case file capability throughout the Agency. Thereafter, encourage the widest use of eFiling and electronically serve FLRA-generated case documents on the parties.

- 2) Continue to effectively implement and manage other IT systems to help the FLRA more effectively and efficiently deliver services.
- 3) Implement methodologies to determine how to improve the usefulness of technological enhancements and their positive impact on the internal and external customer experience.

### Contributing Components

- All FLRA components.

### Performance Goals

- 1) Implement a new and improved FLRA electronic case-management system. Integrate the case-management system with the FLRA document management and eFiling systems in order to fully implement electronic case file capability throughout the Agency.
- 2) FLRA employees and parties understand how to make the most effective use of the FLRA's electronic systems.
- 3) Enhance the positive impact of technological advancements on the customer experience.





*c. Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.*

The FLRA's charge to uphold and administer the Statute relies on its employees. Accordingly, the FLRA's success relies on the expertise and engagement of its workforce. A key component of attracting and retaining an effective workforce is creating a positive work environment in which employees see themselves as stakeholders and innovators. The FLRA will continue to assess the skills and training needs of its workforce, and it will seek new, cost-effective ways to cultivate employee development and commitment. The FLRA will provide opportunities for experienced employees to share their institutional knowledge by providing internal training and through other means. The FLRA's continued focus on human-capital development will help ensure continued mission accomplishment and leadership of the federal-sector labor-management relations program.



## Strategies

The FLRA will use the following strategies to achieve this objective:

- 1) Recruit and retain a diverse and respected work force with federal-sector labor-management expertise; periodically review succession planning initiatives; develop nontraditional resources and other appropriate means for employee education and development.
- 2) Conduct internal employee surveys to monitor and address employee morale and engagement issues to continue the FLRA's culture of respectful problem-solving with its workforce.
- 3) Use technology and telework options where appropriate to promote employee efficiency and a healthy work-life balance, which in turn enables our workforce to better serve the public.

## Contributing Components

- All FLRA components.





## Performance Goals

- 1) Internal and external survey respondents perceive that diverse and respected FLRA employees demonstrate expertise in federal-sector labor-management relations; minimal gaps exist in succession plans; and the Agency develops nontraditional resources for employee education and development.
- 2) The FLRA workforce expresses a stable and improving level of overall job satisfaction, as well as satisfaction with the manner in which internal problem-solving occurs.
- 3) FLRA managers and employees perceive that the Agency appropriately uses telework and technology to promote employee efficiency and a healthy work-life balance.





## Major Management Priorities and Challenges

This strategic plan sets forth a long-term vision for modernizing the FLRA in key areas that will improve the Agency's ability to deliver mission outcomes, provide excellent service to the federal labor-management community, and effectively steward taxpayer dollars on behalf of the American people.

The FLRA will continue to focus on improving the Agency's effectiveness, efficiency, and accountability. The Agency also will continue to focus on transparency and the innovative use of IT and data-driven analysis, to maintain high levels of mission performance and employee engagement.



FLRA Member  
James T. Abbott

While the FLRA is committed to increasing government-wide effectiveness and efficiency, and improving service to the federal workforce, there are challenges outside of the Agency's control that could pose a risk to overall mission delivery. These challenges include budget uncertainty and Presidential appointee vacancies.

For the past several years, there has been budget uncertainty throughout the Federal Government. This uncertain fiscal environment reduces the FLRA's flexibility in making resource decisions, such as hiring staff to fill vacancies, or investing in modernization of IT capabilities that will allow for more efficient case processing.

For quite some time, the FLRA has not had a full complement of Presidential appointees. This decreases the Agency's ability to process cases, to issue decisions, and to achieve its goals and measures.

The FLRA continues to make substantial progress in addressing and resolving challenges identified by its Office of the Inspector General (OIG). Specifically, over the last two fiscal years, the Agency has received clean audits for both its Privacy Program and Federal Information Security Management Act (FISMA) compliance, while reducing existing open recommendations in both from thirteen down to one. The FLRA has also been successful in closing longstanding management challenges identified by the Inspector General. Detailed information about progress towards addressing OIG findings is reported annually in the Agency's Performance and Accountability Report (PAR).





## Evidence Building

To develop this strategic plan, the FLRA used information from a wide range of sources, including a traditional environmental scan, Agency performance data, and OPM's Employee Viewpoint Survey. The FLRA obtains valuable information about the effectiveness of its program through its mission activities, such as trainings, stakeholder engagement, and responses to public inquiries.

The FLRA routinely collects evidence-based performance data to support decision making and to drive innovative approaches within the Agency. Using real-time data, the FLRA measures its performance against the FLRA strategic plan and develops strategies for effectively achieving the FLRA's mission and goals. Throughout the year, Agency leadership shares performance metrics and holds data-driven management meetings where meaningful discussions occur around program performance, areas for improvement, and best practices across components. Also, to continuously improve internal service delivery, the FLRA frequently evaluates its administrative services (IT, human resources, and financial management), using internal survey tools, where appropriate.

To the extent possible, the agency will embed data collection, analysis, and utilization within the design, management, and implementation of Agency programs and services so as to minimize new burdens on limited Agency resources.





## Appendix (Abbreviations)

ADR	Alternative Dispute Resolution
ARB	Arbitration*
eFiling	Electronic-case-filing system
FLRA	Federal Labor Relations Authority
FSIP	Federal Service Impasses Panel, a component of the FLRA comprising seven part-time, presidentially appointed Members
Impasse	Negotiation Impasse*
IT	Information Technology
NEG	Negotiability*
OALJ	Office of Administrative Law Judges
OGC	Office of the General Counsel, a component of the FLRA led by a presidentially appointed, Senate-confirmed General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PAR	Performance and Accountability Report
REP	Representation*
The Agency	Federal Labor Relations Authority
The Authority	A component of the FLRA comprising three presidentially appointed, Senate-confirmed Members
The Statute	Federal Service Labor-Management Relations Statute
ULP	Unfair Labor Practice*

\*A specific type of case filed with the FLRA.

**FEDERAL LABOR RELATIONS AUTHORITY**  
**2020 PERFORMANCE MEASURES**



**SMART REPORT**



<b>Case Processing Performance – Status as of 09-30-2020</b>	<b>Avg. Age of Cases Closed (Historical)</b>	<b>Avg. Age of Cases Closed</b>	<b>Number of Cases</b>	<b>Percent</b>	<b>Score</b>
<b>The AUTHORITY will resolve arbitration exceptions, negotiability petitions, ULP complaints, and representation petitions in a productive and timely manner.</b>					
<i>1a-1 The Authority will reduce by 5% the average age of arbitration exceptions that it decides or otherwise resolves. [FY20 goal of 248 days].</i>	261 days	317 days			<b>FAIL</b>
<i>1a-2 The Authority will decide or otherwise resolve 75% of arbitration cases within 210 days of the filing of exceptions.</i>			34	32%	<b>FAIL</b>
<i>1a-3 The Authority will decide or otherwise resolve 90% of arbitration cases within 365 days of the filing of exceptions.</i>			65	61%	<b>FAIL</b>
<i>Total ARB Cases Closed:</i>			107		
<i>1a-4 The Authority will reduce by 5% the average age of negotiability cases that it decides or otherwise resolves. [FY20 goal of 161 days].</i>	169 days	176 days			<b>FAIL</b>
<i>1a-5 The Authority will decide or otherwise resolve 75% of negotiability petitions within 300 days of the filing of a petition for review.</i>			25	78.13%	<b>PASS</b>
<i>1a-6 The Authority will decide or otherwise resolve 75% of negotiability petitions within 365 days of the filing of a petition for review.</i>			27	84.38%	<b>PASS</b>
<i>Total NEG Cases Closed</i>			32		
<i>1a-7 The OALJ will reduce by 5% the average age of ULP complaints that it decides or otherwise resolves. [FY20 goal of 124 days].</i>	130 days	days			
<i>1a-8 The OALJ will decide or otherwise resolve 80% of ULP complaints within 180 days after the General Counsel issues a complaint.</i>			0		
<i>1a-9 The OALJ will decide or otherwise resolve 95% of ULP complaints within 365 days after the General Counsel issues a complaint.</i>			0		
<i>Total OALJ Cases Closed:</i>			0		



<b>Case Processing Performance – Status as of 09-30-2020</b>	<b>Avg. Age of Cases Closed (Historical)</b>	<b>Avg. Age of Cases Closed</b>	<b>Number of Cases</b>	<b>Percent</b>	<b>Score</b>
<b>The AUTHORITY will resolve arbitration exceptions, negotiability petitions, ULP complaints, and representation petitions in a productive and timely manner.</b>					
<i>1a-10 The Authority will reduce by 5% the average age of ULP cases that it decides or otherwise resolves. [FY20 goal of 226 days].</i>	238 days	422 days			<b>FAIL</b>
<i>1a-11 The Authority will decide or otherwise resolve 75% of ULP cases within 300 days of issuance of an OALJ decision.</i>			1	25%	<b>FAIL</b>
<i>1a-12 The Authority will decide or otherwise resolve 90% of ULP cases within 365 days of issuance of an OALJ decision.</i>			1	25%	<b>FAIL</b>
<b>Total ULP Cases Closed</b>			4		
<i>1a-13 The Authority will reduce by 5% the average age of representation cases that it decides or otherwise resolves. [FY20 goal of 184 days].</i>	194 days	210 days			<b>FAIL</b>
<i>1a-14 The Authority will decide whether to grant review in 100% of representation cases within 60 days of the filing of an application for review.</i>			16	100%	<b>PASS</b>
<i>1a-15 The Authority will decide or otherwise resolve 75% of representation cases within 210 days of the filing of an application for review.</i>			14	88%	<b>PASS</b>
<i>1a-16 The Authority will decide or otherwise resolve 100% of representation cases within 365 days of the filing of an application for review.</i>			14	88%	<b>FAIL</b>
<b>Total REP Cases Closed</b>			16		

<b>Case Processing Performance – Status as of 09-30-2020</b>	<b>Avg. Age of Cases Closed (Historical)</b>	<b>Avg. Age of Cases Closed (Current FY)</b>	<b>Number of Cases</b>	<b>Percent</b>	<b>Score</b>
<b>The OGC will resolve unfair labor practice charges and representation cases in a productive and timely manner.</b>					
<b>1a-17</b> The OGC will reduce by <b>5%</b> the average age of ULP charges that it resolves. [FY20 goal of 99 days].	104	61 days			PASS
<b>1a-18</b> The OGC will resolve <b>70%</b> of ULP charges within <b>120</b> days of filing of the charge.			1,692	93.58%	PASS
<b>1a-19</b> The OGC will resolve <b>95%</b> of ULP charges within <b>240</b> days of filing of the charge.			1,806	99.89%	PASS
<b>Total ULP Cases Closed:</b>			1,808		
<b>1a-20</b> The General Counsel will reduce by <b>5%</b> the average age of ULP appeals that it decides or otherwise resolves. [FY20 goal of 45 days].	47	days			N/A
<b>1a-21</b> The General Counsel will resolve <b>95%</b> of appeals of Regional Directors' dismissals of ULP charges within <b>60</b> days of the date filed.			0		
<b>1a-22</b> The General Counsel will resolve <b>100%</b> of appeals of Regional Directors' dismissals of ULP charges within <b>120</b> days of the date filed.			0		
<b>Total Appeals Resolved:</b>			0		
<b>1a-23</b> The OGC will reduce by <b>5%</b> the average age of representation cases resolved through withdrawal, election, or issuance of a Decision and Order. [FY20 goal of 114 days].	120	91 days			PASS
<b>1a-24</b> The OGC will resolve <b>70%</b> of representation cases through withdrawal, election, or issuance of a Decision and Order within <b>120</b> days of filing a petition.			140	80.00%	PASS
<b>1a-25</b> The OGC will resolve <b>95%</b> of representation cases through withdrawal, election, or issuance of a Decision and Order within <b>365</b> days of filing a petition.			175	100%	PASS
<b>Total REP Cases Closed</b>			175		

<b>Case Processing Performance – Status as of 09-30-2020</b>	<b>Avg. Age of Cases Closed (Historical)</b>	<b>Avg. Age of Cases Closed (Current FY)</b>	<b>Number of Cases</b>	<b>Percent</b>	<b>Score</b>
<b>The FSIP will resolve bargaining-impasse cases in a productive and timely manner.</b>					
<b>1a-26</b> The FSIP will maintain the average age of bargaining-impasse cases in which it declines jurisdiction.	89	70 days	23		PASS
<b>1a-27</b> When the FSIP decline jurisdiction in bargaining-impasse cases, <b>90%</b> of the time it will do so within <b>140</b> days of the date are filed.			23	100%	PASS
<b>1a-28</b> When the FSIP resolves bargaining-impasse cases through settlement, 80% of the time it will do so within 160 days of the date filed			11	84.62%	PASS
<b>1a-29</b> The FSIP will maintain the average age of bargaining-impasse cases that it resolves through final action.	154	162 days	40		FAIL
<b>1a-30</b> When the FSIP resolves bargaining-impasse cases through final action, <b>80%</b> of the time it will do so within <b>200</b> days of the date filed.			35	87.5%	PASS

<b>FSIP Internal – Status as of 09-30-2020</b>	<b>Avg. Age of Cases Closed (Historical)</b>	<b>Avg. Age of Cases Closed (Current FY)</b>	<b>Number of Cases</b>	<b>Percent</b>	<b>Score</b>
<b>The FSIP will resolve bargaining-impasse cases in a productive and timely manner.</b>					
<b>1a-26</b> The FSIP will maintain the average age of bargaining-impasse cases in which it declines jurisdiction.	89	70 days	23		PASS
<b>1a-27</b> When the FSIP decline jurisdiction in bargaining-impasse cases, <b>90%</b> of the time it will do so within <b>140</b> days of the date are filed.			23	100%	PASS
<b>1a-29</b> The FSIP will maintain the average age of bargaining-impasse cases that it resolves through final action.	154	162 days	40		FAIL
<b>1a-30</b> When the FSIP resolves bargaining-impasse cases through final action, <b>80%</b> of the time it will do so within <b>200</b> days of the date filed.			35	87.5%	PASS
<b>Total FSIP Cases Closed by Panel Action:</b>			63		
<b>1a-31</b> The FSIP will maintain the average age of bargaining-impasse cases that are resolved through settlement. [FY20 goal of 120 days]	120	72 days	13		PASS
<b>1a-28</b> When the FSIP resolves bargaining-impasse cases through settlement, 80% of the time it will do so within 160 days of the date filed			11	84.62%	PASS
<b>1a-32</b> Cases that are voluntarily withdrawn by the parties.			20		
<b>Total FSIP Cases Closed by Party Action:</b>			33		
<b>Total FSIP Cases Closed:</b>			96		



Strategic Goal 2: We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor relations disputes and improve their labor management relationships.

*Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.*

External statutory training	Status as of 09-30-2020
2c-1 The FLRA will conduct <b>50</b> in-person statutory training programs.	20
2c-2 The FLRA will conduct in-person statutory training for <b>2500</b> participants.	548
2c-3 <b>80%</b> of participant responses will rate the statutory training as effective or highly effective.	97%

Strategic Goal 3: We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the resolution of labor relations disputes.

*Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.*

Expand the FLRA's technological capabilities		Authority	OGC	FSIP	OALJ	Overall
3b-1a 50% of cases are eFiled Agency-wide.	Current FY%	88.79%	52.01%	75.56%		56.30%
3b-1b 10% increase in eFiling in each component – the OGC, the Authority, and the FSIP.	Previous FY%	79.46%	42.75%	77.92%		46.21%
	% Increase	9.33%	9.26%	-2.36%		10.09%

## Authority Case Status

		OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY20	FY19
A R B	Pending	122	133	131	138	137	146	145	143	142	147	150	148		
	Received	16	8	12	9	16	11	13	10	19	9	3	5	131	136
	Closed	5	10	5	10	7	12	15	11	14	6	5	7	107	87
	Pending (EOM)	133	131	138	137	146	145	143	142	147	150	148	146		
N E G	Pending	17	18	22	29	32	35	36	39	41	39	62	62		
	Received	3	7	8	6	7	2	5	5	2	26	4	5	80	30
	Closed	2	3	1	3	4	1	2	3	4	3	4	2	32	36
	Pending (EOM)	18	22	29	32	35	36	39	41	39	62	62	65		
U L P	Pending	6	6	5	5	4	4	4	4	5	4	3	3		
	Received	0	0	0	0	0	0	0	1	0	0	0	0	1	4
	Closed	0	1	0	1	0	0	0	0	1	1	0	0	4	8
	Pending (EOM)	6	5	5	4	4	4	4	5	4	3	3	3		
R E P	Pending	2	15	14	3	3	4	3	3	3	4	4	4		
	Received	13	0	0	0	1	1	0	0	1	0	0	1	17	5
	Closed	0	1	11	0	0	2	0	0	0	0	0	2	16	8
	Pending (EOM)	15	14	3	3	4	3	3	3	4	4	4	3		

## Authority Cases Closed By Type

		OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY20	FY19	Projected EOY
ARB	Procedural	0	2	2	2	1	6	0	2	1	1	0	0	17	15	17
	Merits	5	8	3	8	6	6	15	9	13	5	5	7	90	72	90
	Total	5	10	5	10	7	12	15	11	14	6	5	7	107	87	107
NEG	Procedural	2	1	0	3	2	1	1	3	2	1	3	0	19	30	19
	Merits	0	2	1	0	2	0	1	0	2	2	1	2	13	6	13
	Total	2	3	1	3	4	1	2	3	4	3	4	2	32	36	32
ULP	Procedural	0	0	0	0	0	0	0	0	0	1	0	0	1	1	1
	Merits	0	1	0	1	0	0	0	0	1	0	0	0	3	7	3
	Total	0	1	0	1	0	0	0	0	1	1	0	0	4	8	4
REP	Procedural	0	1	0	0	0	0	0	0	0	0	0	0	1	1	1
	Merits	0	0	11	0	0	2	0	0	0	0	0	2	15	7	15
	Total	0	1	11	0	0	2	0	0	0	0	0	2	16	8	16
MISC	Procedural	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Merits	0	1	5	3	1	0	0	1	0	0	3	1	15	0	15
	Total	0	1	5	3	1	0	0	1	0	0	3	1	15	0	15
Total:	Procedural	2	4	2	5	3	7	1	5	3	3	3	0	38	47	38
	Merits	5	12	20	12	9	8	16	10	16	7	9	12	136	92	136
	Total	7	16	22	17	12	15	17	15	19	10	12	12	174	139	174

## Authority Pending Case Inventory By Age & Type

Type/Age(Days)	0-90	91-180	181-270	271-360	360+	Total	Average Age
ARB	16	38	22	21	45	142	295
NEG	11	26	5	17	4	63	188
ULP	0	0	0	0	3	3	699
REP	1	1	0	1	0	3	168
MISC	0	0	0	0	0	0	0
Total:	28	65	27	39	52	211	267
Percentage %	13%	31%	13%	18%	25%	100%	



## Office of the General Counsel

### ULP Case Statistics

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY2020	FY2019
Pending	783	781	735	738	754	758	770	760	782	787	820	860		
Received	147	122	143	184	155	156	142	168	189	178	157	187	1,928	2,235
Closed	149	168	140	168	151	144	152	146	184	145	117	144	1,808	2134
Pending (EOM)	781	735	738	754	758	770	760	782	787	820	860	903		

### REP Case Statistics

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY2020	FY2019
Pending	49	50	45	48	39	40	44	38	34	36	35	38		
Received	16	12	17	11	14	20	24	7	13	11	9	10	164	249
Closed	15	17	14	20	13	16	30	11	11	12	6	10	175	266
Pending (EOM)	50	45	48	39	40	44	38	34	36	35	38	38		

### Regional ULP Case Processing (Month Ending 9/30/2020)

	Agent	Pending	Intake	Transfers		Closed	Total Pending Cases
				In (+)	Out (-)		
Atlanta	8	181	55	2	0	41	197
Chicago	4	134	22	1	0	16	141
Denver	6	194	33	0	0	29	198
San Francisco	5	163	46	0	1	24	184
Washington	5	188	31	0	2	34	183
Totals:	28	860	187	3	3	144	903

### Regional REP Case Processing (Month Ending 9/30/2020)

	Agent	Pending	Intake	Transfers		Closed	Total Pending Cases
				In (+)	Out (-)		
Atlanta	8	10	0	0	0	4	6
Chicago	4	7	2	1	0	1	9
Denver	6	8	0	0	0	2	6
San Francisco	5	4	1	0	0	0	5
Washington	5	9	7	0	1	3	12
Totals:	28	38	10	1	1	10	38

## Appeals Cases

### Filings By Region

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY2020	FY2019
Pending	302	311	318	324	331	337	355	365	375	387	393	402		
Received	9	9	6	8	6	18	10	10	12	6	9	4	107	122
Denied	0	0	0	1	0	0	0	0	0	0	0	0	1	0
Withdrawn	0	2	0	0	0	0	0	0	0	0	0	0	2	0
Remand	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pending (EOM)	311	318	324	331	337	355	365	375	387	393	402	406		

## Federal Services Impasses Panel Case Statistics

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY2019	FY2020
Pending	28	30	21	26	21	23	25	20	21	21	22	23		
Received	9	8	7	3	8	6	5	9	9	9	6	11	88	79
Closed	7	17	2	8	6	4	10	8	9	8	5	11	83	84
Pending (EOM)	30	21	26	21	23	25	20	21	21	22	23	23		

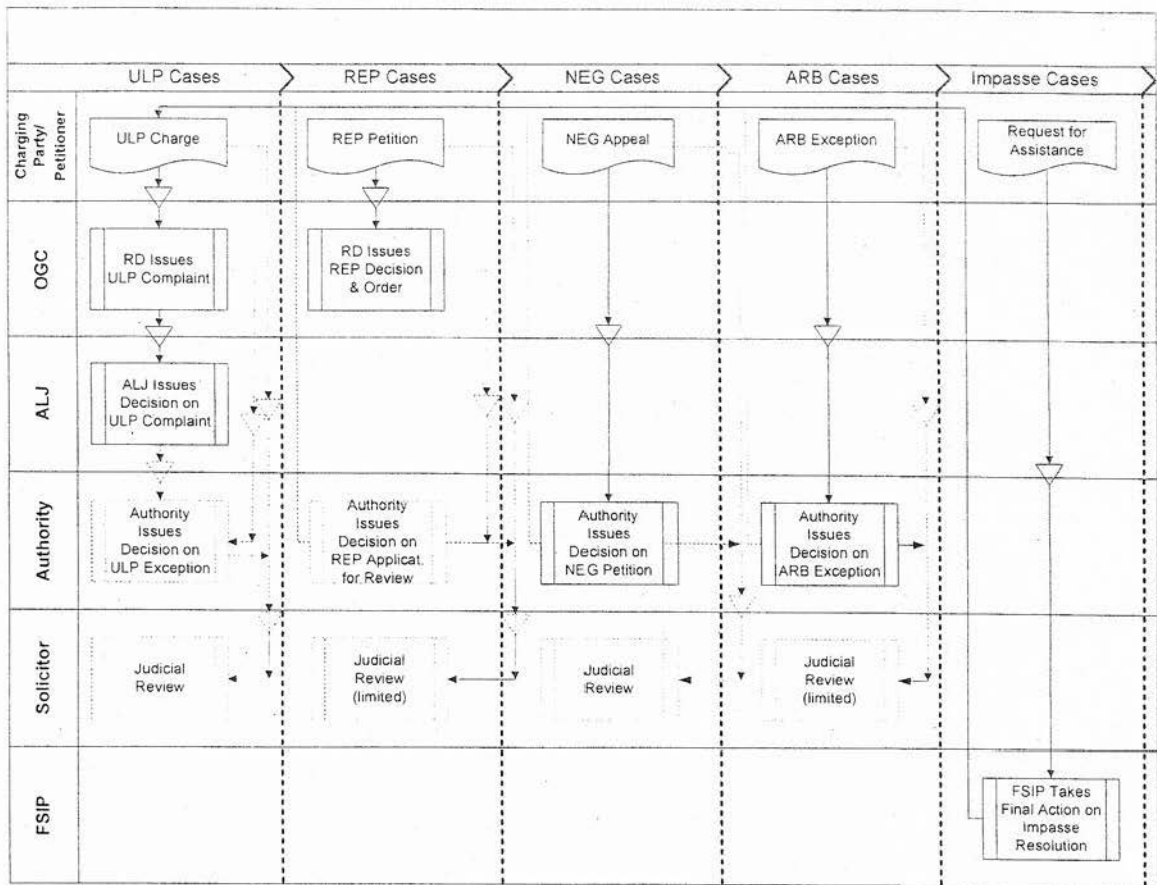


## Office of the Administrative Law Judges Case Load and Performance Goals

		OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY20
Carryover		0	0	0	0	0	0	0	0	0	0	0	0	0
Cases Received		0	0	0	0	0	0	0	0	0	0	0	0	0
Dispositions	Resolved	0	0	0	0	0	0	0	0	0	0	0	0	0
	Decisions	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0	0	0	0	0	0	0	0	0	0	0	0	0
Pending (EOM)		0	0	0	0	0	0	0	0	0	0	0	0	0
Hearings Held		0	0	0	0	0	0	0	0	0	0	0	0	0

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# FLRA Case Flow Chart By Case Type



**FEDERAL LABOR RELATIONS AUTHORITY**  
**HQ TELEPHONE LIST**  
**Main Number (202) 218-7770**

<b><u>FLRA CHAIRMAN</u></b>		Kodish, Douglas	7755	Mister, Greg - Director	7945
Kiko, Colleen Duffy	7900			Stowe, Kesha	7783
		<b><u>EEO Director</u></b>		Sanchez, Kristi (Contractor)	7783
<b><u>OFFICE OF THE CHAIRMAN</u></b>		Sloop, Emily	7924		
Kiko, Colleen Duffy – Chairman	7900	<b><u>OFFICE OF THE SOLICITOR</u></b>	<b>7999</b>	<b>Administrative Services</b>	<b>7750</b>
Molpus, Anna – CC	7742	Peters, Noah - Sol	7908	Storr, Xavier – Director	7764
Duncan, Murray - DCC	7911	Osborne, Rebecca, DS	7986	Gould, Daryll	7793
Morse, Roger	7748	Wilson, Sherry	7928	Downing, Eric	7767
O'Connor, Linda	7743	Blackadar, Sarah	7906	Polite, LaTonya (Contractor)	7765
Keller, Elvin	7746			<b>Mailroom</b>	<b>7781</b>
Brown, Joshua	7939	<b><u>OFFICE OF THE GENERAL</u></b>		<b>Conference Room</b>	
Nguyen, Pauline	7995	<b><u>COUNSEL</u></b>		Agenda Room	7001
Hane, Forrest	7994	Vacant – GC	7910	Chairman's Conference Rm	7784
Archer-Beck, Sarah	7749	Dye, Charlotte – Deputy GC	7741	FSIP Conference Room	7003
Barnwell, Remy	7904	Ali, Ameeran	7759	2 <sup>nd</sup> Floor near CIP and WRO	7000
		Smith, Cabrina	7914	3 <sup>rd</sup> Floor Conference Room	7004
<b>Legislative Affairs &amp; Program Planning</b>		<b><u>WASHINGTON REGIONAL OFFICE</u></b>		3 <sup>rd</sup> Floor near IRMD	7907
Hogan, Aloysius – Director	7927	<b>Main # 202-357-6029</b>		<b>Fax Machines</b>	
Prag, Eric	7922	Bartlett, Jessica – RD	6017	3rd Floor	482-6636
		Guerrin, Douglas	6027	OC	482-6778
<b>Case Intake &amp; Publication</b>	<b>7740</b>	Kirsner, Bill	6023	ALJ	482-6629
Sloop, Emily – Chief	7924	Carr, Chandra	6011	CIP	482-6657
Stevenson, Belinda	7780	Drummond, Mauricio	6028	FSIP	482-6674
Combs, Joe	7902	Kurfis, Sarah	6021	HRD	343-1006
Racowsky, Karen	7956	Vacant	6016	OGC	482-6608
Miller, Chania	7791	Wiseman, Liz	6014	OIG	208-4535
		Potter, Titus	6022	SOL	343-1007
<b><u>OFFICE OF THE MEMBER</u></b>		Garay, Flor	6019	WRO	482-6724
Abbott, James – Member	7930	<b><u>FEDERAL SERVICE IMPASSES</u></b>		<b>Guard's Station</b>	<b>202-682-0200</b>
Baker Wehagen, Stefanie - CC	7786	<b><u>PANEL</u></b>		<b>Regional Directors</b>	
Lee, Tiffany – DCC	7788	Carter, Mark – Chairman	7745	Atl, Rick Jones	5018
Williams Bonilla, Martha	7799	Moseley, Kimberly – ExD	7991	Chi, Sandra LeBold	4015
Traylor, Rebecca	7941	Duran, Dan	7753	Den, Tim Sullivan	1012
Garcia, George	7768	Weinstein, Merritt	7747	SF, John Pannozzo	2021
Compagnone, Joseph	7987	Saddler, Rosetta	7754		
Wallace, Michael	7776			<b>Regional Administrative Officers</b>	
Youchidje, Nima (Intern)	7787	<b><u>OFFICE OF THE EXECUTIVE</u></b>		Atl, Melissa Hardy	5011
		<b><u>DIRECTOR</u></b>		Chi, Y'linda Wilson	4010
<b><u>OFFICE OF THE MEMBER</u></b>		Jeffries, Michael – ExD	7982	Den, Andre Antonie	1010
DuBester, Ernie – Member	7920			SF, Richard Armstrong	2011
Rumsfeld, Kurt - CC	7789	<b>Information Technology</b>			
Wisniewski, Melissa DCC	7782	Fontaine, Dave – CIO	7778		
Pullen, Norma	7797	Wendorf, Chad	7998		
Katz, Anne	7792	Dullaghan, Patrick	7943		
Kaufman, Judith	7966	Nicholas, Maurice	7913		
Bradley, Brandon	7766	Jiang, Hao	7772		
Parker, Stefanie	7937	Atkins, Cleophus (Contractor)	7984		
		<b>IT Helpdesk</b>	<b>7977</b>		
<b><u>OFFICE OF ADMINISTRATIVE</u></b>		<b>Human Resources</b>	<b>7979</b>		
<b><u>LAW JUDGES</u></b>	<b>7950</b>	Chandler, Paula – Director	7985		
Welch, David – Chief ALJ	7923	Duff, Shandust	7981		
Center, Charles	7918	Midgett, Patricia	7953		
Pearson, Richard	7992				
Turner, Catherine	7934	<b>Budget/Finance</b>	<b>7760</b>		
<b><u>OFFICE OF THE INSPECTOR</u></b>					
<b><u>GENERAL</u></b>	<b>7970</b>				
Rooney, Dana – IG	7744				





## **FEDERAL LABOR RELATIONS AUTHORITY**

### **2019 Federal Employee Viewpoint Survey**

### **Interpretation of Results**

**November 4, 2019**

#### ***Organizational Response Rate***

The Office of Personnel Management's (OPM's) Federal Employee Viewpoint Survey (FEVS) provides employees an opportunity to share their opinions about what matters most to them and to influence leadership. Employee feedback provides managers insights into where improvements have been made and are needed.

FLRA's 2019 overall response rate was 63% - 22 points higher than the Governmentwide average of 41%. That rate is also in line with the small agency (100-999 employees) response rate of 67%. A split between the FLRA's two distinct working groups is presented here:

- 1) The Authority and Administrative Headquarters (FLRA HQ) - 23 respondents and a 70% response rate
- 2) The Office of General Counsel (OGC) Headquarters and Regional Offices (OGC/Regions staff) - 29 respondents and a 59% response rate

#### ***Agency Strengths***

The FLRA as a whole has 32 items identified as strengths (defined as 65 percent or greater *positive* responses). The top six strengths:

- 98% *positive* - How would you rate the overall quality of work done by your work unit
- 97% *positive* - My supervisor supports my need to balance work and other life issues
- 97% *positive* - When needed, I am willing to put in the extra effort to get a job done (*increase* from 93% in 2018)
- 96% *positive* - My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals (*increase* from 92% in 2018)
- 96% *positive* - Employees in my work unit share job knowledge with each other (*increase* from 88% in 2018)
- 96% *positive* - Physical conditions allow employees to perform their jobs well (*increase* from 82% in 2018)

#### ***Positive Increases in 2019 (since 2018)***

There were marked *increases* in job satisfaction and overall well-being reported as compared to 2018.

- 14% *Increase* - How satisfied are you with your opportunity to get a better job in your organization?
- 14% *Increase* - Physical conditions allow employees to perform their jobs well
- 14% *Increase* - Considering everything, how satisfied are you with your pay?
- 13% *Increase* - Employees are protected from health and safety hazards on the job
- 13% *Increase* - Supervisors work well with employees of different backgrounds

## ***Areas for Improvement***

Employees identified areas for improvement involving training, the mission of the agency, communication, innovation, management, and leadership. On key questions, there was a substantial difference in *negative* scores reported by the FLRA HQ and the OGC/Regions staff.

Questions with the highest percentage of *negative* scores (broken down by the FLRA HQ, and the OGC/Regions):

- 72% - In my organization, senior leaders generate high levels of motivation and commitment in the workforce. (39% *negative* FLRA HQ, 94% *negative* OGC/Regions)
- 71% - My organization's senior leaders maintain high standards of honesty and integrity. (41% *negative* FLRA HQ, 90% *negative* OGC/Regions)
- 65% - I have a high level of respect for my organization's senior leaders. (27% *negative* FLRA HQ, 90% *negative* OGC/Regions)
- 64% - How satisfied are you with the policies and practices of your senior leaders? (31% *negative* FLRA HQ, 90% *negative* OGC/Regions)

The Strategic Plan Implementation Teams (with representation from every component, including OGC/Regions) will continue to address these and other challenges raised by the FEVS results. In particular, in the coming weeks, the Employee Engagement Team will be analyzing the results of the recently-conducted focus groups to better understand employee concerns.

## ***Government Shutdown***

The 2019 FEVS included a special section related to effects of the government shutdown on employees. Staff reported impacts such as interrupted deadlines or delayed pay. However, there were generally *positive* reviews of how the FLRA leadership responded.

- 97% of the FLRA staff were impacted by the shutdown by not receiving pay until after the lapse ended. Additionally, employees reported a high rate of missed deadlines (70%), reduced customer service (76%), delayed work (94%), and time lost in restarting work (71%).
- 37% said their everyday work was impacted in a moderately negative way by the shutdown, while 45% of staff reported a very negative to extremely negative impact on their work. 19% reported slightly negative to no impact on their work.
- On a positive note: 72% of the overall workforce (88% Authority, 63% Regions) believed the agency provided the support (communication, assistance, and guidance) needed during the partial shutdown.

## ***Work-Life Balance and Teleworking Access***

FLRA staff almost universally reported better than governmentwide *positive* averages in satisfaction with work-life programs offered and teleworking opportunities:

- *87% Positive* - How satisfied are you with the following Work-Life programs in your agency? Alternative Work Schedules (for example, compressed work schedule, flexible work schedule)
- *Greater than 50% telework*: more than 50% of FLRA employees telework 1-2 days per week in contrast with only 16% governmentwide and 39% at small agencies

2019

Office of Personnel Management

## Federal Employee Viewpoint Survey

Empowering Employees. Inspiring Change.



Annual Employee Survey (AES) Report

Federal Labor Relations Authority

FIELD PERIOD	May 23 - July 5, 2019
SAMPLE OR CENSUS	CENSUS
NUMBER OF SURVEYS	53
NUMBER OF SURVEYS	85
RESPONSE RATE	62.4%

32

items identified  
as **strengths**  
(65% positive or  
higher)

19

items identified  
as **challenges**  
(35% negative or  
higher)

## Engagement Index Score

2019 ENGAGEMENT INDEX

64%

LEADERS LEAD

40%

SUPERVISORS

84%

INTRINSIC  
WORK  
EXPERIENCE

67%

## Highest % Positive Items

Select: Highest % Positive

Q28	How would you rate the overall quality of work done by your work unit?	98%
Q42	My supervisor supports my need to balance work and other life issues.	97%
Q7	When needed I am willing to put in the extra effort to get a job done.	97%
Q26	Employees in my work unit share job knowledge with each other.	96%
Q14	Physical conditions allow employees to perform their jobs well.	96%

## Highest % Negative Items

Select: Highest % Negative

Q53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	72%
Q54	My organization's senior leaders maintain high standards of honesty and integrity.	71%
Q61	I have a high level of respect for my organization's senior leaders.	65%
Q66	How satisfied are you with the policies and practices of your senior leaders?	64%
Q62	Senior leaders demonstrate support for Work-Life programs.	52%

2019

Office of Personnel Management

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## GENDER

**47%** Female

## HISPANIC, LATINO, OR SPANISH

-- Hispanic, Latino, or Spanish

## LOCATION

**56%** Headquarters

## MILITARY SERVICE

**16%** Served

## RETIREMENT

**16%** within next five years

## PLAN TO LEAVE

**48%** within the next year

## Age Group

Age Group  
Racial Category  
Education

--  
29 years  
and under

--  
30-39  
years old

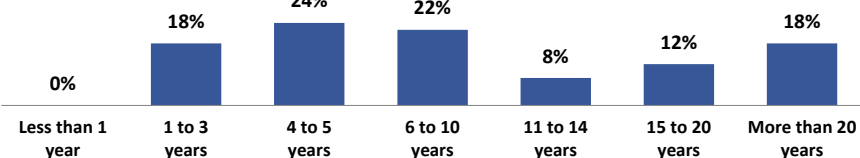
--  
40-49  
years old

--  
50-59  
years old

--  
60 years  
or older

## Agency Tenure

Agency Tenure  
Federal Tenure  
Supervisory Status  
Pay Category/Grade





2019

Office of Personnel Management

## Federal Employee Viewpoint Survey

Empowering Employees. Inspiring Change.



## Annual Employee Survey (AES) Report

Federal Labor Relations Authority

Select: Largest Increases since 2018

## Largest Increases in Percent Positive since 2018

39

items increased since 2018

2016 2017 2018 2019

Percentage Point Change

Q67 How satisfied are you with your opportunity to get a better job in your organization?

55% 47% 24% 38%

+14

Q14 Physical conditions allow employees to perform their jobs well.

94% 87% 82% 96%

+14

Q70 Considering everything, how satisfied are you with your pay?

77% 70% 76% 90%

+14

Q35 Employees are protected from health and safety hazards on the job.

94% 88% 77% 90%

+13

Q55 Supervisors work well with employees of different backgrounds.

87% 73% 56% 69%

+13

Select: Largest Decreases since 2018

## Largest Decreases in Percent Positive since 2018

30

items decreased since 2018

2016 2017 2018 2019

Percentage Point Change

Q34 Policies and programs promote diversity in the workplace.

76% 69% 42% 31%

-11

Q22 Promotions in my work unit are based on merit.

69% 61% 55% 45%

-10

Q38 Prohibited Personnel Practices are not tolerated.

89% 78% 62% 52%

-10

Q40 I recommend my organization as a good place to work.

83% 74% 45% 36%

-9

Q36 My organization has prepared employees for potential security threats.

81% 85% 71% 62%

-9

Response Type	Item	Item Text	Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	1	*I am given a real opportunity to improve my skills in my organization.	47.9%	20.0%	27.9%	19.1%	25.3%	7.7%	33.0%	12	15	10	12	4	53	N/A
Agree-disagree	2	I have enough information to do my job well.	72.3%	26.4%	45.9%	12.4%	11.3%	4.1%	15.3%	14	21	7	6	2	50	N/A
Agree-disagree	3	I feel encouraged to come up with new and better ways of doing things.	44.5%	26.0%	18.4%	27.4%	20.8%	7.3%	28.1%	15	10	13	10	4	52	N/A
Agree-disagree	4	My work gives me a feeling of personal accomplishment.	59.3%	32.1%	27.2%	17.6%	11.0%	12.1%	23.1%	17	15	9	5	6	52	N/A
Agree-disagree	5	I like the kind of work I do.	82.3%	37.7%	44.6%	9.8%	7.9%	0.0%	7.9%	20	23	6	4	0	53	N/A
Agree-disagree	6	I know what is expected of me on the job.	90.1%	37.9%	52.2%	4.9%	5.0%	0.0%	5.0%	20	26	3	3	0	52	N/A
Agree-disagree	7	When needed I am willing to put in the extra effort to get a job done.	96.6%	71.7%	24.8%	3.4%	0.0%	0.0%	0.0%	38	13	2	0	0	53	N/A
Agree-disagree	8	I am constantly looking for ways to do my job better.	87.4%	55.4%	32.0%	12.6%	0.0%	0.0%	0.0%	29	17	7	0	0	53	N/A
Agree-disagree	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	40.2%	9.7%	30.6%	10.3%	26.5%	23.0%	49.5%	5	17	5	15	11	53	0
Agree-disagree	10	*My workload is reasonable.	63.4%	14.9%	48.5%	20.0%	14.6%	1.9%	16.5%	8	26	11	7	1	53	0
Agree-disagree	11	*My talents are used well in the workplace.	59.9%	23.2%	36.8%	12.8%	23.6%	3.7%	27.3%	14	19	6	12	2	53	0
Agree-disagree	12	*I know how my work relates to the agency's goals.	79.2%	32.6%	46.5%	4.1%	16.8%	0.0%	16.8%	17	24	2	9	0	52	0
Agree-disagree	13	The work I do is important.	91.2%	48.8%	42.4%	8.8%	0.0%	0.0%	0.0%	26	22	5	0	0	53	0

Response Type			Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
	Item	Item Text														
Agree-disagree	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	95.8%	36.2%	59.6%	4.2%	0.0%	0.0%	0.0%	20	31	2	0	0	53	0
Agree-disagree	15	My performance appraisal is a fair reflection of my performance.	79.3%	35.9%	43.4%	11.9%	6.9%	1.9%	8.8%	20	22	7	3	1	53	0
Agree-disagree	16	I am held accountable for achieving results.	94.7%	45.0%	49.7%	5.3%	0.0%	0.0%	0.0%	24	26	3	0	0	53	0
Agree-disagree	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	46.8%	26.1%	20.6%	19.3%	20.8%	13.1%	33.9%	15	11	9	11	7	53	0
Agree-disagree	18	My training needs are assessed.	32.2%	12.6%	19.6%	26.5%	28.4%	12.8%	41.3%	8	11	14	13	7	53	0
Agree-disagree	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	75.9%	37.3%	38.6%	14.9%	3.4%	5.9%	9.3%	20	18	8	2	2	50	3
Agree-disagree	20	*The people I work with cooperate to get the job done.	94.9%	47.6%	47.2%	1.8%	1.6%	1.7%	3.3%	25	24	1	1	1	52	N/A
Agree-disagree	21	My work unit is able to recruit people with the right skills.	51.2%	14.9%	36.4%	26.3%	8.6%	13.9%	22.5%	9	18	12	5	7	51	1
Agree-disagree	22	Promotions in my work unit are based on merit.	44.6%	22.6%	22.1%	35.6%	7.2%	12.5%	19.7%	12	12	18	3	5	50	2
Agree-disagree	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	52.5%	20.1%	32.4%	31.2%	10.2%	6.1%	16.3%	10	18	15	4	2	49	3
Agree-disagree	24	*In my work unit, differences in performance are recognized in a meaningful way.	55.0%	30.2%	24.8%	20.4%	18.2%	6.4%	24.6%	15	13	10	8	2	48	4

Response Type			Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
	Item	Item Text														
Agree-disagree	25	Awards in my work unit depend on how well employees perform their jobs.	69.5%	28.0%	41.5%	17.2%	11.2%	2.2%	13.3%	15	23	8	5	1	52	0
Agree-disagree	26	Employees in my work unit share job knowledge with each other.	96.2%	50.4%	45.8%	3.8%	0.0%	0.0%	0.0%	27	23	2	0	0	52	0
Agree-disagree	27	The skill level in my work unit has improved in the past year.	56.6%	30.1%	26.5%	28.2%	11.1%	4.1%	15.2%	16	14	14	5	2	51	1
Good-poor	28	How would you rate the overall quality of work done by your work unit?	98.1%	73.5%	24.6%	1.9%	0.0%	0.0%	0.0%	38	13	1	0	0	52	N/A
Agree-disagree	29	*My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.	87.4%	56.1%	31.3%	8.7%	3.9%	0.0%	3.9%	30	16	4	2	0	52	0
Agree-disagree	30	Employees have a feeling of personal empowerment with respect to work processes.	31.9%	15.9%	16.0%	18.0%	18.9%	31.3%	50.2%	9	8	9	10	16	52	0
Agree-disagree	31	Employees are recognized for providing high quality products and services.	42.7%	19.5%	23.2%	24.9%	19.5%	12.9%	32.4%	11	12	12	10	7	52	0
Agree-disagree	32	Creativity and innovation are rewarded.	34.4%	18.0%	16.4%	21.3%	27.4%	17.0%	44.3%	10	8	11	14	9	52	0
Agree-disagree	33	Pay raises depend on how well employees perform their jobs.	39.4%	10.1%	29.4%	30.9%	20.4%	9.3%	29.7%	6	14	15	9	5	49	3
Agree-disagree	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	31.1%	11.0%	20.1%	32.3%	20.5%	16.1%	36.6%	7	9	16	11	8	51	1
Agree-disagree	35	Employees are protected from health and safety hazards on the job.	90.2%	29.9%	60.2%	9.8%	0.0%	0.0%	0.0%	15	29	5	0	0	49	3
Agree-disagree	36	My organization has prepared employees for potential security threats.	62.5%	22.5%	40.0%	21.6%	12.1%	3.8%	15.9%	13	20	11	6	2	52	0



Response Type	Item Item Text		Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	32.2%	11.6%	20.6%	31.6%	17.8%	18.4%	36.2%	6	12	14	10	9	51	1
Agree-disagree	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	52.2%	18.3%	33.9%	38.8%	7.3%	1.7%	9.0%	9	15	16	4	1	45	6
Agree-disagree	39	My agency is successful at accomplishing its mission.	45.2%	14.4%	30.8%	8.7%	19.0%	27.1%	46.1%	8	15	5	10	14	52	0
Agree-disagree	40	*I recommend my organization as a good place to work.	36.4%	18.9%	17.5%	22.6%	15.8%	25.2%	41.0%	11	9	11	8	13	52	N/A
Agree-disagree	41	*I believe the results of this survey will be used to make my agency a better place to work.	31.0%	19.3%	11.8%	19.6%	16.2%	33.1%	49.3%	11	6	10	8	16	51	1
Agree-disagree	42	My supervisor supports my need to balance work and other life issues.	96.8%	62.3%	34.5%	0.0%	1.5%	1.6%	3.2%	33	16	0	1	1	51	1
Agree-disagree	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	81.8%	44.9%	36.8%	12.7%	1.9%	3.6%	5.6%	24	18	6	1	2	51	1
Agree-disagree	44	Discussions with my supervisor about my performance are worthwhile.	73.4%	41.3%	32.2%	17.0%	6.0%	3.6%	9.6%	23	16	7	3	2	51	1
Agree-disagree	45	My supervisor is committed to a workforce representative of all segments of society.	72.4%	43.5%	28.9%	23.9%	2.1%	1.6%	3.6%	22	14	11	1	1	49	3
Agree-disagree	46	My supervisor provides me with constructive suggestions to improve my job performance.	75.7%	39.5%	36.2%	14.8%	5.9%	3.6%	9.5%	21	19	7	3	2	52	0

Response Type	Item Item Text		Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	47	Supervisors in my work unit support employee development.	81.2%	46.1%	35.1%	11.3%	5.9%	1.6%	7.5%	26	17	5	3	1	52	0
Agree-disagree	48	My supervisor listens to what I have to say.	87.1%	54.8%	32.2%	3.3%	8.1%	1.6%	9.7%	29	16	2	4	1	52	N/A
Agree-disagree	49	My supervisor treats me with respect.	90.8%	56.6%	34.2%	1.4%	3.7%	4.1%	7.8%	30	17	1	2	2	52	N/A
Agree-disagree	50	In the last six months, my supervisor has talked with me about my performance.	87.8%	49.5%	38.4%	5.4%	6.8%	0.0%	6.8%	27	19	2	4	0	52	N/A
Agree-disagree	51	I have trust and confidence in my supervisor.	82.2%	48.8%	33.3%	4.7%	7.4%	5.7%	13.1%	27	15	3	4	3	52	N/A
Good-poor	52	Overall, how good a job do you feel is being done by your immediate supervisor?	80.8%	51.1%	29.7%	9.5%	4.0%	5.7%	9.7%	28	14	5	2	3	52	N/A
Agree-disagree	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	18.9%	10.7%	8.2%	9.1%	17.2%	54.8%	72.0%	7	4	4	10	27	52	0
Agree-disagree	54	My organization's senior leaders maintain high standards of honesty and integrity.	18.9%	10.7%	8.2%	10.5%	30.8%	39.9%	70.6%	7	4	6	15	20	52	0
Agree-disagree	55	Supervisors work well with employees of different backgrounds.	69.5%	32.6%	36.9%	18.1%	8.7%	3.7%	12.4%	16	17	9	4	2	48	4
Agree-disagree	56	*Managers communicate the goals of the organization.	65.3%	27.6%	37.8%	19.9%	5.4%	9.4%	14.8%	15	18	10	3	5	51	1
Agree-disagree	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	58.7%	27.2%	31.5%	29.5%	5.6%	6.2%	11.8%	14	15	12	3	3	47	3

Response Type			Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
	Item	Item Text														
Agree-disagree	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	57.2%	22.6%	34.6%	17.8%	15.8%	9.2%	25.0%	13	16	8	7	5	49	3
Agree-disagree	59	Managers support collaboration across work units to accomplish work objectives.	56.1%	24.3%	31.8%	26.0%	10.9%	7.0%	17.9%	14	15	11	6	4	50	2
Good-poor	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	73.2%	48.2%	25.0%	10.6%	12.4%	3.7%	16.1%	24	12	5	6	2	49	3
Agree-disagree	61	I have a high level of respect for my organization's senior leaders.	24.3%	16.1%	8.3%	10.5%	18.4%	46.8%	65.2%	9	4	6	10	23	52	0
Agree-disagree	62	Senior leaders demonstrate support for Work-Life programs.	34.8%	13.5%	21.3%	12.7%	32.3%	20.2%	52.5%	7	11	6	15	10	49	3
Satisfied-dissatisfied	63	*How satisfied are you with your involvement in decisions that affect your work?	37.2%	20.6%	16.6%	21.1%	26.6%	15.1%	41.8%	12	9	10	13	8	52	N/A
Satisfied-dissatisfied	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	39.7%	24.7%	15.0%	13.5%	23.4%	23.4%	46.8%	14	8	6	12	12	52	N/A
Satisfied-dissatisfied	65	*How satisfied are you with the recognition you receive for doing a good job?	58.3%	26.2%	32.1%	13.8%	22.0%	6.0%	27.9%	15	15	8	11	3	52	N/A
Satisfied-dissatisfied	66	How satisfied are you with the policies and practices of your senior leaders?	18.9%	10.7%	8.2%	16.8%	21.0%	43.3%	64.3%	7	4	8	11	22	52	N/A
Satisfied-dissatisfied	67	How satisfied are you with your opportunity to get a better job in your organization?	38.3%	19.3%	19.0%	21.8%	20.9%	19.0%	39.9%	12	10	11	11	8	52	N/A

Response Type	Item	Item Text	Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %	Strongly Agree/ Very Good/ Very Satisfied N	Agree/ Good/ Satisfied N	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied N	Disagree/ Poor/ Dissatisfied N	Strongly Disagree/ Very Poor/ Very Dissatisfied N	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	68	How satisfied are you with the training you receive for your present job?	33.3%	10.7%	22.6%	26.3%	25.1%	15.3%	40.4%	7	12	13	13	7	52	N/A
Satisfied-dissatisfied	69	*Considering everything, how satisfied are you with your job?	56.7%	25.8%	30.9%	13.4%	22.2%	7.7%	29.9%	14	15	7	12	4	52	N/A
Satisfied-dissatisfied	70	Considering everything, how satisfied are you with your pay?	89.6%	36.7%	52.9%	2.9%	2.0%	5.6%	7.5%	20	26	2	1	3	52	N/A
Satisfied-dissatisfied	71	*Considering everything, how satisfied are you with your organization?	37.7%	16.9%	20.8%	19.5%	19.8%	23.0%	42.8%	9	12	9	10	12	52	N/A
<p>* AES prescribed items as of 2017 (5 CFR Part 250, Subpart C)</p> <p>** Unweighted count of responses excluding 'Do Not Know' and 'No Basis to Judge'</p> <p>The Dashboard only includes items 1-71.</p> <p>Percentages are weighted to represent the Agency's population.</p>																

<b>72. Currently, in my work unit poor performers usually:</b>	<b>N</b>	<b>%</b>
Remain in the work unit and improve their performance over time	8	16.9%
Remain in the work unit and continue to underperform	5	15.2%
Leave the work unit - removed or transferred	5	9.1%
Leave the work unit - quit	2	5.1%
There are no poor performers in my work unit	22	53.7%
Item Response Total	42	100.0%
Do not know	10	--
Total	52	100.0%

Percentages are weighted to represent the Agency's population.





<b>73. Which of the following best describes the impact of the partial government shutdown (December 22, 2018 - January 25, 2019) on your working/pay status?</b>	<b>N</b>	<b>%</b>
The shutdown had no impact on my working/pay status	2	2.9%
I did not work and did not receive pay until after the lapse ended	40	77.1%
I worked some of the shutdown but did not receive pay until after the lapse ended	8	14.3%
I worked for the entirety of the shutdown but did not receive pay until after the lapse ended	0	0.0%
Other, not listed above	2	5.6%
Total	52	100.0%

<b>74. How was your everyday work impacted during (if you worked) or after the partial government shutdown?</b>	<b>N</b>	<b>%</b>
It had no impact	3	5.8%
A slightly negative impact	8	13.1%
A moderately negative impact	18	36.6%
A very negative impact	15	27.7%
An extremely negative impact	8	16.7%
Total	52	100.0%

***If the response to item 74 was "It had no impact", item 75 was skipped.***

<b>75. In what ways did the partial government shutdown negatively affect your work? (Check all that apply)</b>	<b>N</b>	<b>%</b>
Unmanageable workload	12	27.8%
Missed deadlines	33	70.3%
Unrecoverable loss of work	13	30.0%
Reduced customer service	35	75.8%
Delayed work	45	94.3%
Reduced work quality	12	28.2%
Cutback of critical work	4	11.2%
Time lost in restarting work	34	71.4%
Unmet statutory requirements	7	13.8%
Other	8	16.0%
Total (percents will add to more than 100% because respondents could choose more than one response option)	48	--

<b>76. Are you looking for another job because of the partial government shutdown?</b>	<b>N</b>	<b>%</b>
I am looking for another job <b><u>specifically</u></b> because of the shutdown	1	2.2%
I am looking for another job, but the shutdown is <b><u>only one</u></b> of the reasons	9	16.6%
I am looking for another job, but the shutdown had <b><u>no influence</u></b> on that decision	11	19.5%
I am <b><u>not</u></b> looking for another job currently	31	61.8%
Total	52	100.0%

<b>77. My agency provided the support (e.g., communication, assistance, guidance) I needed during the partial government shutdown.</b>	<b>N</b>	<b>%</b>
Strongly Agree	14	26.1%
Agree	12	23.6%
Neither Agree nor Disagree	11	21.7%
Disagree	7	15.7%
Strongly Disagree	7	12.8%
Item Response Total	51	100.0%
No support required	1	--
Total	52	100.0%

Percentages are weighted to represent the Agency's population.

	2019		2018	
<i>78. Please select the response below that BEST describes your current teleworking schedule.</i>	N	%	N	%
I telework very infrequently, on an unscheduled or short-term basis	9	16.8%	18	23.4%
I telework, but only about 1 or 2 days per month	4	6.5%	9	11.4%
I telework 1 or 2 days per week	28	56.7%	38	46.6%
I telework 3 or 4 days per week	1	1.9%	2	2.9%
I telework every work day	0	0.0%	0	0.0%
I do not telework because I have to be physically present on the job	0	0.0%	0	0.0%
I do not telework because of technical issues that prevent me from teleworking	0	0.0%	0	0.0%
I do not telework because I did not receive approval to do so, even though I have the kind of job where I can telework	2	3.6%	2	2.6%
I do not telework because I choose not to telework	8	14.5%	10	13.1%
Total	52	100.0%	79	100.0%

	2019			2018		
<i>79. How satisfied are you with the Telework program in your agency?</i>	N	Satisfaction %	All Response Options %	N	Satisfaction %	All Response Options %
Very Satisfied	15	31.0%	29.3%	20	25.9%	23.7%
Satisfied	19	37.7%	35.7%	37	51.3%	47.0%
Neither Satisfied nor Dissatisfied	12	23.7%	22.5%	12	15.1%	13.8%
Dissatisfied	3	7.6%	7.2%	3	4.9%	4.5%
Very Dissatisfied	0	0.0%	0.0%	2	2.8%	2.5%
Item Response Total	49	100.0%	94.8%	74	100.0%	91.6%
I choose not to participate in this program	3	--	5.2%	4	--	5.8%
This program is not available to me	0	--	0.0%	2	--	2.6%
I am unaware of this program	0	--	0.0%	0	--	0.0%
Total	52	100.0%	100.0%	80	100.0%	100.0%

<i>80. Which of the following Work-Life programs have you participated in or used at your agency within the last 12 months? (Mark all that apply):</i>	2019	
	N	%
Alternative Work Schedules	33	65.6%
Health and Wellness Programs	7	16.2%
Employee Assistance Program – EAP	2	3.4%
Child Care Programs	1	1.5%
Elder Care Programs	0	0.0%
None listed above	17	29.3%
Total (percents will add to more than 100% because respondents could choose more than one response option)	52	--

*Note: This item was not in the 2018 OPM FEVS.*

	2019			2018		
<i>81. How satisfied are you with the following Work-Life programs in your agency? Alternative Work Schedules</i>	N	Satisfaction %	All Response Options %	N	Satisfaction %	All Response Options %
Very Satisfied	22	47.0%	42.7%	27	43.5%	35.1%
Satisfied	18	39.7%	36.0%	27	43.1%	34.8%

Neither Satisfied nor Dissatisfied	5	9.1%	8.3%	8	11.9%	9.6%
Dissatisfied	1	4.1%	3.8%	1	1.6%	1.3%
Very Dissatisfied	0	0.0%	0.0%	0	0.0%	0.0%
Item Response Total	46	100.0%	90.7%	63	100.0%	80.9%
I choose not to participate in these programs	2	--	3.4%	10	--	11.9%
These programs are not available to me	4	--	5.9%	5	--	5.9%
I am unaware of these programs	0	--	0.0%	1	--	1.3%
Total	52	100.0%	100.0%	79	100.0%	100.0%

	2019			2018		
<i>82. How satisfied are you with the following Work-Life programs in your agency? Health and Wellness Programs</i>	N	Satisfaction %	All Response Options %	N	Satisfaction %	All Response Options %
Very Satisfied	3	10.3%	4.9%	13	22.8%	15.1%
Satisfied	9	35.7%	17.1%	26	44.6%	29.7%
Neither Satisfied nor Dissatisfied	9	40.5%	19.3%	13	24.3%	16.2%
Dissatisfied	3	13.5%	6.4%	3	6.0%	4.0%
Very Dissatisfied	0	0.0%	0.0%	1	2.4%	1.6%
Item Response Total	24	100.0%	47.8%	56	100.0%	66.5%
I choose not to participate in these programs	8	--	14.3%	7	--	9.0%
These programs are not available to me	12	--	23.3%	7	--	10.2%
I am unaware of these programs	7	--	14.7%	10	--	14.3%
Total	51	100.0%	100.0%	80	100.0%	100.0%

	2019			2018		
<i>83. How satisfied are you with the following Work-Life programs in your agency? Employee Assistance Program - EAP</i>	N	Satisfaction %	All Response Options %	N	Satisfaction %	All Response Options %
Very Satisfied	1	3.6%	1.5%	4	9.1%	4.8%
Satisfied	4	21.6%	9.1%	11	27.2%	14.3%
Neither Satisfied nor Dissatisfied	13	65.6%	27.7%	27	63.7%	33.5%
Dissatisfied	2	9.2%	3.9%	0	0.0%	0.0%
Very Dissatisfied	0	0.0%	0.0%	0	0.0%	0.0%
Item Response Total	20	100.0%	42.2%	42	100.0%	52.6%
I choose not to participate in these programs	21	--	38.3%	25	--	32.0%
These programs are not available to me	2	--	3.2%	3	--	3.4%
I am unaware of these programs	9	--	16.3%	10	--	12.1%
Total	52	100.0%	100.0%	80	100.0%	100.0%

	2019			2018		
<i>84. How satisfied are you with the following Work-Life programs in your agency? Child Care Programs</i>	N	Satisfaction %	All Response Options %	N	Satisfaction %	All Response Options %
Very Satisfied	0	0.0%	0.0%	1	4.5%	1.1%
Satisfied	2	27.7%	5.2%	3	18.1%	4.5%
Neither Satisfied nor Dissatisfied	6	60.9%	11.3%	15	71.9%	17.6%
Dissatisfied	1	11.4%	2.1%	1	5.5%	1.3%



Very Dissatisfied	0	0.0%	0.0%	0	0.0%	0.0%
Item Response Total	9	100.0%	18.6%	20	100.0%	24.5%
I choose not to participate in these programs	15	--	27.3%	13	--	16.3%
These programs are not available to me	21	--	39.3%	28	--	35.3%
I am unaware of these programs	7	--	14.7%	19	--	23.8%
Total	52	100.0%	100.0%	80	100.0%	100.0%

2019				2018		
<i>85. How satisfied are you with the following Work-Life programs in your agency? Elder Care Programs</i>	N	Satisfaction %	All Response Options %	N	Satisfaction %	All Response Options %
Very Satisfied	0	0.0%	0.0%	1	5.5%	1.1%
Satisfied	1	23.1%	3.6%	2	14.4%	2.9%
Neither Satisfied nor Dissatisfied	5	63.3%	10.0%	14	80.1%	16.4%
Dissatisfied	1	13.5%	2.1%	0	0.0%	0.0%
Very Dissatisfied	0	0.0%	0.0%	0	0.0%	0.0%
Item Response Total	7	100.0%	15.8%	17	100.0%	20.4%
I choose not to participate in these programs	13	--	23.5%	11	--	14.2%
These programs are not available to me	23	--	43.0%	29	--	36.4%
I am unaware of these programs	9	--	17.7%	23	--	28.9%
Total	52	100.0%	100.0%	80	100.0%	100.0%

Percentages are weighted to represent the Agency's population.

The rows above do not include results for any item or year when there were fewer than 4 completed surveys.

## My Employment Demographics

<b><i>Where do you work?</i></b>	<b>%</b>
Headquarters	56.0%
Field	44.0%
Total	100.0%

<b><i>What is your supervisory status?</i></b>	<b>%</b>
Senior Leader	5.9%
Manager	11.8%
Supervisor	15.7%
Team Leader	3.9%
Non-Supervisor	62.7%
Total	100.0%

<b><i>What is your pay category/grade?</i></b>	<b>%</b>
Federal Wage System	0.0%
GS 1-6	0.0%
GS 7-12	8.0%
GS 13-15	74.0%
Senior Executive Service	10.0%
Senior Level (SL) or Scientific or Professional (ST)	2.0%
Other	6.0%
Total	100.0%

<b><i>What is your US military service status?</i></b>	<b>%</b>
No Prior Military Service	84.3%
Currently in National Guard or Reserves	2.0%
Retired	7.8%
Separated or Discharged	5.9%
Total	100.0%

<b><i>How long have you been with the Federal Government (excluding military service)?</i></b>	<b>%</b>
Less than 1 year	0.0%
1 to 3 years	11.8%
4 to 5 years	17.6%
6 to 10 years	17.6%
11 to 14 years	9.8%
15 to 20 years	17.6%
More than 20 years	25.5%
Total	100.0%

<b><i>How long have you been with your current agency (for example, Department of Justice, Environmental Protection Agency)?</i></b>	<b>%</b>
Less than 1 year	0.0%
1 to 3 years	17.6%
4 to 5 years	23.5%
6 to 10 years	21.6%
11 to 14 years	7.8%
15 to 20 years	11.8%
More than 20 years	17.6%

## My Employment Demographics

Total	100.0%
<b>Are you considering leaving your organization within the next year, and if so, why?</b>	
No	52.0%
Yes, to retire	2.0%
Yes, to take another job within the Federal Government	28.0%
Yes, to take another job outside the Federal Government	10.0%
Yes, other	8.0%
Total	100.0%
<b>I am planning to retire:</b>	
Within one year	0.0%
Between one and three years	8.0%
Between three and five years	8.0%
Five or more years	84.0%
Total	100.0%

## My Personal Demographics

<b>Are you of Hispanic, Latino, or Spanish origin?</b>	
Yes	--
No	--
Total	--

Note: All results are suppressed when any single demographic category has fewer than 4 responses.

<b>Please select the racial category or categories with which you most closely identify.</b>	
White	--
Black or African American	--
All other races	--
Total	--

Note: All results are suppressed when any single demographic category has fewer than 4 responses.

<b>What is your age group?</b>	
29 years and under	--
30-39 years old	--
40-49 years old	--
50-59 years old	--
60 years or older	--
Total	--

Note: All results are suppressed when any single demographic category has fewer than 4 responses.

<b>What is the highest degree or level of education you have completed?</b>	
Less than High School/ High School Diploma/ GED	--
Certification/ Some College/ Associate's Degree	--
Bachelor's Degree	9.8%
Advanced Degrees (Post Bachelor's Degree)	84.3%
Total	100.0%

Note: Results are suppressed for each demographic category with fewer than 4 responses.

## My Employment Demographics

<b><i>Are you an individual with a disability?</i></b>	<b>%</b>
Yes	8.2%
No	91.8%
Total	100.0%
<b><i>Are you:</i></b>	<b>%</b>
Male	53.1%
Female	46.9%
Total	100.0%
<b><i>Are you transgender?</i></b>	<b>%</b>
Yes	0.0%
No	100.0%
Total	100.0%
<b><i>Which one of the following do you consider yourself to be?</i></b>	<b>%</b>
Straight, that is not gay or lesbian	95.8%
Gay or Lesbian	--
Bisexual	--
Something else	0.0%
Total	100.0%

*Note: Results are suppressed for each demographic category with fewer than 4 responses.*

Percentages for demographic questions are unweighted.

No suppression was applied to My Employment Demographics.

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2019	1	*I am given a real opportunity to improve my skills in my organization.	47.9%	19.1%	33.0%	53	N/A
Agree-disagree	2019	2	I have enough information to do my job well.	72.3%	12.4%	15.3%	50	N/A
Agree-disagree	2019	3	I feel encouraged to come up with new and better ways of doing things.	44.5%	27.4%	28.1%	52	N/A
Agree-disagree	2019	4	My work gives me a feeling of personal accomplishment.	59.3%	17.6%	23.1%	52	N/A
Agree-disagree	2019	5	I like the kind of work I do.	82.3%	9.8%	7.9%	53	N/A
Agree-disagree	2019	6	I know what is expected of me on the job.	90.1%	4.9%	5.0%	52	N/A
Agree-disagree	2019	7	When needed I am willing to put in the extra effort to get a job done.	96.6%	3.4%	0.0%	53	N/A
Agree-disagree	2019	8	I am constantly looking for ways to do my job better.	87.4%	12.6%	0.0%	53	N/A
Agree-disagree	2019	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	40.2%	10.3%	49.5%	53	0
Agree-disagree	2019	10	*My workload is reasonable.	63.4%	20.0%	16.5%	53	0
Agree-disagree	2019	11	*My talents are used well in the workplace.	59.9%	12.8%	27.3%	53	0
Agree-disagree	2019	12	*I know how my work relates to the agency's goals.	79.2%	4.1%	16.8%	52	0
Agree-disagree	2019	13	The work I do is important.	91.2%	8.8%	0.0%	53	0
Agree-disagree	2019	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	95.8%	4.2%	0.0%	53	0
Agree-disagree	2019	15	My performance appraisal is a fair reflection of my performance.	79.3%	11.9%	8.8%	53	0
Agree-disagree	2019	16	I am held accountable for achieving results.	94.7%	5.3%	0.0%	53	0
Agree-disagree	2019	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	46.8%	19.3%	33.9%	53	0
Agree-disagree	2019	18	My training needs are assessed.	32.2%	26.5%	41.3%	53	0
Agree-disagree	2019	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	75.9%	14.9%	9.3%	50	3
Agree-disagree	2019	20	*The people I work with cooperate to get the job done.	94.9%	1.8%	3.3%	52	N/A



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2019	21	My work unit is able to recruit people with the right skills.	51.2%	26.3%	22.5%	51	1
Agree-disagree	2019	22	Promotions in my work unit are based on merit.	44.6%	35.6%	19.7%	50	2
Agree-disagree	2019	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	52.5%	31.2%	16.3%	49	3
Agree-disagree	2019	24	*In my work unit, differences in performance are recognized in a meaningful way.	55.0%	20.4%	24.6%	48	4
Agree-disagree	2019	25	Awards in my work unit depend on how well employees perform their jobs.	69.5%	17.2%	13.3%	52	0
Agree-disagree	2019	26	Employees in my work unit share job knowledge with each other.	96.2%	3.8%	0.0%	52	0
Agree-disagree	2019	27	The skill level in my work unit has improved in the past year.	56.6%	28.2%	15.2%	51	1
Good-poor	2019	28	How would you rate the overall quality of work done by your work unit?	98.1%	1.9%	0.0%	52	N/A
Agree-disagree	2019	29	*My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.	87.4%	8.7%	3.9%	52	0
Agree-disagree	2019	30	Employees have a feeling of personal empowerment with respect to work processes.	31.9%	18.0%	50.2%	52	0
Agree-disagree	2019	31	Employees are recognized for providing high quality products and services.	42.7%	24.9%	32.4%	52	0
Agree-disagree	2019	32	Creativity and innovation are rewarded.	34.4%	21.3%	44.3%	52	0
Agree-disagree	2019	33	Pay raises depend on how well employees perform their jobs.	39.4%	30.9%	29.7%	49	3
Agree-disagree	2019	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	31.1%	32.3%	36.6%	51	1
Agree-disagree	2019	35	Employees are protected from health and safety hazards on the job.	90.2%	9.8%	0.0%	49	3
Agree-disagree	2019	36	My organization has prepared employees for potential security threats.	62.5%	21.6%	15.9%	52	0
Agree-disagree	2019	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	32.2%	31.6%	36.2%	51	1

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2019	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	52.2%	38.8%	9.0%	45	6
Agree-disagree	2019	39	My agency is successful at accomplishing its mission.	45.2%	8.7%	46.1%	52	0
Agree-disagree	2019	40	*I recommend my organization as a good place to work.	36.4%	22.6%	41.0%	52	N/A
Agree-disagree	2019	41	*I believe the results of this survey will be used to make my agency a better place to work.	31.0%	19.6%	49.3%	51	1
Agree-disagree	2019	42	My supervisor supports my need to balance work and other life issues.	96.8%	0.0%	3.2%	51	1
Agree-disagree	2019	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	81.8%	12.7%	5.6%	51	1
Agree-disagree	2019	44	Discussions with my supervisor about my performance are worthwhile.	73.4%	17.0%	9.6%	51	1
Agree-disagree	2019	45	My supervisor is committed to a workforce representative of all segments of society.	72.4%	23.9%	3.6%	49	3
Agree-disagree	2019	46	My supervisor provides me with constructive suggestions to improve my job performance.	75.7%	14.8%	9.5%	52	0
Agree-disagree	2019	47	Supervisors in my work unit support employee development.	81.2%	11.3%	7.5%	52	0
Agree-disagree	2019	48	My supervisor listens to what I have to say.	87.1%	3.3%	9.7%	52	N/A
Agree-disagree	2019	49	My supervisor treats me with respect.	90.8%	1.4%	7.8%	52	N/A
Agree-disagree	2019	50	In the last six months, my supervisor has talked with me about my performance.	87.8%	5.4%	6.8%	52	N/A
Agree-disagree	2019	51	I have trust and confidence in my supervisor.	82.2%	4.7%	13.1%	52	N/A
Good-poor	2019	52	Overall, how good a job do you feel is being done by your immediate supervisor?	80.8%	9.5%	9.7%	52	N/A
Agree-disagree	2019	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	18.9%	9.1%	72.0%	52	0
Agree-disagree	2019	54	My organization's senior leaders maintain high standards of honesty and integrity.	18.9%	10.5%	70.6%	52	0
Agree-disagree	2019	55	Supervisors work well with employees of different backgrounds.	69.5%	18.1%	12.4%	48	4
Agree-disagree	2019	56	*Managers communicate the goals of the organization.	65.3%	19.9%	14.8%	51	1

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2019	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	58.7%	29.5%	11.8%	47	3
Agree-disagree	2019	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	57.2%	17.8%	25.0%	49	3
Agree-disagree	2019	59	Managers support collaboration across work units to accomplish work objectives.	56.1%	26.0%	17.9%	50	2
Good-poor	2019	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	73.2%	10.6%	16.1%	49	3
Agree-disagree	2019	61	I have a high level of respect for my organization's senior leaders.	24.3%	10.5%	65.2%	52	0
Agree-disagree	2019	62	Senior leaders demonstrate support for Work-Life programs.	34.8%	12.7%	52.5%	49	3
Satisfied-dissatisfied	2019	63	*How satisfied are you with your involvement in decisions that affect your work?	37.2%	21.1%	41.8%	52	N/A
Satisfied-dissatisfied	2019	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	39.7%	13.5%	46.8%	52	N/A
Satisfied-dissatisfied	2019	65	*How satisfied are you with the recognition you receive for doing a good job?	58.3%	13.8%	27.9%	52	N/A
Satisfied-dissatisfied	2019	66	How satisfied are you with the policies and practices of your senior leaders?	18.9%	16.8%	64.3%	52	N/A
Satisfied-dissatisfied	2019	67	How satisfied are you with your opportunity to get a better job in your organization?	38.3%	21.8%	39.9%	52	N/A
Satisfied-dissatisfied	2019	68	How satisfied are you with the training you receive for your present job?	33.3%	26.3%	40.4%	52	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2019	69	*Considering everything, how satisfied are you with your job?	56.7%	13.4%	29.9%	52	N/A
Satisfied-dissatisfied	2019	70	Considering everything, how satisfied are you with your pay?	89.6%	2.9%	7.5%	52	N/A
Satisfied-dissatisfied	2019	71	*Considering everything, how satisfied are you with your organization?	37.7%	19.5%	42.8%	52	N/A
Agree-disagree	2018	1	*I am given a real opportunity to improve my skills in my organization.	54.5%	16.0%	29.5%	81	N/A
Agree-disagree	2018	2	I have enough information to do my job well.	69.4%	18.1%	12.5%	81	N/A
Agree-disagree	2018	3	I feel encouraged to come up with new and better ways of doing things.	43.9%	21.3%	34.7%	82	N/A
Agree-disagree	2018	4	My work gives me a feeling of personal accomplishment.	60.8%	9.6%	29.6%	82	N/A
Agree-disagree	2018	5	I like the kind of work I do.	75.9%	10.7%	13.5%	82	N/A
Agree-disagree	2018	6	I know what is expected of me on the job.	81.8%	10.5%	7.7%	82	N/A
Agree-disagree	2018	7	When needed I am willing to put in the extra effort to get a job done.	93.3%	2.2%	4.4%	82	N/A
Agree-disagree	2018	8	I am constantly looking for ways to do my job better.	86.4%	6.5%	7.1%	82	N/A
Agree-disagree	2018	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	43.7%	17.3%	39.0%	82	0
Agree-disagree	2018	10	*My workload is reasonable.	69.9%	18.1%	12.1%	81	0
Agree-disagree	2018	11	*My talents are used well in the workplace.	56.4%	11.5%	32.1%	82	0
Agree-disagree	2018	12	*I know how my work relates to the agency's goals.	69.4%	9.3%	21.3%	81	0
Agree-disagree	2018	13	The work I do is important.	78.4%	12.3%	9.3%	82	0
Agree-disagree	2018	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	82.3%	13.3%	4.4%	82	0
Agree-disagree	2018	15	My performance appraisal is a fair reflection of my performance.	66.9%	20.0%	13.1%	80	1

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2018	16	I am held accountable for achieving results.	85.2%	11.9%	2.9%	82	0
Agree-disagree	2018	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	44.7%	29.9%	25.4%	78	4
Agree-disagree	2018	18	My training needs are assessed.	21.5%	29.8%	48.7%	81	1
Agree-disagree	2018	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	78.8%	5.7%	15.5%	79	3
Agree-disagree	2018	20	*The people I work with cooperate to get the job done.	84.8%	6.1%	9.1%	82	N/A
Agree-disagree	2018	21	My work unit is able to recruit people with the right skills.	53.1%	21.2%	25.7%	79	3
Agree-disagree	2018	22	Promotions in my work unit are based on merit.	55.1%	20.1%	24.8%	74	7
Agree-disagree	2018	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	61.5%	28.3%	10.3%	75	7
Agree-disagree	2018	24	*In my work unit, differences in performance are recognized in a meaningful way.	45.8%	30.3%	23.9%	79	3
Agree-disagree	2018	25	Awards in my work unit depend on how well employees perform their jobs.	59.1%	23.3%	17.6%	76	4
Agree-disagree	2018	26	Employees in my work unit share job knowledge with each other.	88.2%	8.5%	3.3%	82	0
Agree-disagree	2018	27	The skill level in my work unit has improved in the past year.	54.6%	24.4%	21.0%	79	3
Good-poor	2018	28	How would you rate the overall quality of work done by your work unit?	89.4%	8.4%	2.2%	82	N/A
Agree-disagree	2018	29	*My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.	91.6%	3.4%	5.0%	82	0
Agree-disagree	2018	30	Employees have a feeling of personal empowerment with respect to work processes.	36.7%	17.9%	45.4%	80	1
Agree-disagree	2018	31	Employees are recognized for providing high quality products and services.	49.5%	21.2%	29.3%	80	1
Agree-disagree	2018	32	Creativity and innovation are rewarded.	36.1%	26.8%	37.1%	80	1
Agree-disagree	2018	33	Pay raises depend on how well employees perform their jobs.	40.6%	38.2%	21.2%	73	6
Agree-disagree	2018	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	41.7%	28.8%	29.5%	75	6



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2018	35	Employees are protected from health and safety hazards on the job.	76.5%	21.9%	1.6%	76	5
Agree-disagree	2018	36	My organization has prepared employees for potential security threats.	71.0%	21.5%	7.5%	80	1
Agree-disagree	2018	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	37.7%	29.9%	32.4%	76	4
Agree-disagree	2018	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	62.0%	28.8%	9.2%	70	11
Agree-disagree	2018	39	My agency is successful at accomplishing its mission.	48.9%	13.6%	37.5%	79	2
Agree-disagree	2018	40	*I recommend my organization as a good place to work.	45.3%	21.8%	32.9%	80	N/A
Agree-disagree	2018	41	*I believe the results of this survey will be used to make my agency a better place to work.	32.4%	12.9%	54.7%	75	6
Agree-disagree	2018	42	My supervisor supports my need to balance work and other life issues.	85.5%	7.2%	7.3%	80	1
Agree-disagree	2018	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	73.0%	11.1%	16.0%	80	1
Agree-disagree	2018	44	Discussions with my supervisor about my performance are worthwhile.	72.8%	11.8%	15.4%	80	1
Agree-disagree	2018	45	My supervisor is committed to a workforce representative of all segments of society.	76.0%	16.0%	7.9%	73	8
Agree-disagree	2018	46	My supervisor provides me with constructive suggestions to improve my job performance.	73.6%	10.1%	16.2%	80	1
Agree-disagree	2018	47	Supervisors in my work unit support employee development.	71.5%	21.8%	6.7%	80	1
Agree-disagree	2018	48	My supervisor listens to what I have to say.	84.0%	5.1%	11.0%	81	N/A
Agree-disagree	2018	49	My supervisor treats me with respect.	84.6%	8.6%	6.8%	81	N/A
Agree-disagree	2018	50	In the last six months, my supervisor has talked with me about my performance.	85.9%	6.5%	7.6%	81	N/A
Agree-disagree	2018	51	I have trust and confidence in my supervisor.	76.6%	9.1%	14.3%	81	N/A
Good-poor	2018	52	Overall, how good a job do you feel is being done by your immediate supervisor?	72.1%	18.3%	9.6%	80	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2018	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	24.1%	8.1%	67.7%	79	1
Agree-disagree	2018	54	My organization's senior leaders maintain high standards of honesty and integrity.	27.0%	23.7%	49.3%	75	5
Agree-disagree	2018	55	Supervisors work well with employees of different backgrounds.	55.9%	26.9%	17.2%	71	8
Agree-disagree	2018	56	*Managers communicate the goals of the organization.	56.3%	14.4%	29.2%	79	1
Agree-disagree	2018	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	61.6%	19.1%	19.3%	73	7
Agree-disagree	2018	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	48.2%	10.1%	41.7%	75	4
Agree-disagree	2018	59	Managers support collaboration across work units to accomplish work objectives.	49.6%	14.5%	35.9%	73	4
Good-poor	2018	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	70.5%	17.9%	11.6%	70	10
Agree-disagree	2018	61	I have a high level of respect for my organization's senior leaders.	26.2%	10.1%	63.7%	78	2
Agree-disagree	2018	62	Senior leaders demonstrate support for Work-Life programs.	40.3%	22.3%	37.4%	73	7
Satisfied-dissatisfied	2018	63	*How satisfied are you with your involvement in decisions that affect your work?	38.6%	21.9%	39.5%	80	N/A
Satisfied-dissatisfied	2018	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	32.7%	14.3%	53.1%	80	N/A
Satisfied-dissatisfied	2018	65	*How satisfied are you with the recognition you receive for doing a good job?	59.7%	20.2%	20.1%	80	N/A
Satisfied-dissatisfied	2018	66	How satisfied are you with the policies and practices of your senior leaders?	24.6%	11.2%	64.2%	79	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2018	67	How satisfied are you with your opportunity to get a better job in your organization?	24.1%	38.7%	37.2%	80	N/A
Satisfied-dissatisfied	2018	68	How satisfied are you with the training you receive for your present job?	37.3%	23.4%	39.3%	80	N/A
Satisfied-dissatisfied	2018	69	*Considering everything, how satisfied are you with your job?	55.7%	15.2%	29.0%	79	N/A
Satisfied-dissatisfied	2018	70	Considering everything, how satisfied are you with your pay?	76.2%	17.2%	6.6%	80	N/A
Satisfied-dissatisfied	2018	71	*Considering everything, how satisfied are you with your organization?	31.4%	25.6%	43.0%	80	N/A
Agree-disagree	2017	1	*I am given a real opportunity to improve my skills in my organization.	74.5%	11.4%	14.2%	76	N/A
Agree-disagree	2017	2	I have enough information to do my job well.	91.3%	4.4%	4.3%	76	N/A
Agree-disagree	2017	3	I feel encouraged to come up with new and better ways of doing things.	58.6%	22.9%	18.5%	76	N/A
Agree-disagree	2017	4	My work gives me a feeling of personal accomplishment.	75.7%	17.7%	6.6%	76	N/A
Agree-disagree	2017	5	I like the kind of work I do.	87.4%	11.6%	1.0%	75	N/A
Agree-disagree	2017	6	I know what is expected of me on the job.	91.1%	5.0%	4.0%	76	N/A
Agree-disagree	2017	7	When needed I am willing to put in the extra effort to get a job done.	98.9%	1.1%	0.0%	76	N/A
Agree-disagree	2017	8	I am constantly looking for ways to do my job better.	92.1%	7.9%	0.0%	75	N/A
Agree-disagree	2017	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	57.6%	18.5%	23.9%	75	0
Agree-disagree	2017	10	*My workload is reasonable.	78.5%	9.9%	11.6%	76	0
Agree-disagree	2017	11	*My talents are used well in the workplace.	72.8%	12.7%	14.5%	76	0
Agree-disagree	2017	12	*I know how my work relates to the agency's goals and priorities.	94.5%	5.5%	0.0%	76	0

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2017	13	The work I do is important.	85.6%	12.8%	1.6%	75	0
Agree-disagree	2017	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	87.4%	6.7%	5.9%	76	0
Agree-disagree	2017	15	My performance appraisal is a fair reflection of my performance.	79.6%	8.6%	11.8%	72	4
Agree-disagree	2017	16	I am held accountable for achieving results.	96.9%	3.1%	0.0%	76	0
Agree-disagree	2017	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	76.6%	13.1%	10.3%	72	4
Agree-disagree	2017	18	My training needs are assessed.	59.0%	25.2%	15.8%	75	0
Agree-disagree	2017	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	84.7%	11.6%	3.7%	69	7
Agree-disagree	2017	20	*The people I work with cooperate to get the job done.	86.2%	9.9%	3.9%	76	N/A
Agree-disagree	2017	21	My work unit is able to recruit people with the right skills.	78.7%	7.6%	13.7%	74	2
Agree-disagree	2017	22	Promotions in my work unit are based on merit.	60.8%	19.9%	19.2%	69	7
Agree-disagree	2017	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	60.8%	28.4%	10.8%	66	10
Agree-disagree	2017	24	*In my work unit, differences in performance are recognized in a meaningful way.	61.1%	23.5%	15.4%	70	5
Agree-disagree	2017	25	Awards in my work unit depend on how well employees perform their jobs.	75.2%	18.2%	6.5%	72	4
Agree-disagree	2017	26	Employees in my work unit share job knowledge with each other.	89.6%	7.2%	3.2%	76	0
Agree-disagree	2017	27	The skill level in my work unit has improved in the past year.	74.3%	20.8%	4.9%	73	2
Good-poor	2017	28	How would you rate the overall quality of work done by your work unit?	98.0%	2.0%	0.0%	76	N/A
Agree-disagree	2017	29	*The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	91.7%	7.2%	1.0%	74	1
Agree-disagree	2017	30	Employees have a feeling of personal empowerment with respect to work processes.	61.2%	19.5%	19.3%	74	1
Agree-disagree	2017	31	Employees are recognized for providing high quality products and services.	65.0%	22.8%	12.2%	73	1

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2017	32	Creativity and innovation are rewarded.	52.1%	23.7%	24.2%	74	2
Agree-disagree	2017	33	Pay raises depend on how well employees perform their jobs.	47.5%	27.3%	25.2%	71	4
Agree-disagree	2017	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	69.5%	18.2%	12.3%	70	6
Agree-disagree	2017	35	Employees are protected from health and safety hazards on the job.	88.2%	9.0%	2.8%	75	1
Agree-disagree	2017	36	My organization has prepared employees for potential security threats.	84.6%	8.6%	6.8%	71	4
Agree-disagree	2017	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	67.7%	19.1%	13.2%	73	3
Agree-disagree	2017	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	77.7%	16.3%	5.9%	72	3
Agree-disagree	2017	39	My agency is successful at accomplishing its mission.	88.7%	6.7%	4.6%	76	0
Agree-disagree	2017	40	*I recommend my organization as a good place to work.	74.1%	18.6%	7.3%	76	N/A
Agree-disagree	2017	41	*I believe the results of this survey will be used to make my agency a better place to work.	62.0%	19.1%	18.9%	72	4
Agree-disagree	2017	42	My supervisor supports my need to balance work and other life issues.	85.3%	10.1%	4.6%	76	0
Agree-disagree	2017	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	82.5%	6.7%	10.8%	76	0
Agree-disagree	2017	44	Discussions with my supervisor about my performance are worthwhile.	78.2%	13.5%	8.3%	75	1
Agree-disagree	2017	45	My supervisor is committed to a workforce representative of all segments of society.	82.5%	15.5%	2.1%	69	7
Agree-disagree	2017	46	My supervisor provides me with constructive suggestions to improve my job performance.	75.6%	16.1%	8.3%	75	0
Agree-disagree	2017	47	Supervisors in my work unit support employee development.	78.3%	13.3%	8.4%	75	1
Agree-disagree	2017	48	My supervisor listens to what I have to say.	84.3%	9.6%	6.1%	76	N/A
Agree-disagree	2017	49	My supervisor treats me with respect.	84.8%	6.8%	8.4%	76	N/A



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2017	50	In the last six months, my supervisor has talked with me about my performance.	91.9%	6.0%	2.1%	75	N/A
Agree-disagree	2017	51	I have trust and confidence in my supervisor.	80.6%	10.9%	8.5%	75	N/A
Good-poor	2017	52	Overall, how good a job do you feel is being done by your immediate supervisor?	84.3%	9.6%	6.0%	76	N/A
Agree-disagree	2017	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	62.2%	18.2%	19.6%	75	1
Agree-disagree	2017	54	My organization's senior leaders maintain high standards of honesty and integrity.	68.7%	22.9%	8.4%	73	3
Agree-disagree	2017	55	Supervisors work well with employees of different backgrounds.	73.3%	17.5%	9.2%	72	3
Agree-disagree	2017	56	*Managers communicate the goals and priorities of the organization.	77.8%	15.2%	7.0%	75	1
Agree-disagree	2017	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	87.2%	9.7%	3.1%	73	3
Agree-disagree	2017	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	66.7%	12.3%	21.0%	75	1
Agree-disagree	2017	59	Managers support collaboration across work units to accomplish work objectives.	57.9%	27.9%	14.1%	73	2
Good-poor	2017	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	77.7%	13.9%	8.3%	72	4
Agree-disagree	2017	61	I have a high level of respect for my organization's senior leaders.	62.2%	25.8%	12.0%	76	0
Agree-disagree	2017	62	Senior leaders demonstrate support for Work-Life programs.	73.2%	21.5%	5.4%	74	2
Satisfied-dissatisfied	2017	63	*How satisfied are you with your involvement in decisions that affect your work?	66.7%	12.6%	20.6%	76	N/A
Satisfied-dissatisfied	2017	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	63.6%	14.0%	22.4%	76	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2017	65	*How satisfied are you with the recognition you receive for doing a good job?	65.0%	25.8%	9.2%	75	N/A
Satisfied-dissatisfied	2017	66	How satisfied are you with the policies and practices of your senior leaders?	60.6%	25.6%	13.9%	76	N/A
Satisfied-dissatisfied	2017	67	How satisfied are you with your opportunity to get a better job in your organization?	46.8%	25.3%	27.9%	76	N/A
Satisfied-dissatisfied	2017	68	How satisfied are you with the training you receive for your present job?	67.9%	20.3%	11.9%	76	N/A
Satisfied-dissatisfied	2017	69	*Considering everything, how satisfied are you with your job?	75.9%	17.0%	7.1%	76	N/A
Satisfied-dissatisfied	2017	70	Considering everything, how satisfied are you with your pay?	70.3%	17.2%	12.5%	76	N/A
Satisfied-dissatisfied	2017	71	*Considering everything, how satisfied are you with your organization?	69.0%	16.7%	14.3%	75	N/A
Agree-disagree	2016	1	*I am given a real opportunity to improve my skills in my organization.	83.8%	4.1%	12.1%	98	N/A
Agree-disagree	2016	2	I have enough information to do my job well.	88.4%	6.3%	5.3%	96	N/A
Agree-disagree	2016	3	I feel encouraged to come up with new and better ways of doing things.	71.5%	12.1%	16.4%	97	N/A
Agree-disagree	2016	4	My work gives me a feeling of personal accomplishment.	79.7%	10.1%	10.2%	98	N/A
Agree-disagree	2016	5	I like the kind of work I do.	84.6%	7.1%	8.3%	96	N/A
Agree-disagree	2016	6	I know what is expected of me on the job.	93.8%	1.9%	4.3%	98	N/A
Agree-disagree	2016	7	When needed I am willing to put in the extra effort to get a job done.	95.8%	3.1%	1.2%	98	N/A
Agree-disagree	2016	8	I am constantly looking for ways to do my job better.	88.7%	8.4%	3.0%	98	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2016	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	78.5%	9.2%	12.3%	98	0
Agree-disagree	2016	10	*My workload is reasonable.	79.4%	7.4%	13.2%	98	0
Agree-disagree	2016	11	*My talents are used well in the workplace.	75.7%	13.4%	10.9%	97	0
Agree-disagree	2016	12	*I know how my work relates to the agency's goals and priorities.	93.9%	2.0%	4.1%	97	0
Agree-disagree	2016	13	The work I do is important.	87.6%	8.3%	4.1%	96	0
Agree-disagree	2016	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	94.1%	1.9%	3.9%	98	0
Agree-disagree	2016	15	My performance appraisal is a fair reflection of my performance.	83.4%	7.9%	8.7%	91	5
Agree-disagree	2016	16	I am held accountable for achieving results.	97.0%	2.0%	1.0%	98	0
Agree-disagree	2016	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	75.8%	16.7%	7.5%	92	6
Agree-disagree	2016	18	My training needs are assessed.	68.0%	18.8%	13.2%	97	1
Agree-disagree	2016	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	83.6%	6.7%	9.8%	91	7
Agree-disagree	2016	20	*The people I work with cooperate to get the job done.	93.8%	5.2%	1.0%	98	N/A
Agree-disagree	2016	21	My work unit is able to recruit people with the right skills.	84.2%	14.5%	1.2%	91	6
Agree-disagree	2016	22	Promotions in my work unit are based on merit.	69.4%	21.6%	9.0%	89	9
Agree-disagree	2016	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	62.3%	30.5%	7.2%	82	16
Agree-disagree	2016	24	*In my work unit, differences in performance are recognized in a meaningful way.	60.1%	20.5%	19.4%	87	11
Agree-disagree	2016	25	Awards in my work unit depend on how well employees perform their jobs.	72.0%	11.9%	16.1%	91	7
Agree-disagree	2016	26	Employees in my work unit share job knowledge with each other.	90.5%	6.4%	3.1%	98	0
Agree-disagree	2016	27	The skill level in my work unit has improved in the past year.	81.7%	14.1%	4.2%	93	3
Good-poor	2016	28	How would you rate the overall quality of work done by your work unit?	95.8%	2.2%	2.0%	98	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2016	29	*The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	92.6%	4.4%	3.0%	94	2
Agree-disagree	2016	30	Employees have a feeling of personal empowerment with respect to work processes.	70.8%	8.3%	20.9%	96	1
Agree-disagree	2016	31	Employees are recognized for providing high quality products and services.	80.5%	11.1%	8.4%	96	1
Agree-disagree	2016	32	Creativity and innovation are rewarded.	59.9%	18.4%	21.7%	95	1
Agree-disagree	2016	33	Pay raises depend on how well employees perform their jobs.	58.3%	26.8%	14.9%	86	10
Agree-disagree	2016	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	76.2%	13.7%	10.2%	89	7
Agree-disagree	2016	35	Employees are protected from health and safety hazards on the job.	93.6%	5.3%	1.1%	90	6
Agree-disagree	2016	36	My organization has prepared employees for potential security threats.	80.9%	13.9%	5.2%	94	3
Agree-disagree	2016	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	76.6%	14.2%	9.3%	88	8
Agree-disagree	2016	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	89.1%	9.8%	1.1%	88	8
Agree-disagree	2016	39	My agency is successful at accomplishing its mission.	93.8%	3.1%	3.1%	94	3
Agree-disagree	2016	40	*I recommend my organization as a good place to work.	83.4%	7.4%	9.2%	96	N/A
Agree-disagree	2016	41	*I believe the results of this survey will be used to make my agency a better place to work.	81.8%	9.8%	8.5%	93	4
Agree-disagree	2016	42	My supervisor supports my need to balance work and other life issues.	88.5%	4.1%	7.4%	96	1
Agree-disagree	2016	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	79.4%	7.6%	13.0%	96	1
Agree-disagree	2016	44	Discussions with my supervisor about my performance are worthwhile.	77.0%	12.4%	10.6%	94	1
Agree-disagree	2016	45	My supervisor is committed to a workforce representative of all segments of society.	75.8%	16.3%	8.0%	88	9

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2016	46	My supervisor provides me with constructive suggestions to improve my job performance.	79.2%	11.8%	9.0%	95	1
Agree-disagree	2016	47	Supervisors in my work unit support employee development.	84.4%	10.5%	5.1%	96	1
Agree-disagree	2016	48	My supervisor listens to what I have to say.	87.8%	4.1%	8.1%	97	N/A
Agree-disagree	2016	49	My supervisor treats me with respect.	86.7%	6.4%	6.9%	97	N/A
Agree-disagree	2016	50	In the last six months, my supervisor has talked with me about my performance.	91.6%	3.4%	5.0%	95	N/A
Agree-disagree	2016	51	I have trust and confidence in my supervisor.	79.1%	9.6%	11.3%	97	N/A
Good-poor	2016	52	Overall, how good a job do you feel is being done by your immediate supervisor?	84.1%	8.9%	7.0%	96	N/A
Agree-disagree	2016	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	79.3%	14.6%	6.1%	96	0
Agree-disagree	2016	54	My organization's senior leaders maintain high standards of honesty and integrity.	83.3%	14.6%	2.1%	93	4
Agree-disagree	2016	55	Supervisors work well with employees of different backgrounds.	86.8%	6.9%	6.3%	92	4
Agree-disagree	2016	56	*Managers communicate the goals and priorities of the organization.	88.3%	8.7%	3.1%	93	1
Agree-disagree	2016	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	90.0%	7.9%	2.1%	93	3
Agree-disagree	2016	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	76.2%	13.1%	10.6%	94	2
Agree-disagree	2016	59	Managers support collaboration across work units to accomplish work objectives.	77.2%	12.3%	10.5%	94	3
Good-poor	2016	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	85.1%	9.6%	5.3%	95	1
Agree-disagree	2016	61	I have a high level of respect for my organization's senior leaders.	87.8%	10.0%	2.2%	96	0
Agree-disagree	2016	62	Senior leaders demonstrate support for Work-Life programs.	89.1%	5.3%	5.6%	93	4



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2016	63	*How satisfied are you with your involvement in decisions that affect your work?	72.8%	9.2%	18.0%	95	N/A
Satisfied-dissatisfied	2016	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	77.6%	12.4%	10.0%	97	N/A
Satisfied-dissatisfied	2016	65	*How satisfied are you with the recognition you receive for doing a good job?	77.4%	12.3%	10.2%	97	N/A
Satisfied-dissatisfied	2016	66	How satisfied are you with the policies and practices of your senior leaders?	71.4%	19.9%	8.7%	94	N/A
Satisfied-dissatisfied	2016	67	How satisfied are you with your opportunity to get a better job in your organization?	55.1%	26.0%	18.9%	96	N/A
Satisfied-dissatisfied	2016	68	How satisfied are you with the training you receive for your present job?	68.6%	20.2%	11.2%	95	N/A
Satisfied-dissatisfied	2016	69	*Considering everything, how satisfied are you with your job?	83.6%	6.0%	10.4%	96	N/A
Satisfied-dissatisfied	2016	70	Considering everything, how satisfied are you with your pay?	76.9%	15.5%	7.7%	96	N/A
Satisfied-dissatisfied	2016	71	*Considering everything, how satisfied are you with your organization?	81.2%	9.3%	9.5%	95	N/A
Agree-disagree	2015	1	*I am given a real opportunity to improve my skills in my organization.	86.8%	6.0%	7.2%	98	N/A
Agree-disagree	2015	2	I have enough information to do my job well.	91.6%	5.2%	3.2%	97	N/A
Agree-disagree	2015	3	I feel encouraged to come up with new and better ways of doing things.	67.5%	10.7%	21.8%	96	N/A
Agree-disagree	2015	4	My work gives me a feeling of personal accomplishment.	86.1%	7.5%	6.4%	94	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2015	5	I like the kind of work I do.	90.7%	4.1%	5.2%	96	N/A
Agree-disagree	2015	6	I know what is expected of me on the job.	88.7%	5.1%	6.2%	97	N/A
Agree-disagree	2015	7	When needed I am willing to put in the extra effort to get a job done.	99.0%	1.0%	0.0%	98	N/A
Agree-disagree	2015	8	I am constantly looking for ways to do my job better.	92.8%	6.1%	1.0%	97	N/A
Agree-disagree	2015	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	71.4%	8.1%	20.5%	98	0
Agree-disagree	2015	10	*My workload is reasonable.	76.4%	7.4%	16.2%	98	0
Agree-disagree	2015	11	*My talents are used well in the workplace.	80.4%	10.4%	9.2%	97	0
Agree-disagree	2015	12	*I know how my work relates to the agency's goals and priorities.	93.9%	3.0%	3.1%	98	0
Agree-disagree	2015	13	The work I do is important.	91.7%	4.1%	4.2%	96	0
Agree-disagree	2015	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	93.6%	2.2%	4.2%	97	0
Agree-disagree	2015	15	My performance appraisal is a fair reflection of my performance.	79.3%	8.8%	11.9%	92	6
Agree-disagree	2015	16	I am held accountable for achieving results.	98.0%	2.0%	0.0%	97	0
Agree-disagree	2015	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	82.9%	12.5%	4.6%	89	9
Agree-disagree	2015	18	My training needs are assessed.	74.9%	18.9%	6.2%	96	2
Agree-disagree	2015	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	77.7%	6.6%	15.8%	89	9
Agree-disagree	2015	20	*The people I work with cooperate to get the job done.	90.7%	3.2%	6.1%	98	N/A
Agree-disagree	2015	21	My work unit is able to recruit people with the right skills.	82.6%	10.1%	7.4%	94	4
Agree-disagree	2015	22	Promotions in my work unit are based on merit.	77.8%	17.6%	4.6%	87	10
Agree-disagree	2015	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	65.0%	21.8%	13.2%	84	14
Agree-disagree	2015	24	*In my work unit, differences in performance are recognized in a meaningful way.	75.8%	12.8%	11.4%	88	10

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2015	25	Awards in my work unit depend on how well employees perform their jobs.	79.0%	14.1%	6.9%	87	11
Agree-disagree	2015	26	Employees in my work unit share job knowledge with each other.	95.8%	3.1%	1.1%	97	0
Agree-disagree	2015	27	The skill level in my work unit has improved in the past year.	83.0%	13.8%	3.2%	94	3
Good-poor	2015	28	How would you rate the overall quality of work done by your work unit?	98.0%	2.0%	0.0%	98	N/A
Agree-disagree	2015	29	*The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	94.7%	2.2%	3.1%	97	0
Agree-disagree	2015	30	Employees have a feeling of personal empowerment with respect to work processes.	70.8%	13.1%	16.1%	92	4
Agree-disagree	2015	31	Employees are recognized for providing high quality products and services.	81.6%	7.7%	10.7%	93	3
Agree-disagree	2015	32	Creativity and innovation are rewarded.	61.7%	19.3%	19.0%	94	3
Agree-disagree	2015	33	Pay raises depend on how well employees perform their jobs.	53.1%	27.7%	19.1%	84	13
Agree-disagree	2015	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	81.0%	11.3%	7.7%	90	6
Agree-disagree	2015	35	Employees are protected from health and safety hazards on the job.	93.6%	6.4%	0.0%	96	1
Agree-disagree	2015	36	My organization has prepared employees for potential security threats.	84.8%	9.9%	5.3%	94	3
Agree-disagree	2015	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	79.5%	11.5%	8.9%	91	6
Agree-disagree	2015	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	91.1%	6.7%	2.2%	92	5
Agree-disagree	2015	39	My agency is successful at accomplishing its mission.	93.7%	4.2%	2.1%	96	1
Agree-disagree	2015	40	*I recommend my organization as a good place to work.	85.4%	10.5%	4.1%	97	N/A
Agree-disagree	2015	41	*I believe the results of this survey will be used to make my agency a better place to work.	86.0%	9.8%	4.3%	94	3

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2015	42	My supervisor supports my need to balance work and other life issues.	90.5%	5.3%	4.2%	97	0
Agree-disagree	2015	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	83.2%	10.5%	6.3%	96	1
Agree-disagree	2015	44	Discussions with my supervisor about my performance are worthwhile.	82.3%	7.4%	10.3%	96	0
Agree-disagree	2015	45	My supervisor is committed to a workforce representative of all segments of society.	81.5%	16.2%	2.3%	88	9
Agree-disagree	2015	46	My supervisor provides me with constructive suggestions to improve my job performance.	80.6%	7.2%	12.2%	97	0
Agree-disagree	2015	47	Supervisors in my work unit support employee development.	93.9%	4.0%	2.1%	96	0
Agree-disagree	2015	48	My supervisor listens to what I have to say.	85.3%	9.5%	5.2%	96	N/A
Agree-disagree	2015	49	My supervisor treats me with respect.	86.2%	7.4%	6.4%	95	N/A
Agree-disagree	2015	50	In the last six months, my supervisor has talked with me about my performance.	92.8%	3.1%	4.1%	95	N/A
Agree-disagree	2015	51	I have trust and confidence in my supervisor.	83.2%	9.6%	7.2%	95	N/A
Good-poor	2015	52	Overall, how good a job do you feel is being done by your immediate supervisor?	85.5%	10.5%	4.0%	97	N/A
Agree-disagree	2015	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	85.9%	6.5%	7.5%	94	3
Agree-disagree	2015	54	My organization's senior leaders maintain high standards of honesty and integrity.	85.1%	11.7%	3.2%	95	2
Agree-disagree	2015	55	Supervisors work well with employees of different backgrounds.	83.3%	13.4%	3.3%	92	5
Agree-disagree	2015	56	*Managers communicate the goals and priorities of the organization.	92.5%	5.4%	2.1%	95	1
Agree-disagree	2015	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	94.4%	4.5%	1.1%	93	3
Agree-disagree	2015	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	77.5%	15.1%	7.4%	94	2
Agree-disagree	2015	59	Managers support collaboration across work units to accomplish work objectives.	77.7%	15.0%	7.3%	94	3

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Good-poor	2015	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	83.7%	11.0%	5.3%	95	2
Agree-disagree	2015	61	I have a high level of respect for my organization's senior leaders.	85.4%	9.5%	5.1%	97	0
Agree-disagree	2015	62	Senior leaders demonstrate support for Work-Life programs.	93.8%	5.1%	1.0%	97	0
Satisfied-dissatisfied	2015	63	*How satisfied are you with your involvement in decisions that affect your work?	73.7%	13.9%	12.3%	97	N/A
Satisfied-dissatisfied	2015	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	84.4%	9.5%	6.1%	97	N/A
Satisfied-dissatisfied	2015	65	*How satisfied are you with the recognition you receive for doing a good job?	78.4%	10.4%	11.2%	97	N/A
Satisfied-dissatisfied	2015	66	How satisfied are you with the policies and practices of your senior leaders?	77.9%	16.9%	5.2%	96	N/A
Satisfied-dissatisfied	2015	67	How satisfied are you with your opportunity to get a better job in your organization?	61.7%	21.4%	16.9%	96	N/A
Satisfied-dissatisfied	2015	68	How satisfied are you with the training you receive for your present job?	82.3%	12.5%	5.2%	96	N/A
Satisfied-dissatisfied	2015	69	*Considering everything, how satisfied are you with your job?	88.5%	3.1%	8.4%	96	N/A
Satisfied-dissatisfied	2015	70	Considering everything, how satisfied are you with your pay?	80.2%	7.3%	12.5%	97	N/A
Satisfied-dissatisfied	2015	71	*Considering everything, how satisfied are you with your organization?	85.4%	8.2%	6.3%	97	N/A



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2014	1	*I am given a real opportunity to improve my skills in my organization.	81.8%	8.7%	9.5%	90	N/A
Agree-disagree	2014	2	I have enough information to do my job well.	88.8%	8.0%	3.2%	90	N/A
Agree-disagree	2014	3	I feel encouraged to come up with new and better ways of doing things.	69.2%	13.3%	17.5%	89	N/A
Agree-disagree	2014	4	My work gives me a feeling of personal accomplishment.	81.1%	10.0%	8.9%	89	N/A
Agree-disagree	2014	5	I like the kind of work I do.	81.6%	14.2%	4.2%	90	N/A
Agree-disagree	2014	6	I know what is expected of me on the job.	94.2%	3.6%	2.2%	88	N/A
Agree-disagree	2014	7	When needed I am willing to put in the extra effort to get a job done.	100.0%	0.0%	0.0%	89	N/A
Agree-disagree	2014	8	I am constantly looking for ways to do my job better.	93.6%	6.4%	0.0%	89	N/A
Agree-disagree	2014	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	68.9%	4.3%	26.8%	90	0
Agree-disagree	2014	10	*My workload is reasonable.	53.3%	13.0%	33.7%	90	0
Agree-disagree	2014	11	*My talents are used well in the workplace.	70.0%	15.2%	14.8%	85	0
Agree-disagree	2014	12	*I know how my work relates to the agency's goals and priorities.	95.8%	2.1%	2.1%	90	0
Agree-disagree	2014	13	The work I do is important.	92.4%	6.5%	1.1%	89	0
Agree-disagree	2014	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	91.5%	2.2%	6.4%	89	0
Agree-disagree	2014	15	My performance appraisal is a fair reflection of my performance.	76.1%	10.5%	13.4%	85	4
Agree-disagree	2014	16	I am held accountable for achieving results.	96.9%	2.1%	1.0%	90	0
Agree-disagree	2014	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	69.2%	24.6%	6.2%	86	4
Agree-disagree	2014	18	My training needs are assessed.	74.6%	13.3%	12.1%	89	1
Agree-disagree	2014	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	83.2%	7.4%	9.4%	84	6
Agree-disagree	2014	20	*The people I work with cooperate to get the job done.	86.9%	7.8%	5.3%	90	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2014	21	My work unit is able to recruit people with the right skills.	80.4%	12.9%	6.6%	88	2
Agree-disagree	2014	22	Promotions in my work unit are based on merit.	64.4%	22.0%	13.5%	81	9
Agree-disagree	2014	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	61.1%	21.3%	17.6%	78	11
Agree-disagree	2014	24	*In my work unit, differences in performance are recognized in a meaningful way.	64.3%	19.4%	16.3%	85	5
Agree-disagree	2014	25	Awards in my work unit depend on how well employees perform their jobs.	64.3%	22.3%	13.4%	83	6
Agree-disagree	2014	26	Employees in my work unit share job knowledge with each other.	90.0%	5.6%	4.4%	89	1
Agree-disagree	2014	27	The skill level in my work unit has improved in the past year.	82.2%	15.7%	2.1%	88	2
Good-poor	2014	28	How would you rate the overall quality of work done by your work unit?	91.2%	8.8%	0.0%	90	N/A
Agree-disagree	2014	29	*The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	90.7%	6.0%	3.3%	88	2
Agree-disagree	2014	30	Employees have a feeling of personal empowerment with respect to work processes.	61.1%	16.6%	22.3%	86	4
Agree-disagree	2014	31	Employees are recognized for providing high quality products and services.	74.4%	10.5%	15.1%	86	3
Agree-disagree	2014	32	Creativity and innovation are rewarded.	52.1%	16.7%	31.2%	88	2
Agree-disagree	2014	33	Pay raises depend on how well employees perform their jobs.	45.5%	21.2%	33.3%	85	5
Agree-disagree	2014	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	72.7%	14.1%	13.2%	81	9
Agree-disagree	2014	35	Employees are protected from health and safety hazards on the job.	90.2%	3.8%	5.9%	85	4
Agree-disagree	2014	36	My organization has prepared employees for potential security threats.	77.9%	12.7%	9.4%	85	2
Agree-disagree	2014	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	71.8%	17.0%	11.2%	80	8

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2014	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	80.8%	15.5%	3.7%	79	11
Agree-disagree	2014	39	My agency is successful at accomplishing its mission.	89.0%	9.9%	1.0%	89	0
Agree-disagree	2014	40	*I recommend my organization as a good place to work.	80.6%	11.5%	8.0%	90	N/A
Agree-disagree	2014	41	*I believe the results of this survey will be used to make my agency a better place to work.	73.3%	19.6%	7.1%	84	6
Agree-disagree	2014	42	My supervisor supports my need to balance work and other life issues.	86.1%	6.6%	7.4%	89	0
Agree-disagree	2014	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	74.7%	12.8%	12.5%	90	0
Agree-disagree	2014	44	Discussions with my supervisor about my performance are worthwhile.	75.1%	14.6%	10.3%	88	0
Agree-disagree	2014	45	My supervisor is committed to a workforce representative of all segments of society.	78.1%	14.9%	7.1%	78	11
Agree-disagree	2014	46	My supervisor provides me with constructive suggestions to improve my job performance.	73.8%	14.1%	12.1%	90	0
Agree-disagree	2014	47	Supervisors in my work unit support employee development.	78.1%	13.7%	8.2%	88	1
Agree-disagree	2014	48	My supervisor listens to what I have to say.	85.1%	6.0%	8.9%	89	N/A
Agree-disagree	2014	49	My supervisor treats me with respect.	84.9%	4.5%	10.6%	88	N/A
Agree-disagree	2014	50	In the last six months, my supervisor has talked with me about my performance.	95.6%	2.3%	2.2%	89	N/A
Agree-disagree	2014	51	I have trust and confidence in my supervisor.	74.8%	12.4%	12.8%	89	N/A
Good-poor	2014	52	Overall, how good a job do you feel is being done by your immediate supervisor?	81.9%	13.3%	4.8%	89	N/A
Agree-disagree	2014	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	77.3%	10.5%	12.3%	89	0
Agree-disagree	2014	54	My organization's senior leaders maintain high standards of honesty and integrity.	82.7%	8.2%	9.1%	89	0
Agree-disagree	2014	55	Supervisors work well with employees of different backgrounds.	80.8%	14.2%	5.0%	82	7
Agree-disagree	2014	56	*Managers communicate the goals and priorities of the organization.	89.5%	7.2%	3.3%	87	0

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2014	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	88.1%	9.5%	2.4%	86	2
Agree-disagree	2014	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	69.6%	14.5%	15.9%	86	3
Agree-disagree	2014	59	Managers support collaboration across work units to accomplish work objectives.	73.5%	15.8%	10.7%	83	5
Good-poor	2014	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	81.6%	11.6%	6.8%	88	1
Agree-disagree	2014	61	I have a high level of respect for my organization's senior leaders.	85.1%	7.9%	7.0%	88	0
Agree-disagree	2014	62	Senior leaders demonstrate support for Work-Life programs.	82.6%	8.0%	9.4%	87	2
Satisfied-dissatisfied	2014	63	*How satisfied are you with your involvement in decisions that affect your work?	62.1%	15.0%	22.9%	89	N/A
Satisfied-dissatisfied	2014	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	73.9%	14.2%	11.9%	89	N/A
Satisfied-dissatisfied	2014	65	*How satisfied are you with the recognition you receive for doing a good job?	64.5%	13.8%	21.6%	88	N/A
Satisfied-dissatisfied	2014	66	How satisfied are you with the policies and practices of your senior leaders?	67.5%	19.8%	12.6%	87	N/A
Satisfied-dissatisfied	2014	67	How satisfied are you with your opportunity to get a better job in your organization?	50.7%	23.2%	26.0%	89	N/A
Satisfied-dissatisfied	2014	68	How satisfied are you with the training you receive for your present job?	76.9%	13.4%	9.7%	89	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2014	69	*Considering everything, how satisfied are you with your job?	80.4%	6.7%	13.0%	87	N/A
Satisfied-dissatisfied	2014	70	Considering everything, how satisfied are you with your pay?	73.6%	15.1%	11.3%	89	N/A
Satisfied-dissatisfied	2014	71	*Considering everything, how satisfied are you with your organization?	79.5%	9.0%	11.5%	89	N/A
Agree-disagree	2013	1	*I am given a real opportunity to improve my skills in my organization.	76.6%	8.2%	15.2%	96	N/A
Agree-disagree	2013	2	I have enough information to do my job well.	88.9%	4.3%	6.8%	95	N/A
Agree-disagree	2013	3	I feel encouraged to come up with new and better ways of doing things.	62.4%	19.8%	17.8%	95	N/A
Agree-disagree	2013	4	My work gives me a feeling of personal accomplishment.	76.5%	10.0%	13.5%	96	N/A
Agree-disagree	2013	5	I like the kind of work I do.	84.0%	6.3%	9.7%	93	N/A
Agree-disagree	2013	6	I know what is expected of me on the job.	85.5%	7.6%	6.8%	95	N/A
Agree-disagree	2013	7	When needed I am willing to put in the extra effort to get a job done.	98.0%	1.1%	0.9%	96	N/A
Agree-disagree	2013	8	I am constantly looking for ways to do my job better.	91.2%	7.0%	1.8%	96	N/A
Agree-disagree	2013	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	53.0%	13.7%	33.2%	96	0
Agree-disagree	2013	10	*My workload is reasonable.	59.6%	11.2%	29.1%	94	0
Agree-disagree	2013	11	*My talents are used well in the workplace.	68.4%	9.6%	22.0%	95	0
Agree-disagree	2013	12	*I know how my work relates to the agency's goals and priorities.	92.5%	4.3%	3.2%	94	1
Agree-disagree	2013	13	The work I do is important.	91.8%	6.3%	1.9%	93	1
Agree-disagree	2013	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	87.3%	7.7%	5.1%	96	0
Agree-disagree	2013	15	My performance appraisal is a fair reflection of my performance.	68.1%	10.1%	21.8%	93	2



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2013	16	I am held accountable for achieving results.	92.5%	7.5%	0.0%	95	0
Agree-disagree	2013	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	69.2%	16.7%	14.1%	89	7
Agree-disagree	2013	18	My training needs are assessed.	63.2%	14.6%	22.2%	96	0
Agree-disagree	2013	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	76.1%	9.8%	14.1%	89	7
Agree-disagree	2013	20	*The people I work with cooperate to get the job done.	83.4%	12.7%	3.9%	96	N/A
Agree-disagree	2013	21	My work unit is able to recruit people with the right skills.	62.8%	21.5%	15.7%	90	5
Agree-disagree	2013	22	Promotions in my work unit are based on merit.	58.4%	20.2%	21.5%	90	4
Agree-disagree	2013	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	63.8%	18.6%	17.6%	84	11
Agree-disagree	2013	24	*In my work unit, differences in performance are recognized in a meaningful way.	59.1%	18.2%	22.6%	87	8
Agree-disagree	2013	25	Awards in my work unit depend on how well employees perform their jobs.	63.3%	23.5%	13.2%	84	9
Agree-disagree	2013	26	Employees in my work unit share job knowledge with each other.	86.7%	8.9%	4.3%	96	0
Agree-disagree	2013	27	The skill level in my work unit has improved in the past year.	65.5%	27.0%	7.5%	93	1
Good-poor	2013	28	How would you rate the overall quality of work done by your work unit?	92.0%	6.1%	2.0%	95	N/A
Agree-disagree	2013	29	*The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	88.0%	6.6%	5.3%	94	2
Agree-disagree	2013	30	Employees have a feeling of personal empowerment with respect to work processes.	50.9%	24.9%	24.2%	93	3
Agree-disagree	2013	31	Employees are recognized for providing high quality products and services.	61.5%	22.3%	16.2%	92	4
Agree-disagree	2013	32	Creativity and innovation are rewarded.	45.7%	23.6%	30.6%	93	3
Agree-disagree	2013	33	Pay raises depend on how well employees perform their jobs.	44.7%	24.8%	30.5%	86	9
Agree-disagree	2013	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	60.1%	19.4%	20.5%	88	7

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2013	35	Employees are protected from health and safety hazards on the job.	88.2%	7.3%	4.5%	94	2
Agree-disagree	2013	36	My organization has prepared employees for potential security threats.	75.2%	17.2%	7.6%	93	3
Agree-disagree	2013	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	63.3%	23.3%	13.4%	86	7
Agree-disagree	2013	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	75.5%	13.1%	11.4%	84	12
Agree-disagree	2013	39	My agency is successful at accomplishing its mission.	82.6%	7.5%	9.9%	95	1
Agree-disagree	2013	40	*I recommend my organization as a good place to work.	68.0%	18.6%	13.4%	95	N/A
Agree-disagree	2013	41	*I believe the results of this survey will be used to make my agency a better place to work.	70.8%	14.7%	14.4%	86	10
Agree-disagree	2013	42	My supervisor supports my need to balance work and other life issues.	81.8%	11.0%	7.2%	95	1
Agree-disagree	2013	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	69.1%	17.2%	13.7%	94	1
Agree-disagree	2013	44	Discussions with my supervisor about my performance are worthwhile.	70.0%	15.0%	15.0%	91	1
Agree-disagree	2013	45	My supervisor is committed to a workforce representative of all segments of society.	68.7%	23.4%	8.0%	87	8
Agree-disagree	2013	46	My supervisor provides me with constructive suggestions to improve my job performance.	68.9%	18.5%	12.6%	94	1
Agree-disagree	2013	47	Supervisors in my work unit support employee development.	77.4%	14.4%	8.2%	94	2
Agree-disagree	2013	48	My supervisor listens to what I have to say.	76.7%	17.2%	6.0%	96	N/A
Agree-disagree	2013	49	My supervisor treats me with respect.	82.7%	10.8%	6.4%	95	N/A
Agree-disagree	2013	50	In the last six months, my supervisor has talked with me about my performance.	84.4%	6.6%	9.1%	94	N/A
Agree-disagree	2013	51	I have trust and confidence in my supervisor.	63.0%	20.6%	16.5%	96	N/A
Good-poor	2013	52	Overall, how good a job do you feel is being done by your immediate supervisor?	74.6%	17.2%	8.2%	96	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2013	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	65.7%	12.9%	21.4%	96	0
Agree-disagree	2013	54	My organization's senior leaders maintain high standards of honesty and integrity.	70.1%	13.6%	16.3%	94	2
Agree-disagree	2013	55	Supervisors work well with employees of different backgrounds.	72.7%	15.3%	12.0%	89	7
Agree-disagree	2013	56	*Managers communicate the goals and priorities of the organization.	80.0%	11.8%	8.2%	94	1
Agree-disagree	2013	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	86.2%	9.2%	4.6%	94	2
Agree-disagree	2013	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	68.7%	14.8%	16.4%	93	2
Agree-disagree	2013	59	Managers support collaboration across work units to accomplish work objectives.	69.7%	13.4%	16.9%	93	3
Good-poor	2013	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	76.5%	12.6%	10.9%	93	3
Agree-disagree	2013	61	I have a high level of respect for my organization's senior leaders.	73.2%	12.4%	14.4%	96	0
Agree-disagree	2013	62	Senior leaders demonstrate support for Work-Life programs.	85.1%	5.2%	9.7%	94	2
Satisfied-dissatisfied	2013	63	*How satisfied are you with your involvement in decisions that affect your work?	60.3%	17.6%	22.0%	94	N/A
Satisfied-dissatisfied	2013	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	75.7%	11.1%	13.2%	95	N/A
Satisfied-dissatisfied	2013	65	*How satisfied are you with the recognition you receive for doing a good job?	58.6%	18.1%	23.3%	95	N/A
Satisfied-dissatisfied	2013	66	How satisfied are you with the policies and practices of your senior leaders?	64.4%	17.1%	18.5%	95	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2013	67	How satisfied are you with your opportunity to get a better job in your organization?	40.7%	28.1%	31.1%	94	N/A
Satisfied-dissatisfied	2013	68	How satisfied are you with the training you receive for your present job?	65.3%	14.4%	20.3%	96	N/A
Satisfied-dissatisfied	2013	69	*Considering everything, how satisfied are you with your job?	71.7%	13.3%	15.0%	96	N/A
Satisfied-dissatisfied	2013	70	Considering everything, how satisfied are you with your pay?	68.8%	10.3%	20.9%	96	N/A
Satisfied-dissatisfied	2013	71	*Considering everything, how satisfied are you with your organization?	70.6%	14.0%	15.4%	96	N/A
Agree-disagree	2012	1	*I am given a real opportunity to improve my skills in my organization.	72.2%	10.6%	17.2%	92	N/A
Agree-disagree	2012	2	I have enough information to do my job well.	85.9%	5.9%	8.2%	92	N/A
Agree-disagree	2012	3	I feel encouraged to come up with new and better ways of doing things.	66.1%	20.0%	13.9%	90	N/A
Agree-disagree	2012	4	My work gives me a feeling of personal accomplishment.	74.3%	13.3%	12.3%	92	N/A
Agree-disagree	2012	5	I like the kind of work I do.	87.9%	6.7%	5.3%	92	N/A
Agree-disagree	2012	6	I know what is expected of me on the job.	87.5%	7.6%	4.9%	92	N/A
Agree-disagree	2012	7	When needed I am willing to put in the extra effort to get a job done.	94.0%	3.8%	2.2%	92	N/A
Agree-disagree	2012	8	I am constantly looking for ways to do my job better.	88.3%	4.9%	6.8%	89	N/A
Agree-disagree	2012	9	I have sufficient resources (for example, people, materials, budget) to get my job done.	53.6%	13.0%	33.4%	92	0
Agree-disagree	2012	10	*My workload is reasonable.	71.0%	6.4%	22.6%	90	0
Agree-disagree	2012	11	*My talents are used well in the workplace.	66.5%	20.1%	13.4%	91	1
Agree-disagree	2012	12	*I know how my work relates to the agency's goals and priorities.	92.1%	6.6%	1.3%	92	0

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2012	13	The work I do is important.	88.6%	9.0%	2.4%	91	0
Agree-disagree	2012	14	Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well.	89.7%	5.8%	4.5%	92	0
Agree-disagree	2012	15	My performance appraisal is a fair reflection of my performance.	81.8%	12.3%	6.0%	88	3
Agree-disagree	2012	16	I am held accountable for achieving results.	97.8%	2.2%	0.0%	91	1
Agree-disagree	2012	17	*I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	72.4%	19.1%	8.4%	81	11
Agree-disagree	2012	18	My training needs are assessed.	62.7%	16.5%	20.7%	91	1
Agree-disagree	2012	19	In my most recent performance appraisal, I understood what I had to do to be rated at different performance levels (for example, Fully Successful, Outstanding).	71.6%	12.0%	16.3%	85	7
Agree-disagree	2012	20	*The people I work with cooperate to get the job done.	87.0%	9.4%	3.5%	92	N/A
Agree-disagree	2012	21	My work unit is able to recruit people with the right skills.	49.4%	28.4%	22.2%	84	8
Agree-disagree	2012	22	Promotions in my work unit are based on merit.	52.5%	29.1%	18.3%	80	10
Agree-disagree	2012	23	In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.	53.5%	30.2%	16.3%	79	13
Agree-disagree	2012	24	*In my work unit, differences in performance are recognized in a meaningful way.	57.0%	26.8%	16.2%	82	10
Agree-disagree	2012	25	Awards in my work unit depend on how well employees perform their jobs.	65.5%	19.5%	15.0%	84	8
Agree-disagree	2012	26	Employees in my work unit share job knowledge with each other.	90.0%	3.8%	6.2%	90	1
Agree-disagree	2012	27	The skill level in my work unit has improved in the past year.	64.0%	27.5%	8.4%	88	4
Good-poor	2012	28	How would you rate the overall quality of work done by your work unit?	90.8%	6.8%	2.4%	91	N/A
Agree-disagree	2012	29	*The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.	93.5%	4.3%	2.2%	90	1
Agree-disagree	2012	30	Employees have a feeling of personal empowerment with respect to work processes.	61.5%	22.2%	16.3%	85	6
Agree-disagree	2012	31	Employees are recognized for providing high quality products and services.	66.7%	18.1%	15.2%	88	3



Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2012	32	Creativity and innovation are rewarded.	53.8%	25.7%	20.6%	87	4
Agree-disagree	2012	33	Pay raises depend on how well employees perform their jobs.	35.8%	35.1%	29.1%	83	8
Agree-disagree	2012	34	Policies and programs promote diversity in the workplace (for example, recruiting minorities and women, training in awareness of diversity issues, mentoring).	58.1%	25.4%	16.5%	86	5
Agree-disagree	2012	35	Employees are protected from health and safety hazards on the job.	90.8%	5.6%	3.6%	86	3
Agree-disagree	2012	36	My organization has prepared employees for potential security threats.	74.3%	15.6%	10.1%	85	5
Agree-disagree	2012	37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	62.9%	17.3%	19.8%	83	8
Agree-disagree	2012	38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	75.4%	16.4%	8.3%	79	10
Agree-disagree	2012	39	My agency is successful at accomplishing its mission.	92.3%	5.5%	2.3%	88	2
Agree-disagree	2012	40	*I recommend my organization as a good place to work.	73.1%	17.2%	9.7%	91	N/A
Agree-disagree	2012	41	*I believe the results of this survey will be used to make my agency a better place to work.	72.8%	15.6%	11.6%	81	9
Agree-disagree	2012	42	My supervisor supports my need to balance work and other life issues.	89.1%	3.4%	7.5%	90	1
Agree-disagree	2012	43	My supervisor provides me with opportunities to demonstrate my leadership skills.	77.6%	10.7%	11.7%	88	2
Agree-disagree	2012	44	Discussions with my supervisor about my performance are worthwhile.	78.9%	8.6%	12.6%	88	2
Agree-disagree	2012	45	My supervisor is committed to a workforce representative of all segments of society.	79.0%	13.5%	7.5%	85	6
Agree-disagree	2012	46	My supervisor provides me with constructive suggestions to improve my job performance.	78.6%	8.7%	12.7%	88	3
Agree-disagree	2012	47	Supervisors in my work unit support employee development.	84.3%	6.8%	8.8%	87	4
Agree-disagree	2012	48	My supervisor listens to what I have to say.	86.2%	6.8%	7.0%	90	N/A
Agree-disagree	2012	49	My supervisor treats me with respect.	89.0%	4.9%	6.1%	90	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Agree-disagree	2012	50	In the last six months, my supervisor has talked with me about my performance.	93.8%	3.2%	3.0%	90	N/A
Agree-disagree	2012	51	I have trust and confidence in my supervisor.	78.0%	10.5%	11.4%	89	N/A
Good-poor	2012	52	Overall, how good a job do you feel is being done by your immediate supervisor?	80.3%	12.4%	7.4%	89	N/A
Agree-disagree	2012	53	In my organization, senior leaders generate high levels of motivation and commitment in the workforce.	70.9%	15.3%	13.8%	88	2
Agree-disagree	2012	54	My organization's senior leaders maintain high standards of honesty and integrity.	76.7%	12.1%	11.2%	87	3
Agree-disagree	2012	55	Supervisors work well with employees of different backgrounds.	79.4%	10.7%	9.9%	87	2
Agree-disagree	2012	56	*Managers communicate the goals and priorities of the organization.	80.1%	13.9%	6.0%	89	1
Agree-disagree	2012	57	Managers review and evaluate the organization's progress toward meeting its goals and objectives.	87.8%	11.0%	1.1%	87	2
Agree-disagree	2012	58	Managers promote communication among different work units (for example, about projects, goals, needed resources).	69.0%	18.6%	12.4%	85	4
Agree-disagree	2012	59	Managers support collaboration across work units to accomplish work objectives.	72.8%	20.4%	6.9%	86	3
Good-poor	2012	60	Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?	75.0%	19.7%	5.3%	84	6
Agree-disagree	2012	61	I have a high level of respect for my organization's senior leaders.	76.5%	13.9%	9.6%	89	1
Agree-disagree	2012	62	Senior leaders demonstrate support for Work-Life programs.	85.4%	10.6%	3.9%	88	2
Satisfied-dissatisfied	2012	63	*How satisfied are you with your involvement in decisions that affect your work?	65.4%	16.6%	18.0%	90	N/A
Satisfied-dissatisfied	2012	64	*How satisfied are you with the information you receive from management on what's going on in your organization?	78.5%	13.1%	8.4%	90	N/A

Trend Core Survey

Response Type	Year	Item	Item Text	Percent Positive %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Percent Negative %	Item Response Total** N	Do Not Know/ No Basis to Judge N
Satisfied-dissatisfied	2012	65	*How satisfied are you with the recognition you receive for doing a good job?	71.4%	13.8%	14.8%	89	N/A
Satisfied-dissatisfied	2012	66	How satisfied are you with the policies and practices of your senior leaders?	69.4%	18.4%	12.2%	89	N/A
Satisfied-dissatisfied	2012	67	How satisfied are you with your opportunity to get a better job in your organization?	40.8%	32.0%	27.1%	88	N/A
Satisfied-dissatisfied	2012	68	How satisfied are you with the training you receive for your present job?	61.8%	16.7%	21.6%	90	N/A
Satisfied-dissatisfied	2012	69	*Considering everything, how satisfied are you with your job?	78.2%	9.9%	11.9%	89	N/A
Satisfied-dissatisfied	2012	70	Considering everything, how satisfied are you with your pay?	68.8%	14.9%	16.3%	89	N/A
Satisfied-dissatisfied	2012	71	*Considering everything, how satisfied are you with your organization?	78.1%	11.9%	10.0%	90	N/A

\* AES prescribed items as of 2017 (5 CFR Part 250, Subpart C)

\*\* Unweighted count of responses excluding 'Do Not Know' and 'No Basis to Judge'

The Dashboard only includes items 1-71.

Percentages are weighted to represent the Agency's population.

The rows above do not include results for any item or year when there were fewer than 4 completed surveys.

## Agency-Specific Questions

***1. I know how to contact an ethics official at my agency for assistance in applying the government ethics rules.***

	# of Respondents 2019	Percent 2019
Yes	48	92.2%
No	4	7.8%
Total	52	100.0%

For all tables on this worksheet:

Percentages are weighted to represent the Agency's population.

Source: 2019 OPM Federal Employee Viewpoint Survey

**Office of Personnel Management Federal Employee Viewpoint Survey  
2019 Item Change Summary**

2019 Item Text and Response Options	2018 Item Text and Response Options
<p>(72) Currently, in my work unit poor performers usually:</p> <ul style="list-style-type: none"> <li>• Remain in the work unit and improve their performance over time</li> <li>• Remain in the work unit and continue to underperform</li> <li>• Leave the work unit - removed or transferred</li> <li>• Leave the work unit - quit</li> <li>• There are no poor performers in my work unit</li> <li>• Do not know</li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(73) Which of the following best describes the impact of the partial government shutdown (December 22, 2018 – January 25, 2019) on your working/pay status?</p> <ul style="list-style-type: none"> <li>• The shutdown had no impact on my working/pay status</li> <li>• I did not work and did not receive pay until after the lapse ended</li> <li>• I worked some of the shutdown but did not receive pay until after the lapse ended</li> <li>• I worked for the entirety of the shutdown but did not receive pay until after the lapse ended</li> <li>• Other, not listed above</li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(74) How was your everyday work impacted during (if you worked) or after the partial government shutdown?</p> <ul style="list-style-type: none"> <li>• It had no impact</li> <li>• A slightly negative impact</li> <li>• A moderately negative impact</li> <li>• A very negative impact</li> <li>• An extremely negative impact</li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(75) In what ways did the partial government shutdown negatively affect your work? (Check all that apply)</p> <ul style="list-style-type: none"> <li>• Unmanageable workload</li> <li>• Missed deadlines</li> <li>• Unrecoverable loss of work</li> <li>• Reduced customer service</li> <li>• Delayed work</li> <li>• Reduced work quality</li> <li>• Cutback of critical work</li> <li>• Time lost in restarting work</li> <li>• Unmet statutory requirements</li> <li>• Other</li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(76) Are you looking for another job because of the partial government shutdown?</p> <ul style="list-style-type: none"> <li>• I am looking for another job <u>specifically</u> because of the shutdown</li> <li>• I am looking for another job, but the shutdown is <u>only one</u> of the reasons</li> <li>• I am looking for another job, but the shutdown had <u>no influence</u> on that decision</li> <li>• I am <u>not</u> looking for another job currently</li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(77) My agency provided the support (e.g., communication, assistance, guidance) I needed during the partial government shutdown.</p> <ul style="list-style-type: none"> <li>• Strongly Agree</li> <li>• Agree</li> <li>• Neither Agree nor Disagree</li> <li>• Disagree</li> <li>• Strongly Disagree</li> <li>• No support required</li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(79) How satisfied are you with the Telework program in your agency?</p> <ul style="list-style-type: none"> <li>• Very satisfied</li> <li>• Satisfied</li> <li>• Neither Satisfied nor Dissatisfied</li> <li>• Dissatisfied</li> <li>• Very Dissatisfied</li> <li>• I choose not to participate in this program</li> <li>• This program is not available to me</li> <li>• I am unaware of this program</li> </ul>	<p>(73) How satisfied are you with the following Work/Life programs in your agency? Telework</p> <ul style="list-style-type: none"> <li>• Very satisfied</li> <li>• Satisfied</li> <li>• Neither Satisfied nor Dissatisfied</li> <li>• Dissatisfied</li> <li>• Very Dissatisfied</li> <li>• I choose not to participate in these programs</li> <li>• These programs are not available to me</li> <li>• I am unaware of these programs</li> </ul>



**Office of Personnel Management Federal Employee Viewpoint Survey  
2019 Item Change Summary**

2019 Item Text and Response Options	2018 Item Text and Response Options
<p>(80) Which of the following Work-Life programs have you participated in or used at your agency within the last 12 months? (Mark all that apply):</p> <ul style="list-style-type: none"> <li>• <b>Alternative Work Schedules</b> (for example, compressed work schedule, flexible work schedule)</li> <li>• <b>Health and Wellness Programs</b> (for example, onsite exercise, flu vaccination, medical screening, CPR training, Health and wellness fair)</li> <li>• <b>Employee Assistance Program – EAP</b> (for example, short-term counseling, referral services, legal services, information services)</li> <li>• <b>Child Care Programs</b> (for example, child care center, parenting classes and support groups, back-up care, subsidy, flexible spending account)</li> <li>• <b>Elder Care Programs</b> (for example, elder/adult care, support groups, resources)</li> <li>• <b>None listed above</b></li> </ul>	<p>Not in 2018 OPM FEVS</p>
<p>(81-85) How satisfied are you with the following Work-Life programs in your agency?</p> <p>(81) Alternative Work Schedules (for example, compressed work schedule, flexible work schedule)</p> <p>(83) Employee Assistance Program - EAP (for example, short-term counseling, referral services, legal services, information services)</p> <p>(84) Child Care Programs (for example, child care center, parenting classes and support groups, back-up care, subsidy, flexible spending account)</p> <p>(85) Elder Care Programs (for example, elder/adult care, support groups, resources)</p> <ul style="list-style-type: none"> <li>• Very satisfied</li> <li>• Satisfied</li> <li>• Neither Satisfied nor Dissatisfied</li> <li>• Dissatisfied</li> <li>• Very Dissatisfied</li> <li>• I choose not to participate in these programs</li> <li>• These programs are not available to me</li> <li>• I am unaware of these programs</li> </ul>	<p>(73-78) How satisfied are you with the following Work/Life programs in your agency?</p> <p>(74) Alternative Work Schedules (AWS, for example, compressed work schedule or flexible work schedule)</p> <p>(76) Employee Assistance Program (EAP, for example, short-term counseling, referral services, legal services, information services)</p> <p>(77) Child Care Programs (for example, child care center, parenting classes and support groups, back-up care, flexible spending account)</p> <p>(78) Elder Care Programs (for example, elder/adult care, support groups, speakers)</p> <ul style="list-style-type: none"> <li>• Very satisfied</li> <li>• Satisfied</li> <li>• Neither Satisfied nor Dissatisfied</li> <li>• Dissatisfied</li> <li>• Very Dissatisfied</li> <li>• I choose not to participate in these programs</li> <li>• These programs are not available to me</li> <li>• I am unaware of these programs</li> </ul>
<p>(87) What is your supervisory status?</p> <ul style="list-style-type: none"> <li>• Senior Leader: You are the head of a department/agency or a member of the immediate leadership team responsible for directing the policies and priorities of the department/agency. May hold either a political or career appointment, and typically is a member of the Senior Executive Service or equivalent.</li> <li>• Manager: You are in a management position and supervise one or more supervisors.</li> <li>• Supervisor: You are a first-line supervisor who is responsible for employees' performance appraisals and leave approval.</li> <li>• Team Leader: You are not an official supervisor; you provide employees with day-to-day guidance in work projects, but do not have supervisory responsibilities or conduct performance appraisals.</li> <li>• Non-Supervisor : You do not supervise other employees.</li> </ul>	<p>(80) What is your supervisory status?</p> <ul style="list-style-type: none"> <li>• Non-Supervisor : You do not supervise other employees.</li> <li>• Team Leader: You are not an official supervisor; you provide employees with day-to-day guidance in work projects, but do not have supervisory responsibilities or conduct performance appraisals.</li> <li>• Supervisor: You are a first-line supervisor who is responsible for employees' performance appraisals and leave approval.</li> <li>• Manager: You are in a management position and supervise one or more supervisors.</li> <li>• Senior Leader: You are the head of a department/agency or a member of the immediate leadership team responsible for directing the policies and priorities of the department/agency. May hold either a political or career appointment, and typically is a member of the Senior Executive Service or equivalent.</li> </ul>
<p>(91) How long have you been with your current agency (for example, Department of Justice, Environmental Protection Agency)?</p> <ul style="list-style-type: none"> <li>• Less than 1 year</li> <li>• 1 to 3 years</li> <li>• 4 to 5 years</li> <li>• 6 to 10 years</li> <li>• 11 to 14 years</li> <li>• 15 to 20 years</li> <li>• More than 20 years</li> </ul>	<p>(87) How long have you been with your current agency (for example, Department of Justice, Environmental Protection Agency)?</p> <ul style="list-style-type: none"> <li>• Less than 1 year</li> <li>• 1 to 3 years</li> <li>• 4 to 5 years</li> <li>• 6 to 10 years</li> <li>• 11 to 20 years</li> <li>• More than 20 years</li> </ul>
<p>(94) Are you of Hispanic, Latino, or Spanish origin?</p> <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	<p>(82) Are you Hispanic or Latino?</p> <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>

NOMINATIONS OF COLLEEN D. KIKO, MARY M.  
ROSE, HON. JULIET J. McKENNA, AND JOHN  
R. FISHER

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HEARING

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF COLLEEN D. KIKO TO BE GENERAL COUNSEL, FED-  
ERAL LABOR RELATIONS AUTHORITY; MARY M. ROSE TO BE MEMBER,  
MERIT SYSTEMS PROTECTION BOARD; HON. JULIET J. McKENNA TO  
BE ASSOCIATE JUDGE, DISTRICT OF COLUMBIA SUPERIOR COURT;  
AND JOHN R. FISHER TO BE ASSOCIATE JUDGE, DISTRICT OF COLUM-  
BIA COURT OF APPEALS

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SEPTEMBER 13, 2005

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## CONTENTS

Opening statements:	Page
Senator Voinovich .....	1
Senator Akaka .....	4
Senator Lautenberg .....	5
Senator Carper .....	6

### WITNESSES

TUESDAY, SEPTEMBER 13, 2005

Hon. F. James Sensenbrenner, Jr., a Representative in Congress from the State of Wisconsin .....	2
Colleen D. Kiko, to be General Counsel, Federal Labor Relations Authority ...	7
Mary M. Rose, to be Member, Merit Systems Protection Board .....	9
Hon. Eleanor Holmes Norton, a Delegate in Congress from the District of Columbia .....	19
Hon. Juliet J. McKenna, to be Associate Judge, District of Columbia Superior Court .....	21
John R. Fisher, to be Associate Judge, District of Columbia Court of Appeals ..	23

### ALPHABETICAL LIST OF WITNESSES

Fisher, John R.:	
Testimony .....	23
Prepared statement .....	34
Biographical and professional information .....	121
Kiko, Colleen D.:	
Testimony .....	7
Prepared statement .....	27
Biographical and professional information .....	39
Responses to pre-hearing questions .....	49
Responses to post-hearing questions .....	63
McKenna, Hon. Juliet J.:	
Testimony .....	21
Prepared statement .....	33
Biographical and professional information .....	98
Norton, Hon. Eleanor Holmes:	
Testimony .....	19
Rose, Mary M.:	
Testimony .....	9
Prepared statement .....	31
Biographical and professional information .....	66
Responses to pre-hearing questions .....	72
Responses to post-hearing questions .....	93
Sensenbrenner, Hon. F. James, Jr.:	
Testimony .....	2

### APPENDIX

Hon. Paul Strauss, Shadow U.S. Senator, District of Columbia, prepared statement .....	35
--	----

**NOMINATIONS OF COLLEEN D. KIKO, MARY  
M. ROSE, JULIET J. McKENNA, AND JOHN R.  
FISHER**

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**TUESDAY, SEPTEMBER 13, 2005**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:05 a.m., in room 342, Dirksen Senate Office Building, Hon. George Voinovich presiding.

Present: Senators Voinovich, Akaka, Carper, and Lautenberg.

**OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. Good morning. Today, the Committee on Homeland Security and Governmental Affairs meets to consider four nominations: Colleen Kiko to be General Counsel of the Federal Labor Relations Authority (FLRA); Mary Rose to be a member of the Merit Systems Protection Board (MSPB); Judge Juliet JoAnn McKenna to be an Associate Judge for the Superior Court of the District of Columbia; and John Fisher to be an Associate Judge of the District of Columbia Court of Appeals.

I commend all of these nominees for answering the President's call to serve our Nation, and I trust that you will fulfill your responsibilities with honor, courage, and character befitting the office to which you have been nominated.

We will begin by considering the nominations of Ms. Kiko and Ms. Rose. You have been nominated during a period of extraordinary change in the Federal workforce. Over the past few years, Congress has enacted numerous pieces of legislation that altogether constitute the most significant reforms of the Federal civil service since the enactment of the Civil Service Reform Act of 1978.

Senator Akaka, who I am pleased has joined us here today, has been a steadfast partner in working to raise awareness of the importance of strategic human capital management and finding the solutions to the government's personnel challenges. As Federal departments and agencies continue to understand and take steps to implement these reforms, whether the groundbreaking efforts of developing a new personnel system at the Department of Homeland Security or the more targeted reforms of implementing direct hire, the FLRA and the MSPB will continue to play vital roles in ensuring the success and integrity of the Federal civil service.



I welcome this morning to the Committee Congressman James Sensenbrenner, Chairman of the House Committee on the Judiciary. We are very honored to have you here with us, Congressman Sensenbrenner, and I understand that you are going to introduce Ms. Kiko to us this morning, if you would proceed.

Senator LAUTENBERG. Mr. Chairman, are we going to have opening statements?

Senator VOINOVICH. Well, I think we ought to let the Congressman introduce Ms. Kiko.

Senator LAUTENBERG. It raises the question for me. All of us have our individual rights and opportunities, and there is work that goes into laying out what we think are the parameters for the discussion. However, I will back down for Congressman Sensenbrenner, but I would hope that after his statement and respect for his time that we can hear from each of us, please.

**STATEMENT OF HON. F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I appreciate the opportunity to come before this Committee and endorse the qualifications of my good friend, Colleen Duffy Kiko, for the position of General Counsel for the Federal Labor Relations Authority. She is eminently qualified for this position and let me tell you why.

I have known Colleen for 24 years, since 1981. She graduated from George Mason University School of Law in 1986 and was hired right out of law school by the Department of Justice in the Honors Program, Office of Legal Policy, and later the Civil Rights Division. While there, she spent her time investigating and prosecuting housing and credit discrimination complaints and was detailed to the Eastern District of Virginia to serve as a Special Assistant to the U.S. Attorney prosecuting criminal cases.

At that time, I was the ranking minority member on the Civil and Constitutional Rights Subcommittee of the House Judiciary Committee, and a vacancy occurred on my subcommittee for associate counsel. I knew that there were three upcoming Federal judicial impeachments coming before the committee for which I would need someone on my staff with prosecutorial skills. Colleen fit the bill with her background.

I hired Colleen, who served as my counsel for the several impeachments, and primarily the successful impeachment of Judge Walter Nixon, for which I served as one of the House managers during the Senate trial. During that time, she also served as the principal negotiator for the Judiciary Republicans on the Americans with Disabilities Act, which as we know just celebrated its 15th anniversary.

Colleen left my employ in 1989 due to her ever-expanding family commitments, or at least that is what she used as an excuse to get away from me.

In 1996, she hung out her shingle and opened up her own law practice, focusing primarily on criminal defense and domestic relations. Colleen has excellent legal skills, exercises independent judgment, and is steadfast in purpose. She is good with people and is

a good negotiator. She has shown excellent capabilities of juggling both a serious legal career and her important family commitments.

I would highly recommend her to serve in the position for which she has been nominated. First, she was doing the work of the FLRA for 2 years even before the agency even existed and worked at the FLRA from its inception for 5 more years. She knows the agency and its mission. FLRA whetted her appetite for a law degree, and she returns with not only a law degree, but with much legal and prosecutorial experience from which to draw to be the chief prosecutor for all unfair labor practices in the Federal labor relations area. This is a role especially suited to her background and experience.

In short, I am really happy to be able to present to you a public servant with a distinguished background who really deserves early confirmation by this Committee, and I appreciate your courtesy.

Senator VOINOVICH. Thank you, Congressman. We really appreciate your being here and appreciate your introduction of Ms. Kiko. It means a great deal to me because of the high respect that I have for you.

I know you are a very busy person as chairman of the Judiciary Committee, and I suspect you have other things to do. Thanks very much.

Mr. SENSENBRENNER. We are preparing a few more bills to send over here. [Laughter.]

Senator VOINOVICH. Thanks.

The Federal Labor Relations Authority provides leadership within the Federal Government in developing and maintaining positive labor relations. If confirmed, Ms. Kiko's responsibilities as General Counsel will include processing unfair labor practice allegations, encouraging the use of alternative dispute resolution techniques, and promoting stable and productive labor-management relations in the Federal sector.

As a former mayor and governor, I understand the importance of establishing a positive labor-management relationship based on open communication and trust. I encourage Ms. Kiko to be active in improving labor-management relations in the Federal sector during times of such dramatic reform.

Mary Rose currently serves as the Chair of the Federal Prevailing Rate Advisory Committee of the Office of Personnel Management. Prior to this position, she served as the Deputy Associate Director for Presidential Personnel and was the Director of Personnel for President Reagan. Additionally, Ms. Rose was elected as the Clerk for Anne Arundel County Circuit. Prior to her elected office, Ms. Rose was the Deputy Under Secretary for Management of the Department of Education. Furthermore, Ms. Rose's professional career included working at the Office of Personnel Management, where her responsibilities included acting as the agency liaison to the White House on personnel policy.

Her nomination is to the Merit Systems Protection Board, an independent agency that protects Federal employees from abuses by agency management, including prohibited personnel practices. It is an impartial arbiter and is essential to ensuring that agencies make employment decisions in accordance with the merit systems principles.

I can say to you, Ms. Rose, that the Ranking Member of the Subcommittee, Senator Akaka, is someone who pays a lot of attention to that particular Board.

With the changes underway at the Department of Homeland Security and the Department of Defense, the role of the MSPB continues to evolve. Ms. Rose, if confirmed, you would join the Board at a time when it faces new and complex challenges, and everyone will be watching how cases that come before the Board are disposed of. There is much uncertainty today with the new personnel systems that Congress authorized, and it is going to require the attention of the Board.

Ms. Kiko and Ms. Rose, we look forward to your testimony so that we may learn how you plan to apply your experiences to your new positions and what steps you have taken to prepare for them.

I will now yield to Senator Akaka for his opening statement and the other Members of this Committee who are interested in making opening statements. Senator Akaka.

#### OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I again want to say I enjoy working with you on this Committee. I also want to join you in welcoming our nominees and their families and friends who are here today. Of course, it was good to see Chairman Jim Sensenbrenner. We served together when I was in the House.

President Bush has nominated John Fisher to be an Associate Judge on the D.C. Court of Appeals, and it is good to see you here, John, and your family, and Juliet McKenna to be an Associate Judge on the D.C. Superior Court. Both Mr. Fisher, with his background at the U.S. Attorney's Office, and Ms. McKenna, with her background in family law, have impressive resumes. I look forward to their testimony and hearing their thoughts on the D.C. Court System.

The positions to which Ms. Kiko and Ms. Rose have been nominated are among the most important for Federal employees. If confirmed, I would expect them to be strong voices for employee rights and fair employment principles.

Ms. Kiko has been nominated to be the General Counsel of the Federal Labor Relations Authority. This nomination comes at a critical juncture for the FLRA and the Federal workforce, given the shifting nature of the Federal labor relations system. As such, the position to which she has been nominated will face new challenges and take on renewed importance.

Changes to Federal labor law at the Departments of Homeland Security and Defense will impact the workload of the FLRA and its General Counsel. I fear that employees at those agencies may be unable to have the benefit of an independent prosecutor to bring cases of unfair labor practices and will lack the assurance of having an impartial and independent adjudicator. In addition, the issues that are currently considered unfair labor practices may likely be reduced, further eroding employee rights and impacting the workload of the General Counsel.

In addition, the administration is proposing additional changes to the Federal Labor Management System through the Working for America Act. Because some of these changes are similar to those

proposed by DHS and DOD, the Federal labor-management construct is facing major changes.

Ms. Kiko, I look forward to discussing with you your thoughts on these proposals and how they will impact the job of the General Counsel.

Ms. Rose has been nominated to be a member on the Merit Systems Protection Board. The MSPB is charged with protecting the merit principles and ensuring that Federal employees are free from political and other prohibited personnel practices and management abuses.

I have serious concerns with the proposed changes to the appeals systems at DHS and DOD, which, in my opinion, undermine long-held merit principles. The MSPB plays a critical role in ensuring the right balance between civil service reform and protecting the rights of employees, and that is why I look to the members of MSPB to ensure that the rights and protections of Federal employees, whether in substance or through procedures, are not eroded.

I am particularly interested in discussing with Ms. Rose whistleblower protections for Federal workers. Reporting government mismanagement is a basic obligation of the Federal workforce. To foster confidence in these protections, Federal employees, especially those disclosing information vital to our national security, should feel secure by a strong and functioning Whistleblower Protection Act (WPA). Unfortunately, the Federal Circuit Court of Appeals, with sole jurisdiction over the WPA, has created inconsistencies with Congressional intent through Court decisions. These loopholes pose challenges for the MSPB in interpreting the law as envisioned by Congress. I am pleased that the Committee, and you in particular, Chairman Voinovich, as well as Senators Lautenberg and Carper, have been strong supporters of my legislation, the Federal Employee Protection of Disclosures Act, which would restore Congressional intent to the WPA. I hope the Senate will act on this soon.

Ms. Kiko, Ms. Rose, Mr. Fisher, and Ms. McKenna, I want to welcome you and congratulate you on your nomination.

Mr. Chairman, I also want to mention that I had a good meeting with Mary Rose and want to mention that her husband, a doctor in North Carolina, is teaching and unable to join her. Her son, who is serving with the Coast Guard, and her two daughters, who live in Los Angeles and Pennsylvania, could not be here either. I know the whole family is here today with her in spirit.

Thank you very much, Mr. Chairman.

Senator VOINOVICH. Senator Lautenberg.

#### OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thanks, Mr. Chairman. We rarely have any disagreement about decisions that come from your desk. Everyone knows very well of your public service career and has great respect for you and the accomplishments of that career, so while we differed on the process, I thank you for permitting the opening statements to be read, to learn more about the people who are nominated for these important positions.

I am particularly interested in the Merit Systems Protection function. We have recently been given a vivid reminder of how im-

portant it is to scrutinize nominees for these important jobs. We have a situation at FEMA where the person named to the top position lacked the right experience, and the outcome was almost predictable, and then we learned that some of the claims on his resume or in his biography might have been exaggerated. But this underscores the need to take a closer look at nominees before they are allowed to assume positions of public trust.

Ms. Rose, one of the individuals before us today, is nominated for one of the three seats on the Merit Systems Protection Board and that Board is responsible for enforcing the Federal Government's merit-based employment practices. It was established to protect Federal employees, including whistleblowers, from political and other prohibited personnel practices and abuses by agency management. Now, I believe that this Board requires members to be capable of looking at the facts of a case in a nonpartisan manner, and I am concerned with ensuring that this agency abandon any partisanship and any partisan leanings as they review the cases that come before them.

I would like to learn more about Ms. Rose's view on the importance of whistleblowers that expose waste, fraud, and mismanagement in government bureaucracies and agencies. Many times, the only people aware of such wrongdoings are those who work inside the agency, and if we fail to protect those who would come forward and do the right thing, we do a disservice to the individual and the taxpayers in our country.

Recently, we learned that a whistleblower who exposed irregularities in a billion-dollar no-bid contract between the Department of Defense and Halliburton has been demoted from her job at the Army Corps of Engineers. Now, this was only the latest example of people who were punished after they revealed information that the Administration wanted to hide from the American people.

In my view, the current whistleblower protection system is not working. It doesn't protect those who would come forward, and I am working on legislation to strengthen those protections by making it a criminal offense for an individual to retaliate against whistleblowers. I am pleased to be on an amendment that Senator Akaka has produced to make sure that we are dealing fairly with these people.

Mr. Chairman, I thank you very much for the opportunity to make my statement and look forward to hearing from our witnesses.

Senator VOINOVICH. Senator Carper.

#### OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. I will be brief. To our nominees, welcome, and to those that are on, I think, our second panel, the judicial nominees, we welcome you, too. I am not going to be able to stay for that second panel, but I wanted to be here for at least the beginning of this one.

Both Senator Lautenberg and Senator Akaka have spoken of the need for whistleblower protection. We need it. There are too many instances where people of good faith, good intent, are stepping forward and blowing the whistle, telling the truth, and they are being punished for it rather than rewarded for it. It is just unacceptable,



and it is unacceptable to me, and I am sure it is unacceptable to our Republican colleagues, as well.

We are reminded on the heels of Katrina that the folks whose names come to us for positions—we have an obligation, we have an oversight responsibility to make sure that we fully vet those nominees and better ascertain whether they are well qualified to do the jobs for which they have been nominated. With respect to FEMA, we have seen in recent weeks that sometimes that is not the case. That is the responsibility of the Executive Branch, but we bear responsibility, too.

Again, we thank you. We welcome you and your families and friends today and thank you for your willingness to serve.

Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you, Senator.

Ms. Kiko and Ms. Rose, you have filed responses to a biographical and financial questionnaire and answered pre-hearing questions submitted by the Committee. You have had your financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that witnesses before this Committee take an oath, and if you will stand, I will administer the oath.

Do you swear that the testimony that you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. KIKO. I do.

Ms. ROSE. I do.

Senator VOINOVICH. Ms. Kiko, I understand you have some family members here with you, and I would like to give you an opportunity to introduce them before you make your statement to the Committee.

Ms. KIKO. Thank you, Mr. Chairman. I do have my husband, Phil Kiko, and my daughter, who is representing my four children, Sarah Kiko, and my sister, Tama, is behind my daughter. Thank you.

Senator VOINOVICH. Would you like to share your statement with the Committee?

#### **TESTIMONY OF COLLEEN D. KIKO,<sup>1</sup> TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY**

Ms. KIKO. Thank you, Mr. Chairman. Chairman Voinovich, Senator Akaka, Senator Lautenberg, Senator Carper, Members of the Committee, I would like to thank you and your staff for all the courtesies that have been shown to me as I have prepared for this hearing. I also deeply appreciate Chairman Sensenbrenner taking time away from his boat time to introduce me today.

It is indeed a very special and honored occasion for me to be sitting here after being nominated by the President to serve as the

<sup>1</sup> The prepared statement of Ms. Kiko appears in the Appendix on page 27.  
Biographical and professional information appears in the Appendix on page 39.  
Responses to pre-hearing questions appear in the Appendix on page 49.  
Responses to post-hearing questions appear in the Appendix on page 63.

General Counsel of the Federal Labor Relations Authority having started in the Federal Government in 1972 as a GS-3 clerk-typist. The Federal civil service was considered an honored profession in my family. My father, Lawrence Duffy, had almost a half-century, 49 years, of proudly serving as a civil servant, first as a railway mail carrier for the U.S. Postal Service, and then for the U.S. Customs Service as a customs inspector. He believed in the opportunities the Federal Government offered and advised me as I was determining what career path to follow to look to the Federal Government as an honorable, rewarding, and fulfilling experience.

My father always said that you spend almost half of your life at whatever job you choose—make sure you are happy in it. He provided a daily example of hard work, commitment, and impeccable character. I hope to follow in those shoes.

I would like to point out several areas of my background and employment experience that I believe affirmatively qualify me for this position. From 1976 to 1979, I worked in the Department of Labor, Labor Management Services Administration. This same entity was transferred to the newly created Federal Labor Relations Authority on January 1, 1979, where I worked until I resigned to pursue a legal career in 1983.

I worked in almost all of the professional roles of the Authority. In the regional office, I investigated unfair labor practice charges, chaired hearings on representational disputes, monitored Federal union elections, and conducted training for both management and unions. In the headquarters, I reviewed Administrative Law Judge decisions and the exceptions filed by the parties and prepared draft decisions for the Authority members. I also handled the procedural motions practice before the Authority.

I left the Authority as a supervisory labor relations specialist. My experience working at the Authority in increasingly responsible positions throughout the Authority gives me, I believe, a great understanding of the agency as a whole.

My work at the FLRA spearheaded my decision to pursue a legal career. My experience since then has also prepared me well for this position. After obtaining my law degree in 1986, my service with the Department of Justice in the Civil Rights Division and in the U.S. Attorney's Office, litigating both criminal and civil matters, has particularly prepared me for the prosecutorial role of the General Counsel position.

Further, in my role as an Associate Counsel in the Judiciary Committee, I was very involved with the historic impeachment of a U.S. District Court judge. The House managers, one of whom was Chairman Sensenbrenner, prosecuted the Articles of Impeachment before the Senate.

My years in the private practice of law in a small firm representing clients has given me perspective on advocacy and on the need to respond effectively to client needs.

Finally, in my current position as an Employees' Compensation Appeals Judge, I have had the benefit of independent decision-making, listening to both sides objectively, and rendering a fair decision. Exercising such judicial temperament prepares me well for the neutral role that the Federal Labor Relations Authority plays in the Federal sector labor relations.

I believe I have been well prepared for this position. Neither when I left North Dakota to come to Washington, D.C. in 1972, nor when I left the FLRA to pursue a legal career, did I ever expect to be sitting in this chair right now. It is amazing how full-circle this journey has become.

I see as the goal of the Office of the General Counsel as helping agencies effectively and efficiently fulfill their statutory mission through healthy labor-management relations. I hope to faithfully pursue that objective.

I greatly appreciate the opportunity to appear before this Committee today and will be happy to answer any questions.

Senator VOINOVICH. Thank you very much, Ms. Kiko.

Ms. Rose, you have an opportunity to introduce your family to the Committee.

Ms. ROSE. Thank you, Mr. Chairman. My daughter and my son-in-law and my grandchild are sitting over here, Kaitlyn, the little redhead. Thank you for giving me the opportunity to introduce them.

Senator VOINOVICH. Would you like to share your statement with the Committee?

**TESTIMONY OF MARY M. ROSE,<sup>1</sup> TO BE MEMBER, MERIT  
SYSTEMS PROTECTION BOARD**

Ms. ROSE. Good morning, Chairman Voinovich, Ranking Member Akaka, and Members of the Committee. I am Mary M. Rose, and I appreciate the opportunity to appear before you as you consider my nomination to be a member of the Merit Systems Protection Board. Given the seriousness of the issues that surround you today, I am especially appreciative of the time you have taken to ensure the MSPB operates at full strength.

I am honored by the President's confidence in me, as demonstrated by his decision to nominate me to a position of such importance. If confirmed, I will dedicate myself to discharging the responsibilities of this office in accordance with the laws, rules, and regulations applicable to the Board to the best of my ability.

In this time of change, the mission of the Merit Systems Protection Board is more important than ever. I will work to fully preserve the merit systems principles and to protect Federal employees from prohibited personnel practices, the core of the MSPB's mission. The assurance of fair adjudication of employment disputes and the timely issuance of decisions will enhance the confidence of Federal employees and managers in the civil service system as well as their effectiveness in fulfilling the missions of their respective agencies.

The Board's role in regulatory, studies, and oversight functions, in addition to its adjudicatory responsibilities, will be part of the cutting edge of transformation in human resources management. If confirmed, I welcome the opportunity to work in cooperation with MSPB's Chairman McPhie in fulfilling the responsibilities and missions of the Board during this period of transition and beyond. I

<sup>1</sup> The prepared statement of Ms. Rose appears in the Appendix on page 31.  
Biographical and professional information appears in the Appendix on page 66.  
Responses to pre-hearing questions appear in the Appendix on page 72.  
Responses to post-hearing questions appear in the Appendix on page 93.

hope to use my past experiences in the Federal civil service as well as the expertise I have developed to assist the Board in fulfilling its missions.

I began my tenure in Federal service during the early 1980's when the reforms mandated by the Civil Service Reform Act of 1978 were first being implemented. I saw firsthand how difficult change can be, but witnessed the improvements in government-wide personnel management as a result of that change. During this time, a major shift in management practices required managers and employees to communicate on an annual basis regarding goals of their employing agency and the standards and the expected levels of performance. Should I be confirmed, it will be a great honor to be part of this historical time in the continued evolution of Federal human resources management.

I wish to thank you for consideration for my nomination, and again, I express my appreciation for your time. I would be happy to answer any questions you may have.

Senator VOINOVICH. Thank you, Ms. Rose.

There are standard questions that this Committee asks all of the nominees. I will begin with those questions, and I would appreciate your answering them yes or no.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. KIKO. No.

Ms. ROSE. No, sir.

Senator VOINOVICH. Do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging your responsibilities of the office to which you have been nominated?

Ms. KIKO. No, I do not.

Ms. ROSE. No, sir.

Senator VOINOVICH. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly-constituted committee of Congress if you are confirmed?

Ms. KIKO. Of course, yes.

Ms. ROSE. Yes, sir.

Senator VOINOVICH. I mentioned that you are both coming to your responsibilities at a time that is very critical, as far as I am concerned. We have, as I mentioned, made significant changes to the Civil Service Code at the Department of Homeland Security, Department of Defense, and also government-wide. I value Federal employees. For too many years they have been neglected, but as we have seen with Hurricane Katrina, people do make a difference.

I would like each one of you to comment about your awareness of the situation that you are going to find yourself in. Ms. Kiko.

Ms. KIKO. I will go first, Mr. Chairman. The Department of Homeland Security and the Department of Defense regulations that are currently under consideration are examples where the legislative process made changes allowing the agency to appropriately craft labor relations and employee relations policies that would best effectively take into account its mission. I certainly find that to be an appropriate situation. These agencies certainly are going

through a difficult time right now trying to find out how to properly craft those particular regulations.

Right now, as it is pending litigation in the D.C. Court, certainly the merits of the regulations are not something that I would want to comment on particularly. I do see the government is going through a process of attempting to craft the personnel policies in a time now that is a little different from years past, where homeland security is a particularly important area right now. It is a challenge and the government is going through a process right now which I think is working. The process is doing what it is supposed to be doing.

That is my comment, essentially. I believe that your question was directed mostly to the Homeland Security regulations. If I have missed the point, I would be happy to redirect the answer.

Senator VOINOVICH. I think that one of the concerns that our unions particularly have is this: What kind of people are we going to have in responsible positions and how sensitive are they going to be to the rights of Federal employees.

Ms. Rose.

Ms. ROSE. Thank you, Mr. Chairman. With the new regulations and reforms coming our way, there are going to be major changes, and we will have to be ever vigilant as a member of the MSPB. When adjudicating cases and writing studies the MSPB must find an independent and open way to describe agency performance with respect to personnel practices. Additionally, preventing prohibited personnel practices against employees is vital. As a board we must watch the agency trends to ensure these laws are enacted and the intent of Congress is followed. The new laws may be more complicated and more cumbersome, but I believe we should look at this enthusiastically as a time of change. I look forward to helping in any way I can in the service of my country to protect Federal civil servants and to be more vigilant than ever on their behalf. As well, I hope to help managers through their difficult times.

Senator VOINOVICH. You come to the table with individuals who obviously feel that they have been discriminated against because they have come forward. Do you believe that the parties come to the table and it is an even situation, or do you believe the emphasis should be on trying to make sure that the individual who claims to have been aggrieved perhaps gets more emphasis than the agency that fired or demoted him?

Ms. ROSE. I think every case needs to be judged on its merits. I can't answer, without a case in front of me, if one side is being favored. This is a difficult question. With the changes and reforms, one will have to use extra scrutiny reviewing employee and managers claims because—this is all going to be new to both sides. Everything will have to be looked at very carefully and weighed very openly and impartially. That is how I would look at each case.

Senator VOINOVICH. We have spent a great deal of time on this issue. I would recommend that you clearly communicate that the individuals that come before you are going to receive fair consideration. I know we had testimony here about the backlog of cases before the Office of Special Counsel, and it has been argued that maybe each case wasn't getting the attention that it ought to receive.



I think there is a feeling among Federal employees that perhaps individuals aren't getting the kind of treatment that they should get, and it becomes an issue of perception. This will affect whether or not people are going to be willing to stand up and report wrongdoing. If they just see co-workers blow the whistle and then get shut out, the word will go around that, hey, you had better keep your mouth shut, or leave, or whatever the case may be.

Federal employees really have to have a feeling that they are being treated fairly and that they are listened to and that this isn't just some perfunctory process where they come before the Board and then end up out on the street. You need to take that into consideration.

Ms. ROSE. I believe my management and HR experience will be a benefit because I have experienced situations where employees need help, and I know that communications between manager and employee is very important. I have seen this through many years of my professional life. I think I will be more open to reviewing these cases and seeing them from a different perspective and a dynamic than an attorney would. While I know I am not an attorney, I believe I add a valuable dynamic that will be beneficial to the Board as well as the employees who come before the Board.

Senator VOINOVICH. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

I thank you, Ms. Kiko and Ms. Rose, for your testimony. I appreciate your comments as both the FLRA and MSPB are very important agencies for protecting employee rights.

Ms. Kiko, DHS and DOD claim that their agencies need flexibility in the area of labor-management relations based on their national security needs. In response to Chairman Voinovich's question, you said that employee rights and collective bargaining rights at DHS and DOD are being balanced against the missions of the agency. Could you elaborate on this and tell me if this applies to all agencies and all missions or only those pertaining to national security?

Ms. KIKO. Thank you, Senator Akaka. Labor-management relations, healthy labor-management relations, is important in every government agency. When the statute was created in 1979, it was stated in one of the findings that one of the law's purposes was to help agencies more efficiently and effectively accomplish their statutory mission. Each government agency has been created with a particular mission. The best way that mission can be accomplished is through employees working well with management to accomplish the mission. The best way to do that is with good labor-management relations.

Does it always work? No. Do I have some magic wand that can make it all work? No. But I certainly believe you start there; you want to develop and work on healthy labor-management relations in each agency. The mission is simply where everybody wants to go at the end of the day. What does the agency want to accomplish? It doesn't matter necessarily which mission. Good labor-management relations is good in every agency.

Senator AKAKA. Ms. Kiko, the FLRA has been without a General Counsel for almost a year, and I understand there are over 100 unfair labor practice charges awaiting issuance of a complaint. If you

are confirmed, do you intend to immediately issue complaints on these backlogged charges?

Ms. KIKO. Well, I would probably want to review the complaints first, but certainly, I expect there may be some things sitting on the desk waiting for my action upon my arrival. I do not certainly expect to jump in and start acting immediately. I do intend to communicate with the regional directors, with the staff of the agency, to find out where we are, where we need to go. At that time, I would evaluate each of the complaints waiting to be filed as an unfair labor practice complaint, and determine whether the qualifications are met or the requirements that have been established to date on what would make an unfair labor practice charge into an unfair labor practice complaint. At that point, I would make a determination. But certainly, I don't think I am going to walk in with my pen open and ready to sign.

Senator AKAKA. Ms. Kiko, the General Counsel is responsible for the seven regional offices at FLRA. There has been no hiring in the regional offices in over a year. Under General Counsel policy, a full staffing level of attorneys and labor relations specialists would be 11 agents. The Atlanta Region currently only has four agents and the Dallas Region only has five agents. Do you intend to begin hiring new employees in the regional offices to address these staffing shortages?

Ms. KIKO. I certainly believe one of my first orders of business will be to evaluate the staffing needs of the agency and the staff that is existing to accomplish the mission. There are many factors that affect the staffing in the Federal Labor Relations Authority. Workload is one. Geographical location is another. All of those factors, I would like to study and do staffing reviews and management reviews to determine what the personnel levels should be.

There are other situations facing our agency as to whether the Homeland Security regulations and the Department of Defense regulations will have an effect on the caseload of the agency. That would be certainly something that I would want to investigate prior to making any decisions, but certainly that is an area that would be getting a lot of my attention.

Senator AKAKA. Ms. Rose, a number of Federal Circuit Court interpretations of the Whistleblower Protection Act are inconsistent with Congressional intent. A primary example is the meaning of the term, "any disclosure." In 1994 and again this year, this Committee reaffirmed language from the 1988 Senate Committee report and explicitly stated that the Office of Special Counsel, the Board, and the courts should not erect barriers to disclosure of government wrongdoing, including limiting protection for disclosures made for certain purposes, limiting protection for disclosures made to certain employees, or limiting protection to the employee who is the first to raise the issue. Nonetheless, the Federal Court erected nearly every barrier listed in the Committee report.

As a member of the MSPB deciding whistleblower cases, how would you reconcile this contradiction between Federal Circuit Court case law and clear Congressional intent?

Ms. ROSE. As a member of the Merit Systems Protection Board, I will be obligated to apply the laws that are in place at this time. When Congress enacts legislation that strengthens the Whistle-

blower Act, I assure you if this issue comes before me, I will adjudicate cases, and I will apply the applicable laws as fairly and as openly and as credibly as I can.

Senator AKAKA. Mr. Chairman, my time has expired. Thank you very much.

Senator VOINOVICH. Thank you. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman, and I thank the witnesses for their testimony.

One thing I think that is quite apparent in the Senate is that we rely on sources of information that are not necessarily those that are routine, those that are brought to a committee hearing. So when we have an opportunity to learn from someone who is inside the system, I think we have an obligation to listen.

I ran a pretty good-sized company before I came to this Senate, and I encouraged employee suggestions or even criticism. I didn't want a list of whiners standing at my door in the morning because I would make sure that if someone had a complaint, that they had to have some record of the incident that was verifiable. But I think it particularly important in government, when we have the system of protection in place that we have, that violations not be ignored.

Ms. Rose, you worked under Republican administrations, including this White House, where you helped prepare nominees for political appointments. One of the primary systems of the Merit Systems Protection Board is to ensure that politics is not a factor in civil service personnel action. Now, what will you do to ensure that those individuals who put their consciences above orders that they think are inappropriately functioning, to come up with their criticism or complaint and to guarantee that there is no recrimination for speaking out?

Ms. ROSE. Senator, should I be confirmed, as a member of the Merit Systems Protection Board, I will not allow partisan politics to interfere with any of my decisions. I will not allow partisan politics to exist.

Yes, I worked in the White House, but I also have worked in other jobs. I have worn hats in many fields. My background is varied. I have been a nurse. I did not allow the background of the patients I treated to interfere with my decisions regarding their care. As a manager, employee backgrounds were never part of a decision. I made strong and sound decisions.

I know your concern about looking at candidates very carefully because I, too, have had that responsibility as a Deputy Assistant at the White House. I had to interview people. I had to look them in the eye and see if they were actually telling the truth, if their backgrounds were correct and verifiable. So it is an awesome responsibility to put the right person in the right job.

Senator LAUTENBERG. Ms. Rose, I am sure that you employ your best instincts, but don't we have to look to something beyond one's instincts or one's feeling about the individual to get to the substance of the issue? Are there not systems applications that can be used to say, OK, here is what we do if someone comes up with a complaint? Where do we go? Do we then call in the supervisor? Do we call in fellow employees, rather than rely on some good feeling or bad feeling about an individual? I think that gets us into a prob-

lem that we ought not to be trying to employ in making important decisions like this.

We have, for instance—are you familiar with the Bunny Greenhouse situation? Bunny Greenhouse was an employee of the Corps of Engineers, and she was the top civilian contracting official with the Army Corps since 1997. She was demoted, and it appears to be retaliation for her June 27—just this past year—testimony before a Senate Committee, albeit it was a Democratic Committee because we couldn't get her on the agenda of the standard Committee structure. She talked about inappropriate actions taken by the Army Corps in granting a no-bid contract to Halliburton.

Now, how do you take an action like this and listen to someone carefully who feels that the government is acting improperly in this action and how do you say to that person, well, understand if you tell us, you may be putting your head on the chopping block. What would you do to ensure that these complaints are valid, that they are heard? Would you take the responsibility solely on yourself for making this decision about whether or not this person has fabricated this idea or whether or not punishment is in order?

Ms. ROSE. I think it is the role of the member to seek the truth in whatever way is possible and make decisions based on what you believe is the truth and the facts that are laid out in the case.

Senator LAUTENBERG. Ms. Rose, in 2001, you had a responsibility for recruiting, interviewing, and preparing candidates for appointment at executive levels in the Administration. In 2001, a man named Mike Brown was nominated to be Deputy Director of FEMA. Do you recall working on his nomination?

Ms. ROSE. No, sir.

Senator LAUTENBERG. Well—

Ms. ROSE. I did not have FEMA in my portfolio.

Senator LAUTENBERG. But weren't you responsible for vetting people who were being appointed to high-ranking positions in the government?

Ms. ROSE. Yes, sir. I did domestic agencies, but not FEMA.

Senator LAUTENBERG. So did you not look at Mr. Brown's background? You know what happened there. He had a fabricated biography, as exposed by *Time* magazine and other sources. But that should have been an important look at a candidate for such an important job, and you don't recall having—

Ms. ROSE. No, sir. I had nothing to do with his appointment.

Senator LAUTENBERG. With the vetting? You weren't responsible for the vetting?

Ms. ROSE. No, sir.

Senator LAUTENBERG. Thank you. Thanks, Mr. Chairman. I am done, Mr. Chairman. Thank you.

Senator VOINOVICH. Thank you. Senator Akaka indicated that he would like a second round of questioning, and I will start it off.

Ms. Kiko, how would you approach your responsibility to work with the unions and Federal managers to foster effective labor relations in the Federal Government? I will never forget when I was mayor of Cleveland I had my directors come to me, and they were complaining that it just was impossible to fire a bad employee. I talked to the woman that headed up our Civil Service Board, and she said, "Mayor, the bottom line is they don't know what they are

doing." In other words, there are certain procedures that you follow, and they are not following them. At that time, we began a very aggressive effort to educate them about how the system worked, and it is amazing how the situation improved.

Have you thought about how you might communicate to the various agencies on human capital management? If you conclude that there are agencies that don't know what they are doing or the people in human resources don't have the training they should have, do you feel it is your responsibility to call someone and maybe encourage training sessions?

Ms. KIKO. Thank you for that question. I think it is a very important one in the labor-management area. I think you hit it on the head because of your background. Education is very important in attempting to help parties get along. I think you can certainly understand that managers deal with their employees. Some employees are good workers and some have challenges. There are problems of communication between parties. Sometimes management feels it absolutely can't stand working with the union, and sometimes the union feels it cannot possibly stand to work with management. Then there are other agencies kind of on middle ground.

Hopefully, in the role as the General Counsel of the Federal Labor Relations Authority, you have an opportunity to do two things. Certainly, we have the opportunity to prosecute cases against management or against the union if there are violations of the law. But prior to that, and I think it is probably the most important role, is attempting to get parties to work together, and the most important way to do that is to help them understand their parameters: What are the management rights? What are the union rights? What are the employee rights? And help the agencies understand that.

Certainly, if there are areas where it appears that unfair labor practice charges are coming from the same area over and over and over again, that should suggest a problem. It would be my role to attempt to educate them as to the role of the Federal Labor Relations statute as to the roles of the parties, whether it means picking up the phone and calling someone or whether I set up training classes and offer such opportunities to various agencies that may need assistance.

Senator VOINOVICH. You probably haven't had a chance, but do you intend, if confirmed, to examine the performance of various agencies to get a feel for—

Ms. KIKO. Absolutely. I mean, this is what we are trying to do, is to promote healthy labor relations. If there are unhealthy labor relations going on, is there an opportunity to educate in the ways of the Authority decisions to help them understand? If they understand their parameters, they may be fighting over less. If we can help them understand their particular rights, this is what you need to work within.

I think the Authority in recent years has done an incredibly wonderful job of attempting to do just that, to set out in their decisions, more predictability, more understandable decisions on how do I take this and then follow a roadmap. Oftentimes, legal opinions can be good for this particular case, but not particularly good for the next one because no one really understands what it is all about.



But I think the decisions are starting to become much clearer and helping to educate the parties in what direction people need to go. The FLRA is now telling you: This is what we are finding to be right; this is what we are finding to be wrong. Now go out and play with those rules. And that helps healthy labor-management relations. Certainly, that is one area that I feel that is very important in educating the parties in what their roles are.

Senator VOINOVICH. Do you know Colleen Kelley?

Ms. KIKO. I do not know Colleen Kelley. I certainly know who she is, but I have not met her yet.

Senator VOINOVICH. Do you know John Gage?

Ms. KIKO. Not yet. I do intend to meet with them.

Senator VOINOVICH. That is good. It would be wise for you to spend some time with them and let them share their feelings. I think it is important you all get to know each other so that they understand that you take your job very seriously and that you understand that there has been some misunderstanding between this administration and the unions. I am glad to hear that you are going to do that.

Ms. KIKO. Thank you.

Senator VOINOVICH. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Ms. Rose, at a November 2004 forum hosted by GAO and the National Commission on Public Service, participants questioned whether the merit systems principles should be updated in light of the new personnel flexibilities granted to Federal agencies as well as an increased focus on missions, goals, and results as envisioned by the Government Performance and Results Act. Do you believe that any changes should be made to the Federal merit systems principles, and if so, what changes and why?

Ms. ROSE. That is a very interesting theory. I think it is very important that we constantly improve, and give introspective thought and consideration to all the laws because when laws are enacted, government changes. These laws should be changed based on policy changes that take place in government.

I know of the Congress's intent to look at these merit principles, and I welcome that. As I said, we can always look to improve ourselves in any way possible. In doing so, when the Congress enacts those changes, I will apply those laws to my cases as I see them should I be confirmed.

Did you want a specific—any specific changes? At this time, I am not ready to answer that. As I see cases and identify the need for these changes I will say so in my reports and studies.

Senator AKAKA. Thank you for that. Ms. Kiko, you were a labor relations specialist at the FLRA for 7 years. What problems, if any, did you see with the system at the time you worked there, and in your opinion, do these same problems persist today?

Ms. KIKO. Well, it has been 23 years ago, so I have to go back into the mind a little bit further than I am used to. When I worked in the Federal Labor Relations Authority, it was a brand new agency. I think everyone was excited about the process. It is exciting to have your role taken out of an agency and put into an independent agency, and it gave a much heightened awareness to what we were

doing at the time in the Department of Labor. It was a very exciting time. I recall a birthday cake for it on its first year in 1980.

So at the time, it seemed a process that was working very well. We were attempting to train people. We were attempting to help understand the new law, where it was going, how it was going to be interpreted, that sort of thing. It was a new and exciting time.

Were there problems with the system? I suspect there might have been. Certainly, whenever you are dealing with people trying to get along, you are always going to run into some problems.

As for how the agency works now, that is one of the things that I would like to look at in depth, is how is the agency working, and I don't intend to go in there with a preordained slate of what I remember from 23 years ago. I want to go in there with an open slate, and I want to go in and say, what is wrong with this agency and how does it work well? What is good? What is bad? Let us talk about it, and in my role of the Office of the General Counsel, should I be confirmed, what can I do to make it better?

So I really am looking forward to listening and finding out where those issues are from the unions, from management, from my own staff in the agency, should I be confirmed, and from there determine where the problems are and find ways to correct them if it is possible within my authority.

Senator AKAKA. Thank you.

Ms. ROSE. DHS and DOD have been granted flexibility to waive Chapter 77 of Title 5 relating to Federal employee appeals. As you know, the Federal Aviation Administration was granted similar authority in 1996. However, after finding that the internal process was unfair and biased, Congress reinstated MSPB appeal rights for FAA employees in the year 2000. What do you believe are some best practices that should be included in any appeals system?

Ms. ROSE. Best practices would be making it as easy as possible for employees to appeal. By whatever means. For example, printing brochures or assisting them by making sure their phone calls are answered when they have questions. These simple administrative procedures can make it easier for an employee to appeal. Administratively, there are a lot of things I will do to help make the appeal process easier for the employee. It should be approachable and understandable. If they can't understand the language, it doesn't do them much good, and not all of them can afford attorneys or have the access to the help some other employees may have. Plain language is important. Communication and openness to employees who wish to make appeals are imperative.

As far as the DHS and DOD regulations, I will just have to wait and see how they play out. I will carefully look at how difficult or easy it is for these employees to make appeals. The appeals process to the agencies and the Board must also be closely watched for difficulties or barriers that might interfere.

Senator AKAKA. What about the independence of the appeals boards?

Ms. ROSE. Independence is primary. I mean, there can be no interference or no obstruction to that independence. We talk about the issue of timeliness and the quality of the decisions of those appeals. I said in my question and answers that timeliness is important because people are suffering and you need to address their

case as soon as possible and give them relief as soon as possible. At the same time, I do not believe that the independence or the integrity of the decision process should be endangered.

Senator AKAKA. I thank you both for your responses. Thank you, Mr. Chairman.

Senator VOINOVICH. I have one other question. Ms. Kiko, who do you go to for your budget?

Ms. KIKO. The Chairman of the Authority manages the budget for the Authority.

Senator VOINOVICH. OK. One of the things that I have observed around here is that we often ask people to do a job and then we don't give them the resources to do it. I would hope that you would do an initial evaluation of the capacity of the Board to do its job and make sure that is communicated to OMB.

I think that as we go back and examine preparation for Hurricane Katrina we are going to learn that some agencies should have had more resources. They have been asking for more resources but were ignored by the Administration and Congress. So I would urge you to do that. I know it is not easy, but you have to have the resources to get the job done.

You may also need to hire more people. You are going to have people recommended to you, I am sure. I hope that you have the wherewithal to be able to reject bad candidates. One of the things that I did when I was governor and as mayor, I asked somebody to do a job and I said, you are the one that hires and fires and you are responsible. If you get someone that is recommended and you don't think they have got it, you need to have the courage to say, they are not qualified or I don't want them. Those two things are tough, but standing up for your budget and making sure that you get the people that you need to get the job done are important.

Thank you both for being here today. We are going to leave the record open in the event that some of my colleagues have questions for the record. It will be open for 48 hours. Thank you.

Ms. KIKO. Thank you very much, Mr. Chairman.

Ms. ROSE. Thank you, Mr. Chairman.

Senator VOINOVICH. You are more than welcome.

Now, I ask Judge Juliet McKenna and John Fisher to come forward.

Eleanor, I don't know how long you have been in the wings, but if we kept you there a long time, I apologize.

Ms. NORTON. It is all right. I was watching the hearing.

Senator VOINOVICH. I welcome Eleanor Holmes Norton of the District of Columbia, who is here to introduce Mr. Fisher and Judge McKenna. I would like to thank Delegate Norton for her conscientiousness. She does a good job of making sure that she familiarizes herself with the individuals being nominated and makes it her business to come and appear before the Committee.

Thank you for being here.

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A  
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Mr. Chairman, and may I thank you once again for your very exceptional work for the residents of the District of Columbia on the authorizing Committee

## A P P E N D I X

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STATEMENT  
OF  
COLLEEN DUFFY KIKO  
NOMINEE TO BE GENERAL COUNSEL  
OF THE  
FEDERAL LABOR RELATIONS AUTHORITY  
BEFORE  
THE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

I would like to thank the Committee on Homeland Security and Governmental Affairs and its staff for all the courtesies they have shown me as I have prepared for this hearing. I also deeply appreciate Congressman F. James Sensenbrenner, Jr., Chairman of the House Judiciary Committee, for taking the time to introduce me today.

It is indeed a very special and honored occasion for me to be sitting here after being nominated by the President to serve as General Counsel of the Federal Labor Relations Authority after having started out in the Federal Government in 1972 as a GS-3 clerk typist.

Federal civil service was considered an honored profession in my family. My father, Lawrence Duffy, had almost ½ century - 49 years - of proudly serving as a civil servant - first as a railway mail carrier for the U. S. Postal

Service and later a U.S. Customs Inspector. He believed in the opportunities the federal government offered and advised me, as I was determining what career path to follow, to look to the Federal government as an honorable, rewarding and fulfilling experience. Dad always said that you spend almost half of your life at whatever job you choose - make sure you are happy in it. He provided a daily example of hard work, commitment and impeccable character.

I would like to point out several areas of my background and employment experience that affirmatively qualify me for this position. From 1976 to 1979 I worked in the Department of Labor, Labor Management Services Administration. This same entity was transferred to the newly created Federal Labor Relations Authority on January 1, 1979, where I worked until I resigned to pursue a legal career in 1983. I worked in almost all of the professional roles of the Authority. In the regional office, I investigated unfair labor practice charges, chaired hearings on representational disputes, monitored federal union elections, and conducted training for both management and unions. In the headquarters, I reviewed Administrative Law Judge decisions and the exceptions filed by the parties and prepared draft decisions for the Authority Members. I also handled the procedural



motions practice before the Authority. I left the FLRA as a Supervisory Labor Relations Specialist. My experience working at the FLRA in increasingly responsible positions throughout the Authority gives me a great understanding of the agency as a whole.

My work at the FLRA spearheaded my decision to pursue a legal career. My experience since then has also prepared me well for this position. After obtaining my law degree in 1986, my service with the Department of Justice in the Civil Rights Division and in the U.S. Attorney's Office litigating both civil and criminal matters has particularly prepared me for the prosecutorial role of the General Counsel position. Further, in my role as an Associate Counsel in the Judiciary Committee, I was very involved with the historic impeachment of a U.S. District Court judge. The House Managers, one of whom was Chairman Sensenbrenner, prosecuted the articles of impeachment before the Senate.

My years in the private practice of law in a small firm, representing clients, has given me perspective on advocacy and the need to respond effectively to client needs. Finally, as an Employees' Compensation Appeals Judge, I have had the benefit of independent decision making, listening to both sides

objectively and rendering a fair decision. Exercising such judicial temperament prepares me well for the role the FLRA plays in federal sector labor relations.

I believe I have been well prepared for this position. Neither when I left North Dakota to come to Washington, D.C. in 1972, nor when I left the FLRA to pursue a legal career, did I ever expect to be in this chair right now. It is amazing how full-circle this journey has become.

I see as the goal of the Office of the General Counsel as helping agencies effectively and efficiently fulfill their statutory mission through healthy labor management relations. I would faithfully pursue that objective. I appreciate the opportunity to appear before the Committee.

U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire for Colleen Duffy Kiko  
to be General Counsel  
Federal Labor Relations Authority

I. Nomination Process and Conflicts of Interest

- 1) Why do you believe the President nominated you to serve as General Counsel for the Federal Labor Relations Authority (FLRA)?

I do not specifically know why I was chosen for this nomination by the President but I would assume that it was based on my education, my experience and my qualifications that are appropriate to this position.

- 2) Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

- 3) What specific background and experience affirmatively qualify you to be General Counsel for the FLRA?

I believe that my experience working at the FLRA early in my career is a tremendous advantage to my role as General Counsel in terms of understanding the agency as a whole. My years in the private practice of law in a small firm, representing clients, has given me perspective on advocating on behalf of my clients and the need to respond effectively to their needs. Lastly, as an Employees' Compensation Appeals Judge, I have had the benefit of independent decision making, listening to both sides objectively and rendering a fair decision. Exercising such judicial temperament, I believe, prepares me well for the job of General Counsel.

- 4) Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel? If so, what are they and to whom have the commitments been made?

No.

II. Role and Responsibilities of the General Counsel for the FLRA

- 5) What is your view of the role of the Office of the General Counsel?

The principal role of the General Counsel, as spelled out in 5 U.S.C. § 7104(f), is to investigate and, where warranted, prosecute charges of unfair labor practices. In so doing, the General Counsel is to ensure that the rights and obligations of employees, unions, and agencies are fairly enforced.

- 6) In your view, what are the major challenges facing the Office of the General Counsel? How will you as General Counsel address these challenges and what will be your top priorities?

**The major challenge facing the Office of the General Counsel is to efficiently utilize its resources to apply and enforce Chapter 71 in a balanced and neutral manner. As General Counsel, I will fulfill my statutory duties to ensure that this challenge is met.**

- 7) Do you think that any organizational changes should be made in the General Counsel's Office? Do you think any changes should be made in the manner in which cases are handled? If so, what are they?

**It would be premature at this point for me to comment on whether there should be organizational or case-handling changes until I have had the opportunity to assess the operations of the Office of General Counsel first hand. If confirmed, I would examine all phases of operations and, where appropriate, pursue organizational or case-handling changes.**

- 8) Do you believe that any changes should be made in any substantive guidance, policies, or procedures of the General Counsel's Office, or do you believe that any new guidance, policies, or procedures should be issued? If so, please describe them.

**Again, it would be premature to suggest changes at this time. I intend to examine all guidance published on the agency's website, as well as the case-handling manuals published by the Office of the General Counsel, to ensure that it is current and consistent with present statutes, court decisions, etc.**

- 9) How do you plan to communicate to the Office of the General Counsel staff on matters of relevance to them?

**I will communicate with staff throughout the Office of General Counsel in person and/or through electronic means, such as telephone, e-mail and, if available, teleconferencing.**

- 10) Describe your philosophy regarding enforcement of the labor provisions contained in Chapter 71 of title 5, United States Code.

**My philosophy will be to enforce the provisions of the Chapter 71 as Congress has provided, respecting the rights of employees, agencies, and unions.**



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

June 28, 2005

The Honorable Susan M. Collins  
Chair  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Colleen D. Kiko, who has been nominated by President Bush for the position of General Counsel, Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Ms. Kiko is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in cursive script, reading "Marilyn L. Glynn", is written over the typed name.

Marilyn L. Glynn  
Acting Director

Enclosure



- 11) FLRA's fiscal year 2004 Performance and Accountability Report outlines a number of performance goals, including ensuring that no more than 15 percent of Unfair Labor Practice (ULP) cases pending are more than 90 days old without the issuance of a complaint, or without the dismissal, withdrawal, or settlement of the charge. What is your assessment of how well FLRA is meeting each of these goals? How would you ensure that cases are investigated and resolved in a timely manner?

**I was not involved in establishing these goals and for that reason do not believe it would be appropriate, at this point, to render an opinion on how well the Office of the General Counsel is performing with respect to its goals. I will make timely processing and resolution of cases a top priority.**

- 12) The Office of General Counsel provides training for union and management representatives on their rights and responsibilities and how to avoid litigation. What is your opinion of the current program, and, if confirmed, what changes, if any, would you make?

**I support training initiatives; however, I have no first-hand experience with the current training policies in use within the Office of General Counsel. If confirmed, I will assess the current training policies and practices and determine whether changes need to be made.**

- 13) The General Counsel of the FLRA has prosecutorial discretion in determining whether to prosecute charges of unfair labor practices and operates, to a large extent, without supervision. The decision not to pursue a charge of an unfair labor practice may leave the possible injured party without legal recourse. Given this great responsibility, what factors would you consider in deciding whether to pursue charges of unfair labor practices?

**The Office of General Counsel has published criteria in its ULP Casehandling Manual, Part 4, Chapter F (available on the FLRA website), for the exercise of prosecutorial discretion. These criteria include, but are not limited to, the seriousness of the violation, whether the violation is an isolated one, whether the violation has been cured, or whether circumstances are such as to preclude an effective remedy. As an outsider, I view these criteria as a reasonable basis for the exercise of prosecutorial discretion. However, as with all policies of the Office of the General Counsel, upon assumption of the position, I will evaluate this policy to ensure that it continues to be appropriate and effective.**

- 14) In the biographical information that you provided to this Committee, you stated that your private law practice and your time at the U.S. Attorney's Office prepared you for the prosecutorial role that the General Counsel has in the federal labor relations arena. Please elaborate on this. Among other things, did any of your legal work involve issues relating to the Federal Sector Labor-Management Relations statute, the National Labor Relations Act, or other aspects of employment law? Did you represent unions or employees; did

you represent employers; did you represent plaintiffs? Please describe the nature and extent of your experience as a prosecutor.

My work as a private attorney, as well as my time at the U.S. Attorney's Office, afforded me opportunities to hone my ability to evaluate evidence, prepare witnesses, and prepare and present arguments before a tribunal. In the prosecution of unfair labor practices, the same legal skills are required. My work in those capacities did not involve the Federal Sector Labor Management Relations statute nor the National Labor Relations Act. In my private practice of law, I represented several clients who had been terminated from employment. My experience as a Special Assistant U. S. Attorney involved the prosecution of misdemeanors and traffic violations occurring on Federal property as well as a felony prosecution for drug possession.

- 15) In the biographical information that you provided to this Committee, you also stated that your current position as an Employee's Compensation Appeals Judge has provided you with an opportunity to assist with the management of a staff of approximately 50 attorneys, paralegals, and legal clerks. Please elaborate on this. Among other things, how many employees are under your supervision? What is your role in the management of employees who are not under your supervision?

As an Employees' Compensation Appeals Judge, I do not personally supervise any employees. I am, however, involved in an advisory capacity to the Chief Judge of the Board as he manages the staff of approximately 50 employees.

### III. Policy Questions

#### Labor-Management Relations

- 16) Are there any statutory or regulatory standards, policies, or procedures related to the FLRA and its responsibilities which you feel should be modified? Please explain.

At this point, I am not prepared to identify specific standards, procedures, or policies in need of revision; however, all such matters are appropriate for continuing review and, where appropriate, modification.

- 17) What is your assessment of the current state of labor-management relations in the federal government?

I view the current state of Federal sector labor-management relations in connection with the Department of Homeland Security (DHS) and the Department of Defense (DoD) as one of transition, as a result of legislation regarding those agencies. The effect of this transition on the state of labor-management relations government-wide, remains to be seen. To the extent that the transition in DHS and DOD is encouraging communication between parties, I believe that is positive.

- 18) In certain labor-management relationships, there is a perception that some may abuse their rights by filing frivolous ULP complaints. Do you share this perception? If so, do you have a sense of the extent to which this may be occurring and how such situations and complaints should be dealt with?

I have no current basis upon which to render a judgment on this matter. I will, however, ensure that all ULP charges are taken seriously and investigated to the extent necessary to ascertain their merits. Where investigations reveal charges to be clearly without merit, such charges should be promptly dismissed.

- 19) The Federal Sector Labor-Management Relations statute states a Congressional finding that statutory protection of the right of employees to organize and bargain collectively contributes to the effective conduct of public business. (5 U.S.C. § 7101(a)).

- a. To what extent, and under what circumstances, do you believe that collective bargaining at federal agencies contributes to the effective conduct of public business?

Congress has found that collective bargaining over certain matters affecting employees contributes to the effective conduct of public business and facilitates the amicable resolution of workplace disputes. I believe that is an appropriate guide to follow in carrying out statutory responsibilities.

- b. To what extent, and under what circumstances, do you believe that the right of federal employees to bargain collectively is, or could be, detrimental to the ability of agencies to fulfill their missions?

In my view, the collective bargaining rights of federal employees should not interfere with an agency's ability to fulfill its statutory mission. Chapter 71 recognizes this principle, noting in § 7101(b) that the provisions of the chapter "should be interpreted in a manner consistent with the requirement of an effective and efficient Government." I believe that it is important that an appropriate balance exist between the benefits of collective bargaining and the need for serving the taxpayer through an effective and efficient government.

- 20) After the General Counsel issues a complaint alleging that an agency or labor organization engaged in an unfair labor practice, the FLRA may seek injunctive relief, under 5 U.S.C. § 7123(d).

- a. Under what circumstances do you believe it is appropriate to seek such injunctive relief?

Under the current policy of the Office of General Counsel, *see Case Handling Manual Part 2, Chapter E* (available on the FLRA website), injunctive relief is appropriate only in extraordinary circumstances, where the *status quo* must be maintained. I view this to be a reasonable basis for the exercise of injunctive relief. For example, the Office of the

General Counsel has previously successfully petitioned for injunctive relief in cases involving an illegal strike by a labor organization, *United States v. PATCO*, 524 F.Supp. 160 (D.D.C. 1981); and in a case involving the unilateral termination of on-base housing where other suitable housing was not available, *Petrucchi v. United States Southern Command, Department of Defense, Republic of Panama*, No. 94-3786 (E.D. La. Nov. 29, 1994).

- b. Do you agree with the factors currently set forth in the Office of General Counsel Case Handling Manual (e.g., Part 2, Chapter E, Injunctions)? Do you believe changes should be made to these stated factors?

These factors, including the seriousness of the violation, the likelihood of success on the merits, and the absence of a meaningful post-litigation remedy appear to be reasonable. As noted earlier, however, I will evaluate this and other policies, in order to assess their continued efficacy.

- c. Do you believe it is appropriate for the FLRA to seek injunctive relief under the same criteria as, or different criteria from, those under which the NLRB has traditionally sought injunctive relief in the context of the private sector under 29 U.S.C. § 160(j)?

The general requirements noted in the NLRB's Caschandling Manual, Part 1, § 10310.2, that injunctive relief is appropriate only where there is a sufficient showing that a ULP has occurred and that the effects of the ULP cannot be remedied without interim relief, appear similar to the federal standard but without further research into how the standard has been applied over the past decades, it is difficult to determine whether it would be an appropriate standard for the federal sector. Chapter 71 recognizes the difference between the private sector and government operations. Title 5, section 7123(d) specifically provides that a court shall not grant temporary relief if it would interfere with the ability of the agency to carry out its essential functions. I believe that to be an appropriate standard for the federal sector.

- 21) The Office of Management and Budget recently released a draft bill entitled the "Working for America Act," which, if enacted, would make several changes to the Federal Service Labor-Management Relations statute, including the following:
  - a. Section 401(1)(A) of the draft bill would change the definition of a "grievance," by amending 5 U.S.C. § 7103(a)(9)(C)(ii) to read: "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation *issued for the purpose of affecting conditions of employment, including determinations regarding an employee's pay, except the exercise of managerial discretion of judgment in such determinations.*" (New language shown in italics.)
  - b. Section 401(2)(A) of the draft bill would change the current process for resolving bargaining disputes by requiring the Chairman of the FLRA to "... establish a single, integrated process to resolve all matters associated with a bargaining dispute." Among other things, the Chairman would be granted the power "to

direct the General Counsel, the Federal Services Impasses Panel, or both, to submit a matter before them to the Authority for appropriate action or to take whatever action is appropriate pursuant to the procedures the Chairman establishes under this paragraph."

- c. Section 401(2)(A) of the draft bill would allow the Chairman of the FLRA, "in his or her sole discretion," to call a meeting of the Authority without regard to 5 U.S.C. § 552b (the Government in the Sunshine Act).
- d. Section 401(2)(B) of the draft bill would allow the Chairman of the FLRA to appoint an Executive Director, regional directors, administrative law judges, and other individuals as he or she may find necessary, and to delegate authority to them. Current law authorizes the Authority collectively to appoint those officers and to delegate authority to them.
- e. Section 401(2)(E) of the draft bill would prohibit the FLRA from imposing *status quo ante* remedies, "where such remedies would adversely impact the agency's or activity's mission or budget, or the public interest."
- f. Sections 401(1)(B) and 401(3) of the draft bill would change management rights with respect to emergencies. In addition to having the right to take whatever actions may be necessary to carry out the agency mission during emergencies, the bill would authorize management to take whatever actions may be necessary "to prepare for, practice for, or prevent any emergency." Moreover, the term "emergency" is defined to mean "an actual or potential situation requiring immediate action to carry out critical or essential agency functions, including, but not limited to, any situation involving or potentially involving - (A) an adverse effect on agency resources; (B) an increase in agency workload due to unforeseeable events; (C) changed mission requirements imposed on the agency by external authorities; or (D) any budgetary exigency caused in whole or in part by authorities external to the agency."
- g. Section 401(5) of the draft bill would alter the duty to bargain by adding the following limitation: "The obligation of any agency or any labor organization to bargain or consult extends to any otherwise negotiable subject only if the effect of the change on the bargaining unit, or that portion of the bargaining unit affected by the change, is foreseeable, substantial, and significant in terms of impact and duration."

For each of the bill provisions identified above - (1) What would be the effect, if any, on the operations, authority, and independence of the Office of General Counsel? (2) What do you believe would be the effect on agencies and their ability to fulfill their missions, on employees and their ability to assert their interests, on the FLRA and its operations, and on the nature of labor relations within the government? (3) Generally, what is your opinion of the proposed provision, and do you believe it is necessary and desirable? (4)



With respect to the bill provision identified in paragraph h. of this question, how would you interpret the meaning of the terms "foreseeable," "substantial," and "significant"?

At this stage, it is difficult to speculate what the overall effect of the listed provisions will be on agencies, employees, the FLRA and the nature of labor relations within the Government. The potential impact will likely become clearer as the bill is considered and the views of the various stakeholders are expressed. Nonetheless, I will attempt to respond to the questions to the best of my ability.

a.) Section 401(1)(A)

(1) The provision as presented in this context does not appear to have an impact on the operations, authority, and independence of the Office of General Counsel.

(2) To the extent that this provision may or may not change substantive aspects of Federal labor law, my role as General Counsel would be to apply and enforce the substantive provisions of Chapter 71 as established or revised by the Congress.

(3) This provision, restricting grievances to violations of law rule, or regulation issued for the purpose of affecting conditions of employment, appears to be a codification of a case decided by the United States Court of Appeals for the District of Columbia Circuit. *United States Dep't of the Treasury, United States Customs Serv. v. FLRA*, 43 F.3d 682 (D.C. Cir. 1994). I have no basis for determining whether this provision is necessary or desirable. As General Counsel, it would be my duty to uphold and enforce the law enacted by Congress in a balanced and neutral manner and to ensure the Office of General Counsel, as an organization, carries out its duties consistent with the provisions of Chapter 71.

b.) Section 401(2)(A)

(1) The provision as presented in this context may impact the operations of the Office of General Counsel in terms of providing opportunities for evaluating and perhaps streamlining the processing of cases agency-wide. The Office of General Counsel is but one component of the FLRA, which also includes the Office of Administrative Law Judges, the Authority, and the Federal Service Impasses Panel. Although ULP cases do arise in the Office of General Counsel, a particular case does not necessarily end there. The same case may route through one or more of the other FLRA components during the life of the case. This provision, as presented, appears to be geared to improving customer service government-wide by seeking to address efficiencies in case-processing. I do not view this provision as significantly impacting the responsibility that I, as General Counsel, would have to apply and enforce the substantive provisions of Chapter 71.

(2) To the extent that this provision may or may not change substantive aspects of Federal labor law, my role as General Counsel would be to apply and enforce the substantive provisions of Chapter 71 as established or revised by Congress.

(3) As General Counsel, it would be my duty to uphold and enforce the law enacted by Congress in a balanced and neutral manner and to ensure the Office of General Counsel, as an organization, carries out its duties consistent with the provisions of Chapter 71.

- c./d.) Section 401(2)(A)  
Section 401(2)(B)  
The provisions as presented in this context, regarding meetings of the Authority and the Chairman's appointing authority, do not directly affect the responsibility of the Office of the General Counsel to apply and enforce the substantive provisions of Chapter 71.
- e.) Section 401(2)(E)  
This provision, as I understand it, would prohibit the FLRA from imposing *status quo ante* remedies if such remedies would adversely impact the public interest or an agency's mission or budget. I do not at this time have any basis upon which to state whether this provision is necessary or desirable.
- f.) Section 401(1)(B) and 401(3)  
As I understand these provisions, in the context presented, Section 401(1)(B) defines the term emergency and § 401(3) extends management's right as necessary "to prepare for, practice for or prevent" any emergency.  
(1) & (2) The impact of these two provisions is unclear at this point. Currently "emergency" is undefined in Chapter 71.  
(3) I am not in a position at this time to state whether this provision is necessary or desirable. As General Counsel, it would be my duty to uphold and enforce the law enacted by Congress in a balanced and neutral manner and to ensure the Office of General Counsel, as an organization, carries out its duties consistent with the provisions of Chapter 71.
- g.) Section 401(5)  
(1) & (2) As I understand this provision, in the context presented, the effect of §401(5), which limits the bargaining obligation to matters that are "foreseeable, substantial, and significant," is unclear. Under current law, the obligation to bargain exists whenever a change has "more than a *de minimis* effect on conditions of employment." *Soc. Sec. Admin., Office of Hearings and Appeals, Charleston, S.C., 59 F.L.R.A. 646 (2004).*  
(3) I am not in a position to state whether this provision is necessary or desirable. As General Counsel, it would be my duty to uphold and enforce the law enacted by Congress in a balanced and neutral manner and to ensure the Office of General Counsel, as an organization, carries out its duties consistent with the provisions of Chapter 71.  
(4) As General Counsel, I would attempt to interpret the terms "foreseeable," "substantial," and "significant" in a manner consistent with Congressional intent and illuminating decisions rendered by the Authority and the Courts. In the absence of Congressional debate and consideration of this proposed legislation, as well as decisions of the Authority interpreting this provision, it would be premature for me to speculate on how these terms should or would be interpreted and applied.

#### Alternative Dispute Resolution

- 22) There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations Statute. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures on the parties to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes? Is there a role for the Office of the General Counsel in this regard and, if so, what should that role be?

I believe that Alternative Dispute Resolution (ADR) services can be a useful tool or technique for dispute resolution as the parties are able to craft their own resolution of a dispute rather than having one imposed upon them. Since Congress created the Federal Mediation and Conciliation Service (FMCS) nearly 60 years ago, I believe it has been the perspective of Congress that techniques such as mediation and other methods short of litigation are useful for promoting productive labor-management relations. In the early 1990's, Congress passed the *Alternative Dispute Resolution Act* which requires Federal agencies to incorporate ADR when appropriate. I believe that ADR techniques can be used successfully in resolving federal workplace disputes. In terms of the role for the Office of the General Counsel, I believe that ADR is a tool to facilitate dispute resolution, along with other tools and techniques and in relation to the services provided by other agencies (such as FMCS). Reviewing and monitoring the effective use of ADR would be included in my oversight role as General Counsel, to ensure timely resolution of cases for our customers, both labor and management.

- 23) While ADR techniques can be helpful, in some situations, to resolving conflicts, what, in your view, can be done to help prevent disputes from arising in the first place and promote collaborative labor-management working relationships? Is there a role for the Office of the General Counsel in this regard and, if so, what should that role be?

The ultimate responsibility for a productive and collaborative labor-management relationship rests with the parties. It is my understanding that the FLRA provides training to the parties to ensure they understand their rights and obligations and that Office of General Counsel staff do participate in providing training, as do attorneys from other FLRA components. As the General Counsel, I would support training initiatives.

#### Personnel Systems at the Departments of Homeland Security and Defense

- 24) The Departments of Homeland Security (DHS) and Defense (DOD) are in the midst of developing and implementing changes to their personnel systems. What are your views about the changes as they affect labor-management relations? What are the implications for the Office of General Counsel in terms of workload and its leadership role in federal labor-management relations?

It remains to be seen precisely how the DHS and DOD regulations may affect labor relations in those agencies until the regulations are in effect and the parties are operating under the new system. As General Counsel, I would expect to monitor workload once the DHS and DoD regulations are in effect and to offer my input alongside other FLRA program components in connection with meeting the agency's statutory mission and strategic plan goals.

- 25) Both the final DHS and the proposed DOD personnel regulations create labor relations panels appointed by the respective Secretary. The regulations provide that FLRA may review the decisions of these internal boards, but must defer to the internal labor relations panels' findings of fact and law unless the requesting party shows the panel's decision was: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) based on error in applying the board's procedures; or (3) unsupported by substantial evidence.

- a) Do you view these changes as an impediment to FLRA's authority to independently review these labor relations disputes? Please explain.

As the FLRA General Counsel, I would have no direct role in the FLRA's review of the decisions of the DHS or DOD labor boards. It is my understanding that review of the DHS or DOD labor board decisions would be under the jurisdiction of the three-Member Authority. In accordance with Chapter 71, I would defer to the Authority's decision(s) concerning whether these or other regulations create impediments to the FLRA's statutory responsibilities.

- b) What role would you anticipate playing with respect to the new systems for labor management at DHS and DOD?

As I understand the final DHS regulations (70 Fed. Reg. 5,272) and the proposed DOD regulations (70 Fed. Reg. 7,552), there are some powers and duties ascribed to the FLRA Authority (the three members, 5 U.S.C. § 7104(a)). The regulations, as I understand them, are silent with respect to the General Counsel.

- c) Do you support the DHS and DOD labor relations regulatory provisions, and do you believe that model should be extended government-wide, despite the diminished role for FLRA?

I have great respect for the legislative process and the separation of powers. The Congress has determined that DHS and DOD may establish their own agency-specific labor relations systems. Once these systems have been implemented, I will, consistent with my Chapter 71 responsibilities, execute the provisions of the DHS and DOD regulations, as appropriate. Should Congress choose to extend the DHS and DOD authority to other Federal agencies, I will, consistent with my Chapter 71 responsibilities, execute the provisions of those regulatory schemes.

- 26) Under the final DHS and the proposed DOD personnel regulations, the new internal labor-relations boards would be assigned many of the responsibilities of the FLRA, including the handling of unfair labor practice charges related to bargaining. However, these regulations do not appear to provide for the establishment of a neutral and independent investigative and prosecuting authority such as the FLRA General Counsel. Would you recommend creating such an entity at DHS and DOD? Please explain.

**Congress has made the determination to permit the Secretaries of DHS and DOD, in conjunction with the Director of OPM, to establish their own labor-relations systems. It will be up to the particular entities to determine the procedures for handling their program.**

- 27) The final DHS and the proposed DOD personnel regulations provide that, when management issues directives, matters addressed in those directives are no longer allowed to be the subject of collective bargaining. At DHS such directives must be department-wide, and at DOD such directives may extend to the entire department or to any component of the department. The DHS and DOD regulations also expand the scope of "management rights" that managers can exercise without being required to bargain.

- a. What do you believe would be the effect of these regulations on the nature and extent of employees' right to bargain collectively and to participate through labor organizations in decisions that affect them?

**The actual effect of these provisions can only be ascertained with certainty after the respective systems have gone on-line and the parties have operated under the systems for a period of time. The administration of labor-management relations is, at the end of the day, a function of the relationship among the parties.**

- b. If one party to a negotiation can take any subject off the table at will, to what extent do you believe collective bargaining can achieve its intended purpose of encouraging and facilitating the amicable and productive resolution of workplace issues?

**As I understand Chapter 71, which has been in effect now for more than 25 years, the Statute has long limited the scope of bargaining and has excluded some agencies from the provisions altogether. For example, an agency may choose to bargain or not on various matters set out in 5 U.S.C. § 7106 (b). Therefore, as I read the authorities granted with respect to the scope of collective bargaining in the DHS and DOD systems, they are changes of degree rather than something totally new and previously unknown to Federal sector collective bargaining. The actual effect that these regulatory provisions will have on collective bargaining rights remains to be seen.**

- c. Do you believe that the DHS and DOD regulations on collective bargaining are desirable? Are there any changes to those regulations that you believe would be preferable?

Congress has instructed DHS and DOD to develop a labor relations program appropriate for each agency's respective and specific mission. As such, these agencies are in the best position to make the necessary determinations concerning regulations on collective bargaining and the implementation of such regulations. As the FLRA General Counsel, my role would be to execute whatever, if any, provisions that are consistent with law, and my duties under Chapter 71.

- 28) In January 2003, the Administrator of the Transportation Security Administration (TSA) issued an order prohibiting federal baggage and passenger screeners from engaging in collective bargaining. The Administrator issued a statement explaining that "mandatory collective bargaining is not compatible with the flexibility required to wage the war against terrorism." The Administrator's statement further explained: "Fighting terrorism demands a flexible workforce that can rapidly respond to threats," and: "That can mean changes in work assignments and other conditions of employment that are not compatible with the duty to bargain with labor unions." This January 2003 order remains in effect. Do you believe that the need for a flexible workforce that can rapidly respond to threats can be compatible with the duty to bargain with labor unions? Please explain.

As FLRA General Counsel, I would be responsible for enforcing the law under Chapter 71. The Authority has recognized that Congress conferred upon the head of TSA the authority to determine whether collective bargaining is appropriate for the agency's employees. *United States Dep't of Homeland Sec., Border and Transportation Sec. Directorate, Transportation Sec. Admin.*, 59 F.L.R.A. 423 (2003). It remains the role of Congress to determine whether, and to what extent, federal employees should have the right to organize for collective bargaining.

#### Collaboration with other agencies

- 29) Describe your vision of what the relationship should be between FLRA and other agencies with government-wide civil service responsibilities, including the Office of Personnel Management, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, and the Office of Special Counsel. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

As the FLRA General Counsel, I would endeavor to establish or to maintain effective, professional relationships with these agencies, recognizing, however, that these agencies may appear as parties in cases before the Authority.

#### IV. Relations with Congress

30. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?



Yes.

- 31) Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

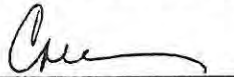
V. Assistance

- 32) Are these answers your own? Have you consulted with the FLRA or any interested parties? If so, please indicate which entities.

Each answer is my own; however, I have consulted with FLRA staff to obtain helpful information of a background nature.

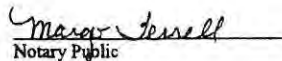
**AFFIDAVIT**

I, Colleen Duffy Kiko, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



Colleen Duffy Kiko

Subscribed and sworn before me this 19<sup>th</sup> day of August, 2005.

  
Notary Public

SHOWN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE  
THIS 19<sup>th</sup> DAY OF August, 2005, IN THE  
DISTRICT OF COLUMBIA  
  
MARAGO TERRELL  
Notary Public, District of Columbia  
My Commission Expires Oct. 30, 2006

**Post-Hearing Questions for the Record  
Submitted to Colleen D. Kiko  
From Senator Daniel K. Akaka**

**September 13, 2005**

1. Both the Department of Defense (DOD) and the Department of Homeland Security (DHS) have been granted flexibility with their human resources management systems, including the authority to make changes to their labor-management system. Such authority could have major implications on how labor-management relations are handled and what issues may come before your office.

- A. What should the role of the General Counsel be with regard to the new personnel systems at DOD and DHS?

**The principal role of the General Counsel of the Authority, as spelled out in 5 U.S.C. § 7104(f), is to investigate and, where warranted, prosecute charges of unfair labor practices. As I understand the final DHS regulations (70 Fed. Reg. 5,272) and the proposed DoD regulations (70 Fed. Reg. 7,552), they are silent with respect to the General Counsel. Therefore, the role of the General Counsel would be to apply and enforce the substantive provisions of Chapter 71, as established or revised by the Congress.**

- B. Do you believe the final DHS regulations and the proposed DOD regulations will foster positive labor-management relations and communication between labor and management?

**I believe that communication between and among parties is an important part of a positive labor-management relations program. The ultimate responsibility for a productive and collaborative labor-management relationship, however, rests directly with the parties. It remains to be seen precisely how the DHS and DoD regulations may affect labor relations in those agencies until the regulations are in effect and the parties are operating under the new system.**

2. Earlier this year, the FLRA Chairman commissioned a study that concluded that 81 percent of all FLRA employees were too highly graded. This conclusion applied to all of the employees in the Regional Offices, who would be under your authority if you were confirmed as General Counsel. Do you believe that attorneys and labor relations specialists who work for the FLRA are over-graded, and if so, do you believe that those positions that operate under the authority of the General Counsel should be downgraded?

**I was not involved in and have no experience with this study and for that reason would not be able to render an opinion on the study or the conclusions of the study. I do know that classification of Federal positions is governed by Title 5 of the U.S. Code. The**

are out of balance with agency missions? Do you believe the current labor-management construct inhibits agencies from carrying out their missions?

I have no current basis upon which to render a judgment regarding the status of collective bargaining rights within DHS and DoD and whether such rights are out of balance with each of these respective agency's missions, nor do I have first-hand knowledge of the current status within other agencies. Section 7101(b) of Chapter 71 recognizes that the provisions of Chapter 71 "should be interpreted in a manner consistent with the requirement of an effective and efficient Government." I accept this provision as enacted by Congress. The General Counsel would be responsible for enforcing the law under Chapter 71 and, with respect to regulations of DHS, DoD, or other agencies, for executing whatever provisions are consistent with law and my duties under Chapter 71.



**NOMINATIONS OF WAYNE C. BEYER AND  
STEPHEN T. CONBOY**

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**HEARING**

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF WAYNE C. BEYER TO BE MEMBER, FEDERAL LABOR  
RELATIONS AUTHORITY, AND STEPHEN T. CONBOY TO BE U.S. MAR-  
SHAL, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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SEPTEMBER 13, 2006

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## CONTENTS

Opening statement:	Page
Senator Voinovich .....	1

### WITNESSES

WEDNESDAY, SEPTEMBER 13, 2006

Hon. Judd Gregg, a U.S. Senator from the State of New Hampshire .....	1
Wayne C. Beyer, to be Member, Federal Labor Relations Authority .....	3
Stephen T. Conboy, to be U.S. Marshal, Superior Court of the District of Columbia .....	4

### ALPHABETICAL LIST OF WITNESSES

Beyer, Wayne C.:	
Testimony .....	3
Prepared statement .....	9
Biographical and professional information .....	10
Responses to pre-hearing questions .....	18
Letter from U.S. Office of Government Ethics .....	30
Letter of support from Hon. Charles Bass and Hon. Jeb Bradley, Representatives in Congress from the State of New Hampshire .....	31
Conboy, Stephen T.:	
Testimony .....	4
Prepared statement .....	32
Biographical and professional information .....	34
Responses to pre-hearing questions .....	39
Additional questions submitted by Senator Lautenberg .....	56
Letter from U.S. Office of Government Ethics .....	58
Gregg, Hon. Judd:	
Testimony .....	1

## **NOMINATIONS OF WAYNE C. BEYER AND STEPHEN T. CONBOY**

**WEDNESDAY, SEPTEMBER 13, 2006**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:33 p.m., in room 342, Dirksen Senate Office Building, Hon. George V. Voinovich, presiding.

Present: Senator Voinovich.

### **OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. The Committee will come to order. Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Wayne Beyer to be a Member of the Federal Labor Relations Authority and Stephen Conboy to be U.S. Marshal for the Superior Court of the District of Columbia.

I would like to extend my warm regards to both Mr. Beyer and Mr. Conboy. I would like to say how pleased I am that both of you continue to use your talents to serve your Nation. I would also like to thank your families, who make significant sacrifices in order for you to pursue professions in public service.

Mr. Beyer, the Federal Labor Relations Authority has the responsibility to adjudicate disputes arising out of the Civil Service Reform Act of 1978, including determining what is negotiable through collective bargaining agreements, appeals over unfair labor practices, and hearing petitions for union representation of Federal employees.

While governor of Ohio, I spent a significant amount of my time working to improve labor-management partnerships in Ohio State agencies. Mr. Beyer, I look forward to discussing with you the status of labor-management relations within the Federal Government.

I welcome my friend and Senator and colleague, Senator Judd Gregg, who is here to introduce Mr. Beyer. Senator Gregg, we are very happy that you are here today with us, and we look forward to hearing from you.

### **TESTIMONY OF HON. JUDD GREGG, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE**

Senator GREGG. Thank you, Senator Voinovich, and it is a pleasure to be here before your Committee to introduce and strongly support the nomination of Wayne Beyer.

Mr. Beyer and I go back a long way, over 20 years, actually, as his career started out in New Hampshire. He went to Dartmouth College and then got a graduate degree, I believe, at Harvard. He practiced law in New Hampshire for a significant amount of time. I have known him as a friend and as someone who always represented a commitment to public service. Back when I was governor, I tried to sign him up to come into the State government, but at that time, he was a young lawyer just trying to get started, and it is a little bit expensive to come into the State service, but he has requited himself extraordinarily well.

As a member of this Administration, as an Administrative Appeals Judge, he understands the issues which will be before him on the Federal Labor Relations Authority. He will bring integrity, intelligence, and capability to this, and he is fair-minded and that is what you want from someone in this position.

I hope this Committee will act favorably on his nomination, and I appreciate the chance to have the opportunity to come here and testify on his behalf.

Senator VOINOVICH. Thank you very much. I know that you have a busy schedule today, so I thank you very much for coming today.

Senator GREGG. Thank you.

Senator VOINOVICH. Mr. Beyer, Senator Gregg must think a great deal of you.

Mr. BEYER. Thank you.

Senator VOINOVICH. Mr. Conboy, as you are well aware, the U.S. Marshals Service is our oldest Federal law enforcement agency. In the District of Columbia, the Marshals Service has the significant responsibility of providing law enforcement for the Federal courts.

With 23 years of experience with the U.S. Marshals Service, Mr. Conboy has served in numerous positions throughout the agency, including Deputy U.S. Marshal, Senior Inspector, Supervisory U.S. Marshal, Chief Deputy, and his current position as Acting U.S. Marshal for the Superior Court of the District of Columbia. Prior to joining the Marshals Service, Mr. Conboy served in the U.S. Marine Corps.

I believe that both of the nominees today are well qualified for the positions for which they have been nominated, and I look forward to hearing from them about their qualifications and other reasons for pursuing public service.

It is the custom of this Committee to swear in witnesses, and if you will both stand up, I will swear you in. Do you swear that the testimony you are about to give is the truth and nothing but the truth, so help you, God?

Mr. BEYER. I do.

Mr. CONBOY. I do.

Senator VOINOVICH. Thank you. I understand that both of you have friends and relatives here today, and supportive colleagues, and I thought that I might give you an opportunity to introduce them. Mr. Beyer, we will start with you.

Mr. BEYER. Thank you, Senator. I am here with Dale Cabaniss, the Chair of the FLRA; Colleen Kiko, who is the General Counsel of the FLRA. I note that Carol Waller Pope, who is the other member of the FLRA, is also here, and I don't see anyone else. Thank you, Senator.

Senator VOINOVICH. Thank you. Mr. Conboy.

Mr. CONBOY. Thank you, Senator. I would like to first recognize my biggest supporter, my wife of 30 years, Elizabeth. She is a teacher with Fairfax County Public Schools and has spent the past 2 years earning a second Master's degree in education with Virginia Tech and the immediate past year as an assistant principal intern at Lorton Station. I am most proud of her. Our two daughters, Anna and Sarah, could not be here today.

I would like to introduce, as well, the Hon. Chief Judge Rufus G. King III, the Hon. —

Senator VOINOVICH. It is nice to have you here with us. Thank you for being here.

Mr. CONBOY [continuing]. Judge Gregory Jackson; the Hon. Pete Elliott, U.S. Marshal for the Northern District of Ohio; the Hon. George Walsh, U.S. Marshal for the District of Columbia. I may mention that there are actually two districts within the District of Columbia, U.S. District and the Superior Court, as well. There are a number of other friends and supporters here.

Senator VOINOVICH. We are glad to have all of you here, and Mrs. Conboy, I thank you for the sacrifice that you have made so that your husband can serve. I am sure you thank him for the sacrifice he makes so you can serve our public schools.

Mrs. CONBOY. Absolutely.

Senator VOINOVICH. We have questions that we ask all of the nominees here before this Committee. I will ask these questions of both of you. First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BEYER. No, Senator.

Mr. CONBOY. No, sir.

Senator VOINOVICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BEYER. No, Senator.

Mr. CONBOY. No, Senator.

Senator VOINOVICH. Do you have any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Mr. BEYER. No, Senator.

Mr. CONBOY. No, Senator.

Senator VOINOVICH. I would welcome comments from you, Mr. Beyer, about why you are interested in being appointed. I will then call on you, Mr. Conboy.

#### **TESTIMONY OF WAYNE C. BEYER,<sup>1</sup> TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. BEYER. Thank you, Senator. I do have a brief statement.

Chairman Voinovich and distinguished Members of the Committee, I am honored to appear before you today as the President's nominee to be a Member of the Federal Labor Relations Authority. My career is about evenly divided between private practice in New

<sup>1</sup> The prepared statement of Mr. Beyer appears in the Appendix on page 9.

Hampshire and public service here in Washington. The submissions provide the details.

My strengths include an ability to understand the facts and analyze and apply the law, write well analytically, work productively, and work collegially. Four-and-a-half years as an Administrative Appeals Judge adjudicating cases arising under worker protection laws will be good preparation for the FLRA if I am fortunate enough to serve in that capacity.

I want to recognize and thank those who have contributed to the nomination process, Katja Bullock of the White House, Dale Cabaniss, Chair of the FLRA, the Senate staff, especially Jennifer Hemingway, my friend, Judd Gregg, the senior Senator from New Hampshire, for his kind remarks, the Committee for its time and attention, and, of course, the President for the confidence placed in me. The only way I can prove my gratitude is to perform to the best of my ability if I am confirmed for this important position.

I will answer any questions that you have, Senator.

Senator VOINOVICH. Thank you. Mr. Conboy.

**TESTIMONY OF STEPHEN T. CONBOY,<sup>1</sup> TO BE U.S. MARSHALL,  
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. CONBOY. Thank you, Chairman Voinovich. I would like to thank our President and Commander in Chief for nominating me to this position and to the Attorney General for appointing me to be the Acting U.S. Marshal, a position that I have held since January 2004, and for his confidence in me for this nomination. I would like to recognize and express my sincere appreciation to Mayor Anthony Williams for recommending me to the White House for this position.

As a career Deputy U.S. Marshal with 23 years of experience with the U.S. Marshals Service, I am most proud of being associated with such a fine cadre of brave and dedicated men and women that I have the privilege of working with at Superior Court. The District of Columbia can be proud of the tremendous service that they provide to both this community and to their Nation each day.

I look forward to responding to whatever questions the Committee may have.

Senator VOINOVICH. Thank you.

Mr. Beyer, while the statute divides the Board membership between the two political parties, I believe its judicial function demands members of the Federal Labor Relations Authority to not hold political biases. Do you agree with that?

Mr. BEYER. Yes, I do, Senator.

Senator VOINOVICH. What is your philosophy in approaching this position?

Mr. BEYER. I look at this position as a quasi-judicial position. It is not a policy-making or management position. I would approach each case on its merits, scrupulously applying the law to the facts of each individual case without any predisposition, without any bias. As I think the Senator knows, I have had a similar role for the last 4½ years in the Department of Labor, and I think this would be a good opportunity for me to continue in that kind of role.

<sup>1</sup>The prepared statement of Mr. Conboy appears in the Appendix on page 32.

Senator VOINOVICH. Do you have any comments about the current state of labor relations in the Federal Government?

Mr. BEYER. I think, Senator, they are good at the Department of Labor under the guidance of Secretary of Labor Elaine Chao. Outside of the Department of Labor, my knowledge is a little bit more secondhand and more anecdotal. I realize that there is some fluctuation with regard to the Department of Defense and Homeland Security. By and large, I think labor relations are quite stable within the Federal Government, with perhaps those exceptions. I look forward, hopefully, to making my own contribution through the decisions of the cases that arise before me as a member of the FLRA.

Senator VOINOVICH. Mr. Conboy, having served as Acting U.S. Marshal for a while, you have had an insight into some of the challenges inherent in the job. Could you share with me what you think is the biggest challenge facing the U.S. Marshals Service Superior Court Office?

Mr. CONBOY. Senator, I believe the biggest challenge would be in the formulation as to how we approach the resources that are allocated at Superior Court. The functions at Superior Court are very unique to the Marshals Service in that I really serve as the de facto sheriff, if you would. It is a very challenging environment. We perform functions that are not performed anywhere else in the country by the Marshals Service. It is a challenge to ensure these—

Senator VOINOVICH. Could you give me some examples of that?

Mr. CONBOY. Well, one would be performing evictions for the District of Columbia. That is a function that is primarily executed by a county sheriff. We perform upwards of 60 of those a day within the District of Columbia. It is a very challenging job—the security aspect of it, the accountability of performing that on a day-to-day basis.

Senator VOINOVICH. Do you have the resources you need to get the job done? This Committee heard testimony from Secretary Chertoff yesterday and questioned him about whether or not he had the resources to do the job we have asked him to do.

Mr. CONBOY. I believe that we are using the resources that you have provided to us to the very best of our ability. Of course, we could always do more, and we are certainly always performing analysis for what we need to get the job done.

Senator VOINOVICH. What steps have you taken to ensure that all of your employees, including the detention enforcement officers and the Deputy U.S. Marshals, are provided equality of opportunity in terms of training?

Mr. CONBOY. We have a very vigorous program that ensures that deputies at Superior Court are provided the training and the detention officers are provided the training that is required to get the job done. We have mandatory basic and refresher training that is put on at FLETC in Brunswick, Georgia.

Senator VOINOVICH. Do you have a tough time recruiting employees?

Mr. CONBOY. Of course, that is performed on a national level, Senator, so I know that it is an ongoing process. It is a very difficult and cumbersome process, and I would commend our Human



Resources Division for the work that they do in getting those men and women into the ranks.

Senator VOINOVICH. In effect, they scour the country for people that might be interested and provide you with a pool of available applicants?

Mr. CONBOY. Yes, they do, Senator.

Senator VOINOVICH. I understand that, in 2004, the U.S. Marshals Service entered into an intergovernmental agreement with the District of Columbia Department of Corrections for the transportation of prisoners. How is this agreement working?

Mr. CONBOY. I believe that agreement is working absolutely fantastic. It has been an absolute win-win for the Federal Government and for our partners in the District of Columbia. It ensures the timely and safe delivery of prisoners to the courthouse, and, of course, that is something that allows us to free up deputies to perform other functions, such as pursuing fugitives.

Senator VOINOVICH. Once someone is convicted, what is the status of the jail facilities?

Mr. CONBOY. I am sorry, Senator, the status of the jail facilities?

Senator VOINOVICH. I remember the conditions of the Federal facilities in Ohio when I was governor. So I am curious what is the condition of the jail facilities today? Once these folks are convicted, I suspect that you are the ones that have to take them wherever they are going to end up in jail.

Mr. CONBOY. That is correct, Senator.

Senator VOINOVICH. What about the capacity? Do you have enough jail space out there today or are the facilities crowded?

Mr. CONBOY. I believe we do, Senator. That population fluctuates daily. It is something that we in the criminal justice community keep an eye on very closely. Certainly, there has been mandates and caps over there. Presently, we do not have a concern.

One of the differences is that the prisoners coming from Superior Court are not remanded to the U.S. Marshals Service until such time as they are sentenced, unlike U.S. District Court, where they are remanded as soon as they are taken into custody and ordered so by the court. So we really—the population issue, and it is a shared issue, it is not just the Department of Corrections, it is Superior Court and U.S. District Court, and it is something that, as partners, we have to keep our eye on all the time. Parolee issues, prisoners that are being arrested on a daily basis because of new crime initiatives, those all have impacts on the population.

But I will say that we, as partners, have done an absolutely fantastic job in formulating a Memorandum of Understanding that expedites the process so that as soon as they receive a judgment and commitment, we have a time frame in place where we are removing them from the District to their designated facilities within 21 days. So it is a very timely process, and it is one that is being used as a template across the country.

Senator VOINOVICH. So you believe you have adequate facilities to hold convicted individuals during the interim period, and, within 21 days, you transport them to wherever they have been sentenced to? The reason I am asking is that in my State, we are seeing a tremendous overcrowding of our prisons. There has been, for some reason, an uptake in crime. I remember while I was governor,

things started to subside a bit, but now it appears they are again overcrowded. You are telling me that you are not having that problem on the Federal level?

Mr. CONBOY. Presently, no, not within the District of Columbia.

Senator VOINOVICH. Do either one of you have anything else you would like to say, other than your desire for the Committee to move quickly?

Mr. BEYER. No, but thank you, Senator, very much for the opportunity to appear before this Committee.

Senator VOINOVICH. Great. I am pleased that both of you are here, and again, as I mentioned in my earlier remarks, thank you for your willingness to serve your country in the capacity that the President has nominated you. I wish you good luck, and we will do what we can to move your nominations along.

Mr. BEYER. Thank you.

Mr. CONBOY. Thank you.

Senator VOINOVICH. The hearing is adjourned.

[Whereupon, at 2:55 p.m., the Committee was adjourned.]



## APPENDIX

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**Statement of Wayne C. Beyer  
Nominee to be a Member of the  
Federal Labor Relations Authority  
September 13, 2006**

Chairman Voinovich, Ranking Member Akaka and distinguished members of the committee, I am honored to appear before you today as the President's nominee to be a member of the Federal Labor Relations Authority.

My career is about evenly divided between private practice in New Hampshire and government service in Washington. The submissions provide the details. My strengths include an ability to: understand the facts and analyze and apply the law; write well analytically; work productively; and work collegially. Four and a half years as an administrative appeals judge enforcing worker protection laws will be good preparation for the FLRA, if I am fortunate enough to serve in that capacity.

I want to recognize and thank those who have contributed to the nomination process: Katja Bullock of the White House; Dale Cabaniss, Chair of the FLRA; the Senate staff, especially Jennifer Hemingway; my friend, the senior Senator from New Hampshire, Judd Gregg, for his kind remarks; the Committee for its time and attention; and of course the President, for the confidence placed in me. The only way I can prove my gratitude is to perform to the best of my ability if I am confirmed for this important position.

I will answer any questions you may have.

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of Wayne C. Beyer to be a Member of the  
Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I do not know specifically why the President nominated me to serve as a Member of the FLRA Authority decisional component. I assume my selection was based upon my background, training, and experience as a lawyer; my successful service as an appellate judge with the U.S. Department of Labor, handling matters arising under worker protection statutes; and my temperament and philosophy, which is to decide each case on its merits, scrupulously applying the law as it is written and established to the facts as found.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a Member of the FLRA?

I have had a successful and varied career as a lawyer, fairly evenly divided between private practice and the government, with individuals and governmental entities as clients. My strengths include my ability to: (1) understand the facts and analyze and apply the law; (2) write well analytically; (3) work productively; and (4) and work collegially. My more than four years of service as an administrative appeals judge at the Administrative Review Board (ARB) are excellent training for the FLRA. Both are quasi-judicial boards; involve appeals and a review of the record; demand application of the law to the facts of individual cases; require board members to work collegially with each other, staff lawyers and support staff; and have jurisdiction over enforcement of labor-employment laws. And the mission of both the ARB and the FLRA is the legally correct, expeditious and just resolution of cases.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a Member of the FLRA? If so, what are they and to whom have commitments been made?

No. However, I expect to support the goals and objectives of the FLRA and will decide each case on its merits.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

None expected. If any such situation arises, I will follow FLRA procedures for recusal.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

## II. Role of a Member, FLRA

7. What is your view of the role of the FLRA?

The role of the FLRA is to administer the *Federal Labor Management Relations Statute* (the Statute) as set forth in Chapter 71 of Title 5, United States Code. The Statute allows certain non-postal federal employees to organize, bargain collectively, and participate through labor organizations of their choice in decisions affecting their working lives. As spelled out in 5 USC §7101(a)(2), the Statute defines and lists the rights of employees, labor organizations, and agencies so as to reflect the public interest demand for the highest standards of employee performance and the efficient accomplishment of the operations of the Government.

8. What is your view of the role of a Member of the FLRA?

The role of a Member of the FLRA is a statutory role, set forth in section 7105 of the Statute. In fulfilling those statutory obligations, I view the role of a Member of the FLRA to be an adjudicatory one -- deciding issues that come before the three-member quasi-judicial Authority based upon a careful interpretation of the language of the Statute. An important part of accomplishing this role requires thoughtful consideration of the case presented, existing administrative and or judicial precedent, and Congressional intent as expressed in the Statute.

9. In your view, what are the major challenges currently facing the FLRA and the Authority? What do you plan to do, specifically, to address these challenges?

The major challenge facing the FLRA Authority decisional component of the FLRA is ultimately to administer the Statute by adjudicating cases that come before it fairly, impartially, and expeditiously in a manner that the parties can understand as they seek to apply FLRA decisions in the workplace. Challenges for the FLRA, as an agency, are likely similar to those facing other agencies throughout the Federal government, such as engaging in succession planning to address anticipated retirements, promoting electronic filing, responding to changes in how work is accomplished, and continually promoting professionalism and ethics throughout the workforce as an independent, neutral agency.

10. A January 20, 2006 *Washington Post* article entitled, "Plan for More Labor Boards Prompts Independent Agency to Regroup," cited two unnamed employees who characterized FLRA staff morale as low. How do you believe the FLRA could improve employee morale?

If confirmed, I would promote employee morale by instilling and encouraging a sense of mission in my chief counsel and through my own actions by a focus on serving the parties who come before the Authority and establishing a positive work environment focused on accomplishing the Agency mission for the customer.



11. What will be your long-term priorities as a Member of the FLRA?

If confirmed, I will have two primary long-term priorities. First, I will work to ensure that cases that come before the Authority are decided timely. From my reading of the Statute and the agency's regulations, currently, only Representation appeals are processed under a specific timeline. It is my understanding that such cases always are decided within this timeline. Should I be confirmed as a Member, I would seek to work in a collegial manner with the FLRA Chairman and the other Authority Member to institute additional agency timelines for processing the other types of cases that come to the Authority, including exceptions to Arbitration decisions, Negotiability cases, and Unfair Labor Practice cases.

My second long-term priority will be to ensure the quality of the Authority's decisions. As a quasi-judicial entity, I will work to instill in my staff, and, through my dealings with other Authority Member staffs, the importance of sound analysis and clear writing. Authority decisions are the means by which the Authority "provides leadership in establishing policies and guidance in matters under the Statute" (§7105(a)(1)) throughout the Federal labor-management community. Therefore, I believe the final work product must not only be timely, but also must be understandable to the ultimate customer -- agency and labor organization practitioners.

12. Describe your vision of what the relationship should be between the FLRA, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

Congress established each of these three agencies with distinct statutory missions and functions. As I understand each agency's jurisdictions, there is presently only limited jurisdictional overlap among these three agencies. The FLRA, unlike either the EEOC or MSPB, is primarily involved with cases involving labor-management relations whereas EEOC and MSPB are involved with administrative adjudication of cases within the employment law area. Although I am aware that the Subcommittee on the Federal Workforce and Agency Organization of the House Committee on Government Reform recently held a hearing to consider formation of a commission to study the various roles of these agencies, along with the Office of Special Counsel and the Federal Mediation and Conciliation Service, I do not at this time have any basis upon which to state whether changes in the current missions and functions of the agencies are needed.

13. What do you believe is the appropriate role of a Member of the FLRA, and how does that differ from the role of the Chairman? Do you believe Members of the FLRA should have access to all information pertaining to the organization and administration of the FLRA as well as any changes to the FLRA that are under consideration?

Section 7104(b) of the Statute, which spells out the role of the Chairman of the FLRA, provides that "[t]he Chairman is the chief executive and administrative officer of the Authority." In this regard, Congress has established that the activities related to running the organization, are the ultimate responsibility and obligation of the Chairman. This would include the budget, personnel matters, and the like. Therefore, the extent to which the CEO of the organization decides to provide all information or any information pertaining to the organization and administration of the FLRA or any changes under consideration, is, to me, a right solely reserved to the Chairman. Although I would be willing to provide input on administrative or operational matters to the extent I believed I was qualified, I would not expect this to be an integral part of my role as a Member, given the role the Statute clarifies for Authority Members.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No, except for two bar complaints that were dismissed. See attached.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

See attached.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No, except that I recall that Cleveland, Waters, & Bass brought a collection action against a client who owed us for fees.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

#### E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

The statutory role of Members involves activities related expressly to administering the Statute itself. Authority Members have a role in actions relating to deciding various types of cases, such as exceptions to arbitrator's awards (§7122); resolving issues relating to the duty to bargain in good faith (§7117(c)); and resolving complaints of unfair labor practices (§7118), as examples. In addition, pursuant to §7105(d), the Authority Members become involved in matters relating to appointment of the executive director, administrative law judges, and regional directors; and also the delegation of various authorities to regional directors and administrative law judges in carrying out various functions of processing cases under the Statute. As a Member, in addition to my primary role of deciding cases, it is in these areas that I would expect my input would be sought.

### III. Policy Questions

14. The FLRA revised its strategic plan for FY 2004-09 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular, that part of the goal relating to prompt resolution. What role do you see for yourself in helping achieve this goal? Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.

I have read the FLRA's current Strategic Plan, which is available on the web-site. As I understand the current plan, the goal expresses the purpose for which Congress established the Agency - - to resolve disputes impartially and timely. In this case, FLRA "disputes" include five types:

- Determining the appropriateness of units for labor organization representation
- Adjudicating exceptions to arbitrator's awards
- Resolving complaints of unfair labor practices
- Resolving impasses, and
- Resolving issues related to the duty to bargain

According to the Statute and agency regulations, the FLRA consists of four distinct program areas that may have a role in processing one or more of these types of disputes (Office of the General Counsel, Office of Administrative Law Judges, Authority decisional component, and Federal Service Impasses Panel). Cases may cross more than one program area from the time the case is filed until finally resolved. For example, unfair labor practice cases begin in the Office of the General Counsel as a charge. If the charge matures to a complaint, the case may move to the Office of Administrative Law Judges for a hearing and decision. If a party then appeals an ALJ decision, the case would move to the Authority for resolution; after which, it may or may ultimately be appealed to the Federal court system. With respect to that part of the goal relating to prompt resolution, I believe the single, agency-wide goal is recognizing the fact that there are different components through which a case may be processed and that all components must be cognizant of the fact that there are parties at the other end awaiting resolution. Regardless of which component the case is in at any point, the component heads and managers within each component must understand that although the FLRA components have different and separate roles with respect to various dispute resolution proceedings, the agency goal must be to continuously improve service to the customer (agencies and labor organizations) and not view the case as belonging to any one component.

In terms of other goals, as I have no first-hand experience with the internal workings of the Agency, it would be premature to comment on whether there should be additional goals. If confirmed, I would examine all case-processing activities related to the Authority decisional component and, where appropriate, pursue changes through the FLRA Chairman.

15. The FLRA's strategic and performance plans give much attention to the timely processing of cases. However, these plans are silent with regard to the quality of case processing and decisions. In your view, must the goal of timely case processing be balanced against the goal of high quality case processing, and, if not, how should the need for timelines be weighted against the need for quality? Do you believe that the quality of case processing and decisions can and should be measured? If so, what should the measures be? Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why not.

I do not consider quality and timeliness as independent of each other or inconsistent with each other. For example, the Authority's regulations set a clear timeline of 60 days for Representation cases. To my knowledge, the Authority has never failed to meet this goal and has never been faulted as sacrificing quality to meet this goal. As a result, it seems likely to me that the managers (chief counsels to the Members) have made processing of Representation cases within the required timeline an internal priority among themselves and for their respective staffs. In this regard, I believe it is indeed possible to establish internal employee performance standards related to case processing and decision quality. At this time, however, it would be premature for me to suggest specific goals. If confirmed, I would examine all phases of the Authority's case-processing operations and, where appropriate, pursue changes related to timeliness and or quality.

16. One way to reduce case processing time is to reduce the number of adjudicated cases. Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities? Please explain.

It would be premature at this point for me to comment on whether and how to reduce case filings or to resolve without the need for a decision matters brought to the Authority. If confirmed, I would examine all phases of Authority operations and, where appropriate, pursue case-handling changes.

17. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations statute, 5 U.S.C. Chapter 71. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that, although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

Congress has recognized the usefulness of ADR as a tool or technique for resolution of workplace disputes for more than 60 years, when it created the Federal Mediation and Conciliation Service (FMCS). More recently, the passage of the *Alternative Dispute Resolution Act*, during the 1990s, requires Federal agencies to incorporate ADR when appropriate. I believe ADR is a tool that can be useful in helping the parties reach a resolution of their immediate dispute and also assist them in developing a better understanding of one another. Because the foundation of effective ADR is the fact that it is a voluntary process, however, I don't believe it is a tool that should be forced on parties. I believe ADR should be an option, but not a requirement.

18. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

I view the current state of Federal labor-management relations as being stable in some areas, such as non-DoD/DHS agencies and in a state of transition, within DoD/DHS agencies. For the latter, the effect of recent legislation and resulting court action evidence this transition. Whether either side has achieved its objectives remains to be seen; however, the very fact that the issue has encouraged discussion, communication, and a healthy debate, among all stakeholders, is, I believe positive.

19. The Federal Service Labor-Management Relations statute states a Congressional finding that statutory protection of the right of employees to organize and bargain collectively contributes to the effective conduct of public business (5 U.S.C. § 7101(a)). To what extent, and under what circumstances, do you believe that collective bargaining at federal agencies contributes to the effective conduct of public business? To what extent, and under what circumstances, do you believe that the right of federal employees to bargain collectively is, or could be, detrimental to the ability of agencies to fulfill their missions?

Regarding collective bargaining at federal agencies contributing to the effective conduct of public business, I accept this as the finding of the Congress in enacting the Statute. Thus, I consider this to be an appropriate guide to follow in carrying out statutory responsibilities. Section 7101(b) of the Statute provides that its provisions "should be interpreted in a manner consistent with the requirement of an effective and efficient Government." I believe the Authority Members need to give careful consideration to the language of the Statute in its entirety. Because disputes arising from or relating to these matters may come before the Authority in the future, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on this issue specifically.

20. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

At this point, I am not prepared to identify specific improvement that could or should be made to the Statute. Should I be confirmed, I would examine the interpretations given to the language of the Statute as set forth in current precedent and also court interpretations and, where appropriate, pursue clarification.

21. What kinds of effects, if any, do you believe a blended workforce of federal employee and federal contract personnel is having on federal labor-management relations?

I am aware that some Federal labor organizations are opposed to the increased use of contract employees and that some of the issues raised have included such topics as size of the federal workforce, work schedules, benefits, etc. As a potential Member, I would have no comment on the propriety of such issues or arguments. Additionally, because disputes relating to contracting out have come before the Authority and may come before the Authority decisional component in the future, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on these issues.

22. The Department of Homeland Security (MAX<sup>HR</sup>) personnel regulations and the Department of Defense National Security Personnel System regulations propose changes to how labor relations are conducted at those agencies. What are your views on labor

relations changes as proposed? Do you support the DHS and DOD labor relations regulatory provisions as proposed, and do you believe that the model should be extended government-wide?

How or whether the DHS (MAX<sup>HR</sup>) personnel regulations and the DoD(NSPS) regulations affect labor relations in those agencies or government-wide remains to be seen until the agencies are operating under the respective systems. Clearly many stakeholders and oversight groups (such as GAO) are analyzing and evaluating the models and processes involved. As a potential Member, I would have no comment on the propriety of such issues or arguments. Additionally, because disputes arising from or relating to these matters may come before the Authority decisional component in the future, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on these issues.

23. On June 27, 2006, the U.S. Court of Appeals for the District of Columbia issued a ruling in *NTEU v. Chertoff*. The Court of Appeals ruled that the Department of Homeland Security was not permitted to use the Federal Labor Relations Authority as an element of its proposed personnel system, MAX<sup>HR</sup>. Absent this ruling, what do you believe would have been the implications of the ruling on the FLRA in terms of workload and leadership in labor-management relations?

In terms of workload, my understanding is that the FLRA has experienced a downward trend in case submissions in all categories of cases for several years independent of the DHS and DoD proposed personnel systems and this decline has continued. Therefore, notwithstanding the DHS and DoD rulings, I believe FLRA leadership and administrators would be monitoring and adjusting agency resources accordingly. Regardless of the DHS and DoD rulings, however, it is also my understanding that passage of the BRAC legislation may also have an impact on the continuing decline of case filings with the FLRA, as well as having an impact on the location of FLRA customers, as bases relocate and realign. Should I be confirmed, I would expect to continue monitoring workload and to offer my input, as appropriate, as it relates to addressing the Agency's mission and strategic plan.

24. In its June 27, 2006 opinion referenced above, the U.S. Court of Appeals for the District of Columbia found that the new personnel system proposed by the Department of Homeland Security failed to ensure collective bargaining by: (1) reserving to itself the right to supersede existing collective bargaining agreements; and (2) excessively limiting the scope of bargaining to employee-specific personnel matters, thereby eliminating all meaningful bargaining over fundamental working conditions. What are your views on these findings?

The Appellate Court considered the arguments presented in light of the DHS proposed regulations, applied the language of the Statute and rendered an opinion. Issues relating to this matter may come before the Authority in the future, therefore, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on these issues.

25. In January 2003, the Administrator of the Transportation Security Administration (TSA) issued an order prohibiting federal baggage and passenger screeners from engaging in collective bargaining. The Administrator issued a statement explaining that "mandatory collective bargaining is not compatible with the flexibility required to wage the war against terrorism." The Administrator's statement further explained: "Fighting terrorism



demands a flexible workforce that can rapidly respond to threats," and: "That can mean changes in work assignments and other conditions of employment that are not compatible with the duty to bargain with labor unions." This January 2003 order remains in effect. Do you believe that the need for a flexible workforce that can rapidly respond to threats can be compatible with the duty to bargain with labor unions? Please explain.

In 2003, the FLRA Authority recognized that Congress conferred upon the head of TSA the authority to determine whether collective bargaining is appropriate for the agency's employees. *United States Dep't of Homeland Sec., Border and Transportation Sec. Admin.*, 59 FLRA 423. If confirmed, I would continue to recognize the legislative process and the separation of powers and would apply the law as enacted.

26. Last year the Office of Management and Budget released a draft bill entitled the "Working for America Act," which, if enacted, would make several changes to the Federal Service Labor-Management Relations statute. For each of the following changes: (1) what would be the effect of the provision on the Authority; (2) what would be the effect of the provision on federal employees; and (3) do you believe the provision is desirable?

- a. Section 401(2)(B) of the draft bill would empower the Chairman of the FLRA, "to direct the General Counsel...to submit a matter before...[the General Counsel] to the Authority for appropriate action or to take whatever action is appropriate pursuant to the procedures the Chairman establishes under this paragraph [establishing a process to resolve all matters associated with a bargaining dispute]."

The provision as presented in this context, appears to be focused on efficiencies in case-processing from an agency-wide perspective, rather than changing substantive aspects of Federal labor law. The Office of the General Counsel of the Authority is one of four program components within the FLRA, which also includes the Office of Administrative Law Judges, the Federal Service Impasses Panel, and the Authority decisional component. Such a provision would appear to provide an opportunity for Component Heads to evaluate current processing of cases and explore opportunities for streamlining case-processing.

- b. Section 401(1)(A) of the draft bill would change the definition of a grievance to "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation issued for the purpose of affecting conditions of employment, including determinations regarding an employee's pay, except the exercise of managerial discretion of judgment in such determinations"

This provision, restricting grievances to violations of law, rule, or regulation, issued for the purpose of affecting conditions of employment, appears to be a codification of a case decided more than ten years ago by the U.S. Court of Appeals for the District of Columbia Circuit. *United States Dep't of the Treasury, United States Customs Serv. V. FLRA*, 43 F.3d 682 (D.C.Cir.1994).

- c. Section 401(2)(A) of the draft bill would change the current process for resolving bargaining disputes by requiring the Chairman of the FLRA to "...establish a

single, integrated process to resolve all matters associated with a bargaining dispute."

The provision as presented in this context, appears to be focused on efficiencies in case-processing from an agency-wide perspective, rather than changing substantive aspects of Federal labor law. The Office of the General Counsel of the Authority is one of four program components within the FLRA, which also includes the Office of Administrative Law Judges, the Federal Service Impasses Panel, and the Authority decisional component. Such a provision would appear to provide an opportunity for Component Heads to evaluate current processing of cases and explore opportunities for streamlining case-processing.

- d. Section 401(2)(A) of the draft bill would allow the Chairman of the FLRA to "...in his or her sole discretion call a meeting of the members of the Authority without regard to section 552b," referring to open meetings.

I do not have at this time have any basis upon which to state whether this provision is necessary or desirable.

- e. Section 401(2)(B) of the draft bill would allow the Chairman of the FLRA, rather than the Authority collectively, to "appoint an Executive Director, regional directors, administrative law judges..., and other individuals as he or she may...find necessary."

The provision as presented in this context, appears to be focused on cleaning-up existing statutory ambiguities, rather than changing substantive aspects of Federal labor law. If I were confirmed as a Member of the Authority, such a provision would not negatively impact my role as a Member with respect to case-processing. The provision appears to support existing statutory language and Congressional intent of the FLRA Chairman's role as CEO and chief administrative officer of the agency.

- f. Section 401(2)(E) of the draft bill would prohibit the FLRA from "[imposing] status quo ante remedies in cases in which there has been a finding of violation... where such remedies would adversely impact the agency's or activity's mission or budget, or the public interest."

This provision, as presented in this context, appears to prohibit the FLRA from imposing *status quo ante* (SQA) remedies where an SQA would adversely impact the public interest or an agency's mission or budget. At this time, I do not have any basis upon which to state whether this provision is desirable.

- g. Section 401(3) of the draft bill would change the definition of management rights to "take whatever actions may be necessary to prepare for, practice for, or prevent any emergency; and carry out the agency mission during emergencies."

This provision, as presented in this context, appears to extend management's right as necessary "to prepare for, practice for or prevent" any emergency. Currently, there is no express definition of "emergency" within Chapter 71. Should this provision be enacted, disputes arising from or relating to it may come before the Authority in the future. As a

nominee for a position as an Authority Member, it would not be appropriate for me to comment on whether this provision is desirable.

- h. Section 401(5) of the draft bill would change the duty to bargain as follows "the obligation of any agency or any labor organization to bargain or consult extends to any otherwise negotiable subject only if the effect of the change on the bargaining unit, or that portion of the bargaining unit affected by the change, is foreseeable, substantial, and significant in terms of impact and duration."

With respect to this quoted provision, how would you interpret the term "foreseeable, substantial, and significant"?

Under current law, the obligation to bargain exists whenever a change has "more than a *de minimis* effect on conditions of employment." *Soc. Sec. Admin., Office of Hearings and Appeals, Charleston, S.C.*, 59 FLRA 646 (2004). Should this provision be enacted, disputes arising from or relating to it may come before the Authority in the future. As a nominee for a position as an Authority Member, it would not be appropriate for me to comment on whether this provision is desirable.

27. Since 2002, you've been an Administrative Appeals Judge for the Administrative Review Board in the Department of Labor. Please give the details of your service at the Board and provide the Committee copies of every opinion you wrote or co-wrote. Please also provide a list of dissents you have made while serving as an Administrative Appeals Judge.

I am serving my third two-year term appointment by U. S. Secretary of Labor Elaine Chao, with White House approval. The Administrative Review Board has a chief judge/chair and three judges/board members, a general counsel, currently seven senior staff lawyers, and two staff assistants. The ARB renders final decisions on appeals from recommended decisions of administrative law judges under about 40 private-sector worker-protection statutes, involving: whistleblowers in securities, air, atomic energy, environmental, and motor carrier safety; federal grants to states for job training; child labor; and prevailing wages for federal construction and service contracts, and temporary foreign workers. Following a review of the record from the ALJ and the briefs, the lead panel member and at least one other meet with an assigned staff lawyer and occasionally the general counsel, and decide the case. Appeals from ARB are generally to the U.S. Court of Appeals in Circuit in which case arose. I have authored or co-authored 310 opinions (available at OALJ.dol.gov). I have written two concurring opinions, but no dissents. Following discussion with Senate staff, I have selected thirty-two opinions for review based upon their significance, representative nature, and/or my high degree of involvement.

27. Under section 7116(a)(4) of title 5, it is an unfair labor practice to discipline an employee for filing a complaint or giving testimony on matters under chapter 71 of title 5. This provision is used, among other things, to protect employees against retaliation for whistleblowing.

During your tenure at the Department of Labor, it appears that many of the cases you worked on were whistleblower case adjudications. Your decisions at the Department of Labor may suggest how you would handle unfair labor practice charges relating to whistleblowers under section 7116(a)(4).

- a. In the last few years, what percentage of cases did the Board reverse ALJ decisions that found for whistleblowers? In how many of those cases did you join in and in how many of those cases did you dissent from the decisions?

I consider each case on its merits and we do not maintain those kinds of statistics. I have not written a dissent in any of our cases.

- b. In the last few years, what percentage of whistleblower cases did the Board reverse ALJ decisions that found for employers? In how many of those cases did you join in and in how many of those cases did you dissent from the decisions?

I consider each case on its merits and we do not maintain those kinds of statistics. I have not written a dissent in any of our cases.

- c. What do you believe is the purpose of whistleblower protection statutes?

Whistleblower statutes are designed to protect workers and serve the public interest by providing remedies for workers who are retaliated against for raising matters of public concern, e.g., safety, waste, fraud and abuse. The federal whistleblower statutes which fall under our jurisdiction were enacted because Congress found that state laws were inadequate or not uniform, and that workers engaged in private-sector jobs involving, for example, interstate commerce in air safety and trucking, should have a federal remedy if they are retaliated against for whistleblowing.

- d. Generally, please explain your views of employee disclosure rights and any comments you would like to make regarding your record on whistleblower adjudications at the Board.

I decide each case on its merits, scrupulously applying the law as it is written and established to the facts as found. I note that some of the whistleblower laws we have jurisdiction over provide greater protection for workers than some other federal or state laws or First Amendment decisions in the following ways: (1) The whistleblower does not have to be the common law employee of the respondent, but an employee over whom the respondent employer exercises control. (2) The whistleblower does not necessarily have to make a "disclosure" outside the chain of command, but, for example, may be protected for making a safety complaint to a supervisor. (3) The whistleblower need not prove tangible job consequences; under some of the implementing regulations, a threat, intimidation, or harassment is enough to establish retaliation. (4) The whistleblower need only prove that his/her protected activity was a factor in the adverse employment decision. And (5) the employer must then prove by clear and convincing evidence that it would have made the same employment decision without the whistleblowing activity.

28. What efforts did you undertake to improve case review processes at the Administrative Review Board, and to what extent might those efforts be applicable at the FLRA?

Our chief judge/chair is responsible for management, but I have assisted to the extent requested. For example, I rewrote the performance standards for staff lawyers to reflect case review and analysis, quality, productivity, and collegiality. An increased emphasis on production has reduced the backlog and reduced the average time for disposing of cases, thereby benefiting the parties who appear

before us. If confirmed, I will bring this experience to my position as a Member of the Authority decisional component.

IV. Relations with Congress

29. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

30. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, if confirmed?

Yes.

31. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I will respond timely to any reasonable request for information from any duly-constituted committee of Congress and will respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress.

V. Assistance

Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

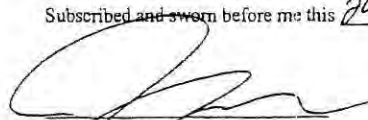
Each answer is my own, however, I have consulted with FLRA staff to obtain helpful information of a technical or background nature.

AFFIDAVIT

I, WAYNE C. BEYER, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Wayne C. Beyer

Subscribed and sworn before me this 24 day of July, 2006.

  
Notary Public

JOHN W. FEENEY  
Notary Public District of Columbia  
My Commission Expires February 14, 2009

U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-Hearing Questionnaire



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

June 15, 2006

The Honorable Susan M. Collins  
Chair  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Wayne C. Beyer, who has been nominated by President Bush for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Beyer is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert I. Cusick".

Robert I. Cusick  
Director

Enclosure



**Congress of the United States**  
**Washington, DC 20515**

September 11, 2006

Senator Susan Collins  
 Chairwoman  
 Senate Committee on Homeland Security  
 and Governmental Affairs  
 340 Dirksen Senate Office Building  
 Washington, DC 20510

Senator Joseph Lieberman  
 Ranking Member  
 Senate Committee on Homeland Security  
 and Governmental Affairs  
 340 Dirksen Senate Office Building  
 Washington, DC 20510

Senator George Voinovich  
 Chairman  
 Subcommittee on Oversight of Government  
 Management, the Federal Workforce,  
 and the District of Columbia  
 442 Senate Hart Building  
 Washington, DC 20510

Senator Daniel Akaka  
 Ranking Member  
 Subcommittee on Oversight of Government  
 Management, the Federal Workforce,  
 and the District of Columbia  
 442 Senate Hart Building  
 Washington, DC 20510

Dear Senators Collins, Lieberman, Voinovich and Akaka:

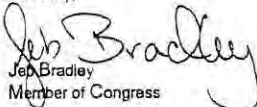
We are writing to offer our support for the nomination of Wayne Beyer to the Federal Labor Relations Authority.

Wayne's common sense work ethic was shaped by his New Hampshire roots, his extensive education and longstanding public service and legal career. In addition to fifteen years of private practice in New Hampshire, he has worked for two Members of Congress, as Chief of Staff and later Principal Deputy General Counsel of the U.S. General Services Administration, and Senior Litigation Counsel for the District of Columbia Government. His present position as Administrative Appeals Judge with the Department of Labor is another example of the excellence Wayne has achieved in his work and valuable preparation for the FLRA.

Because his time was spent working in New Hampshire and Washington, Wayne will bring to the FLRA a unique perspective, and we believe that this perspective will ably guide him. In his career and his personal endeavors, Wayne has demonstrated that he commands the expertise necessary to be of a great benefit to those with whom he works. We are confident that he will afford this same benefit to the FLRA.

Judge Wayne Beyer is accomplished, knowledgeable and, most importantly, respected. We strongly urge you to join us in supporting his nomination to the FLRA.

Sincerely,

  
 John Bradley  
 Member of Congress

  
 Charles Bass  
 Member of Congress

cc: Members of the Senate Committee on Homeland Security and Governmental Affairs



S. Hrg. 110-983

# NOMINATIONS OF HON. CAROL W. POPE AND THOMAS M. BECK

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## HEARING

BEFORE THE

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF HON. CAROL W. POPE AND THOMAS M. BECK TO BE  
MEMBERS OF THE FEDERAL LABOR RELATIONS AUTHORITY

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SEPTEMBER 11, 2008

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Available via <http://www.gpoaccess.gov/congress/index.html>

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Committee on Homeland Security and Governmental Affairs



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## CONTENTS

Opening statements:	Page
Senator Akaka .....	1

### WITNESSES

THURSDAY, SEPTEMBER 11, 2008

Hon. Eleanor Holmes Norton, Delegate of the District of Columbia, U.S. House of Representatives .....	2
Hon. Carol W. Pope to be a Member of the Federal Labor Relations Authority:	
Testimony .....	4
Biographical and professional information .....	17
Responses to pre-hearing questions .....	31
Letter from U.S. Office of Government Ethics .....	42
Thomas M. Beck to be a Member of the Federal Labor Relations Authority:	
Testimony .....	5
Biographical and professional information .....	43
Responses to pre-hearing questions .....	51
Letter from U.S. Office of Government Ethics .....	59





## NOMINATIONS OF HON. CAROL W. POPE AND THOMAS M. BECK

THURSDAY, SEPTEMBER 11, 2008

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:35 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senator Akaka.

### OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order.

Today the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Carol Waller Pope and Thomas Beck to be members of the Federal Labor Relations Authority (FLRA). Both Ms. Pope and Mr. Beck have had long careers dealing with labor-management relations—Ms. Pope working for the Federal Government at the FLRA and Mr. Beck working in the private sector at Jones Day. I want to welcome our nominees along with their families and friends to the Committee today.

Congress acted to allow Federal workers the right to bargain collectively because labor organizations and collective bargaining are in the public interest. The right of employees to unionize and bargain contributes to the effective conduct of public business and facilitates the amicable settlement of workplace disputes.

Because the FLRA is responsible for resolving disputes between labor unions and the government, the positions to which Ms. Pope and Mr. Beck have been nominated are among the most important to Federal employees and the ability of the Federal agencies to meet their missions. A well-managed organization understands the need to invest in its workforce. To be an employer of choice and promote high employee morale, employees must have input in management decisions.

When managers vet proposed changes to working conditions with affected employees, they better understand their practical impact on an employee's ability to do his or her job, and on workforce morale as well.

When managers restrict the ability of the employees to bring their concerns to the table and try to eliminate collective bargaining, they undermine their agencies' missions, lower employee morale, and make the organization an employer of last resort.

The FLRA is at a critical juncture given the shifting nature of the Federal labor relations system. As such, the positions to which Ms. Pope and Mr. Beck have been nominated will face new challenges and take on renewed importance.

Over the past 8 years, we have seen proposed changes to Federal labor law at the Departments of Homeland Security and Defense which would have significantly impacted the FLRA and Federal workers. If implemented, I believe that employees at those agencies will not be able to have their cases decided by an impartial adjudicator. In addition, the Administration proposed additional changes to the Federal labor-management system government-wide through the Working for America Act in 2005. These changes would have further eroded workers' rights. I am pleased that the Administration's proposals have not been enacted. However, these proposals sent the wrong message to Federal employees. It has diminished labor-management relations in the Federal Government and employee morale.

In my opinion, workplace changes are now viewed with more suspicion. Workplace disputes have taken on a more adversarial nature. The reinstatement of labor-management partnerships is essential, and I hope the next Administration will work with the FLRA to improve labor relations and alternative means to resolving disputes.

The challenges facing the Federal labor-management system have taken a toll on the FLRA. Like other Federal agencies, FLRA is facing a human capital crisis. The prospect of legislative changes significantly altering the functions and workload of the agency have left the FLRA with a high number of vacancies and low employee morale. In fact, the FLRA placed last among small agencies in the Partnership for Public Service 2007 Best Places to Work rankings. The new leadership at the FLRA must take action to address the agency's human capital crisis and make the FLRA an employer of choice.

I look forward to discussing these issues with the nominees to get their views on how to improve operations at FLRA and the state of labor-management relations in the Federal Government.

Ms. Pope and Mr. Beck, again, I welcome you and congratulate each of you on your nomination.

Now I would like to recognize Delegate Eleanor Holmes Norton. We are happy to have you with us today. Welcome to the Committee. I know you have a tight schedule, so please proceed with your introduction of Ms. Pope.

**TESTIMONY OF HON. ELEANOR HOLMES NORTON, DELEGATE  
OF THE DISTRICT OF COLUMBIA, U.S. HOUSE OF REPRESENTATIVES**

Ms. NORTON. Well, thank you very much, Mr. Chairman, and I know about your schedule, and I am very appreciative that you have made time to get to this business before recess.

I am here to introduce Carol Pope, a Washingtonian, and a present member of the Federal Labor Relations Authority. You have spoken, I think, very well about the importance of this agency to hundreds of thousands of Federal employees and to the Federal

Government itself, so this is a nomination of some importance to the country.

Ms. Pope has been nominated by two Presidents—President Clinton and President Bush. You are familiar with her extensive qualifications. Suffice it for me to say that she is an attorney, admitted to the U.S. Supreme Court, and Federal Courts of Appeals. She began her career in the Office of the Solicitor, Department of Labor, in 1979, moving almost immediately in 1980 to the FLRA, and has spent most of her career there, indeed, including as Assistant General Counsel.

Mr. Chairman, it is always gratifying to see a career Federal employee rise through the ranks to become a member of the commission or of the governing authority itself. And that is what the record of Carol Pope has allowed her to do in the opinion of the two Presidents who have nominated her, and now she is being renominated for another term. I am very pleased and very proud of her and very pleased to offer her to you as an exceptionally well qualified candidate to be a member of the FLRA.

Thank you very much, Mr. Chairman.

Senator AKAKA. Well, thank you very much, Delegate Norton. I really appreciate your remarks and your support of Ms. Pope.

Ms. NORTON. Thank you.

Senator AKAKA. Thank you.

Ms. Pope and Mr. Beck have filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, Ms. Pope and Mr. Beck, I ask you to both please stand and raise your right hand. Do you solemnly swear that the information you are about to submit to the Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. POPE. I do.

Mr. BECK. I do.

Senator AKAKA. Thank you very much. Let it be noted in the record that the witnesses answered in the affirmative.

Ms. Pope and Mr. Beck, I know that your families and friends are here at this time, and I am glad I had the opportunity to say hello to them. I want to give you the opportunity to present them formally to the Committee. So, Ms. Pope, will you please introduce your family to the Committee?

Ms. POPE. Thank you, Mr. Chairman. I would like to introduce my brother-in-law, Wallace White; my sister, Lynda White, from Philadelphia; my niece, Evin Jethroe; and friend, Fred Grigsby.

Thank you.

Senator AKAKA. Thank you. Thank you very much.

Mr. Beck, will you please introduce your family?

Mr. BECK. Chairman Akaka, my wife, Amanda Beck, is here with us today. And her parents, Colonel and Mrs. Bruce J. Host, are

here from Tallahassee, Florida, and I want to thank them for coming here to be with me today.

Senator AKAKA. Thank you. Thank you very much and welcome to all of you. We are happy to have you here today. I can see that both of you have a lot of strong support, not only from family but friends as well here.

So, Ms. Pope, will you please proceed with your statement?

**TESTIMONY OF HON. CAROL W. POPE TO BE A MEMBER,  
FEDERAL LABOR RELATIONS AUTHORITY**

Ms. POPE. Thank you, Mr. Chairman.

Chairman Akaka, I am honored to appear before you today as the President's nominee to be a member of the Federal Labor Relations Authority. I would like to thank Congresswoman Norton for her support and her kind words on my behalf. Finally, I would like to thank the staff members of the Committee for their work and for their assistance in scheduling this hearing.

I appeared before this Committee over 8 years ago when I was first nominated and confirmed as a member of the Federal Labor Relations Authority. At my swearing-in, the youngest member of my family—my niece, Evin Jethroe—who was 10 years old at the time, held our family Bible. Today I am proud to say that Evin is here in Washington and here at this hearing because she is a freshman at George Washington University. I thank Evin and all of my family and extended family and friends for their support.

I also want to acknowledge my colleagues and friends from the Federal Labor Relations Authority who are here. There are those in the hearing room today and many more who are watching this proceeding through the live video feed. I commend all of the FLRA employees for their interest in this process and for their commitment to the mission of the agency.

In the 8 years that I have served as a member, the Federal sector labor relations landscape has changed. I note with sadness that today is the anniversary of one of the most horrific acts of domestic terrorism experienced in my lifetime. Federal employees, both personally and professionally, have, like the entire country, suffered from the impact of those tragic acts. In addition, during the last 8 years, the Department of Homeland Security was created, which consolidated functions from 22 separate agencies with separate bargaining units and collective bargaining agreements.

Legal issues regarding proposed personnel and labor relations systems at DHS as well as the Department of Defense dominated labor-management discussions at all levels over these years. Also during this time, numerous other pay and personnel reforms were contemplated, and some were instituted. Agency reorganizations, employee turnover due to the retirement bubble, and pay and personnel changes have tested and oftentimes strained the relationships between labor and management.

I pledged at my first hearing before this Committee and I pledge now, if I am confirmed, to ensure that the FLRA fulfills its important mission by adjudicating disputes fairly, impartially, and expeditiously, and by producing quality decisions that enhance the stability of labor-management relations in the Federal Government.

I also pledge my support to work with my colleagues, including presidential appointees and others, to assist the FLRA in discharging its statutory leadership role in establishing labor-management policies and guidance throughout the Federal sector. I greatly appreciate the opportunity to appear with Thomas Beck and look forward to welcoming him as chairman to the FLRA, which has been my professional home for the last 28 years.

Thank you very much. I am happy to answer any questions you might have.

Senator AKAKA. Thank you very much for your statement, Ms. Pope.

Now, Mr. Beck, your statement, please.

**TESTIMONY OF THOMAS M. BECK TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. BECK. Chairman Akaka, thank you.

First of all, I want to say it is an honor to be here before you today, and I want to thank you for holding this hearing and permitting Ms. Pope and myself to appear here, and for your warm reception today as well. Thank you very much for that.

As you know, the FLRA has lacked a quorum since Chairman Cabaniss stepped down roughly 2 months ago, and I know that your prompt efforts since then to consider my nomination and that of Ms. Pope are appreciated by the people at the agency and by the parties that the agency serves. So thank you again for moving to hold this hearing.

I also want to join Ms. Pope in thanking the Committee staff who did help us work through this process quite quickly, and they were very kind and generous with their time and helpful to me, to whom this process is new, in understanding the process. And I also want to thank the folks from the FLRA who are interested and are here with us today to observe what we talk about today.

Senator Akaka, a working and productive FLRA is integral to the proper functioning of our Federal agencies. The FLRA's ultimate mission is to foster constructive labor relations in the Federal sector. It does so when it resolves impartially and expeditiously the disputes that are presented to it by Federal agencies and by the labor organizations that represent the employees of those agencies.

Currently, the FLRA has a backlog of close to 400 cases. If I am confirmed and designated chairman, my most pressing priority will be to address and to reduce this backlog of cases to the greatest extent possible, given, of course, that it seems, for the near term at least, the Authority will have two members rather than the full complement of three, most likely. And I suppose sometimes Ms. Pope and I will agree and sometimes we will disagree when it comes to the disposition of particular cases. But I believe that we will both work to try to do something about that backlog, which is larger than it should be.

If I am confirmed and designated chairman, another priority will be to assess the human capital needs at the FLRA. You referred to this, Senator Akaka, in your own statement a few moments ago, and I know that this is a pressing issue at the agency. And I understand it is a pressing issue for the parties that the agency serves as well.



The agency staff overall is substantially reduced from where it was 5 years ago, and in particular, the case-writing staff, which is so directly involved in the agency's core function of processing cases, as I understand it, is just slightly over half of what it was 5 years ago. Now, these very significant reductions in personnel do not correlate, so far as I know, to any concomitant reduction in the agency's statutory mission or its responsibilities. And so this raises the question, at least, as to whether the FLRA is adequately staffed. And as I sit here today, I do not know the magic number in terms of what the proper number of employees at the agency might be, but it is certainly a matter that I think warrants the immediate and serious attention of the FLRA's next chairman.

And I also just want to note with Ms. Pope here that I really very much look forward to working with her in a collaborative way to address these and the other challenges that face this agency. Ms. Pope generously reached out to me roughly a year ago when I was nominated and congratulated me on my nomination, and since then we have had several friendly, and I think productive, discussions. And what I have learned about Ms. Pope is that she is not just a bright and gracious individual, but she is also someone who really knows the ins and outs of this particular agency because she has served there in many positions over the years. And so if I am confirmed and am permitted to take on the role of chairman, I know that she will be an invaluable resource that I will look to to help me get acquainted with and understand the inner workings of this agency.

With that, Mr. Chairman, I want to thank you again for holding the hearing today, and I will be pleased to answer any questions you may have.

Senator AKAKA. Well, thank you very much for your statement, and I look forward to you working together.

I will begin with the standard questions this Committee asks of all nominees, and so I ask for your responses to these questions.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. POPE. No.

Mr. BECK. No.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. POPE. No.

Mr. BECK. No.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. POPE. Yes, Mr. Chairman.

Mr. BECK. Yes.

Senator AKAKA. Thank you very much for your responses.

My first policy question is to both of you. As I mentioned in my opening statement, I believe that the state of labor relations in the Federal Government is at an all-time low. Several years ago, President Clinton established labor-management partnerships through-



out the Federal Government to improve cooperation between labor and management. In my view, these partnerships were a great success, but shortly after taking office, President Bush abolished them. Last year, I introduced legislation to reinstate the partnerships.

What are your views on the use of labor-management partnerships? And what role do you believe the FLRA should play in improving labor-management relations? Ms. Pope.

Ms. POPE. Thank you. As you stated previously, the FLRA had a leadership role in facilitating and assisting parties in developing productive labor-management partnerships after the Executive Order was enacted. We enjoyed a lot of success in collaboration with agency leadership and union leadership to facilitate the institution of partnerships as well as to facilitate the ongoing management of those partnerships. It certainly benefited the FLRA in that a lot of issues were resolved before cases were filed. In instances where the parties had filed numerous charges, we were able to employ the partnership principles to resolve some of those cases amicably without the need for additional resources of the FLRA or time away from the workplace for the employees engaged in those labor-management disputes.

So, in my view, there has been a lot of success in the past. Anecdotally, I understand that some labor-management partnerships continue today voluntarily in the absence of an Executive Order, and I certainly would welcome any legislation that would require agencies to take another look and engage in labor-management partnerships.

Senator AKAKA. Thank you. Mr. Beck.

Mr. BECK. Senator Akaka, I know that President Bush rescinded President Clinton's Executive Order. I do not think, however, that really affirmatively prohibits informal labor-management partnerships or discussions that may, and I think sometimes do, take place in agencies. And as a general proposition, I think more talking is probably good between parties who potentially could come into dispute with one another. I think it is better to talk and try not to let that dispute reach a head, if at all possible. And to the extent the management of agencies wants to talk informally and feels that it is a good idea to talk informally with labor organizations and that the labor organizations feel the same way, I think talking is a good thing.

And if they can avoid even having a dispute that they bring to the Federal Labor Relations Authority, I think that is great for all concerned. Then if they have a dispute that they cannot resolve before they bring it to the Authority, there are different aspects and avenues for alternative dispute resolution that the Authority can make available. Perhaps if and when I am there, I suppose I might make an assessment as to whether we ought to have a little more of that. Perhaps we should. But with my experience in the private sector, more talking between the parties is, generally speaking, a good thing. And even if they do develop a dispute, sometimes it makes a lot of sense to still talk informally and see if the dispute can be resolved, either through bilateral negotiations or through mediated settlement discussions, before full-blown litigation ensues.

As a general proposition, I am in favor of talking.

Senator AKAKA. Well, as I mentioned I have introduced legislation, S. 2197, to reinstate labor-management partnerships in the Federal Government. And I believe that bill would certainly help what you just mentioned in providing a process for talking to continue on these problems.

Mr. Beck, you have had extensive experience in the private sector representing corporations in disputes with labor unions. Will you please explain how you will make the shift from representing management in such disputes to being a neutral adjudicator?

Mr. BECK. Yes, Senator. Not an unexpected question given my background. It is true that I have spent the greater bulk of my legal career advocating for employers in the private sector when they have had disputes with their employees or with labor unions, and sometimes with the government as well. I was hired to do a job as an advocate, and I did it, hopefully fairly well most of the time, and had a little bit of success at that. But I understand full well that the job that I am nominated for is a different job, and it is a job where I am not being paid to be an advocate. I am being paid to try to be, as best I can, an impartial decider of cases in my role as a member of the Authority looking at cases that are presented to the Authority.

I am not ideological on this, Senator. My law firm made a policy decision many years ago before I arrived that we would represent management, and as far as I know, we have never represented labor unions. I certainly have not personally. But it is also true that I have never represented Federal agencies either, and so as I look at the job of member and chairman of the Federal Labor Relations Authority—I have never represented a labor union as an advocate. I have never represented a Federal agency as an advocate. And I suppose one might analogize in some ways the management of Federal agencies to the management of private sector employers that I have represented. But to me, Senator, a Federal agency is really a different animal from a private sector employer. I don't equate the two or really view them philosophically as equivalents.

And so this really will be a new milieu for me, getting into the Federal sector with Federal agencies and Federal sector labor unions. And so I am really quite confident I will be able to be impartial and look at these cases that are presented to me.

One more comment about my work in the private sector. I must say, although I have been doing it for several years, I am far from coming to a conclusion that all management is made up of good guys or all unions and union members are good guys, or the reverse. I have seen management be good guys and bad guys sometimes in different circumstances, and I have seen labor unions be good guys and, frankly, bad guys sometimes, too. And so I just do not really have a view that one is always right or one is always wrong.

Senator AKAKA. Mr. Beck, no organization can succeed without investing in its human capital. As you know, the FLRA placed last—and I mentioned that in my opening statement—in the most recent Best Places to Work rankings by the Partnership for Public Service, and it has a high number of vacancies. Since President Bush has indicated that he would designate you as chairman of the

FLRA if you are confirmed, please explain your strategy for addressing the FLRA's human capital challenges and improving employee morale.

Mr. BECK. Well, Senator, I do know that is one of the most important challenges that is facing this agency, and I think I noted in my opening remarks that there has been a substantial reduction in the personnel at this agency over the last few years, and you noted that as well. And I am very well aware of the study of small agencies in which the Authority, the FLRA, ranked dead last. It will absolutely be my mission to do something about that.

Obviously, I am not there yet, and so I do not think I can lay out in great detail exactly how I would do it step by step, but I must tell you that what I want to do, if and when I arrive at the Authority, is to go on a listening tour, if you will, and that is kind of a trite way to put it, perhaps, but I really want to talk to Ms. Pope in great detail about what she thinks is going on at this agency and what needs to be done in terms of human capital and other challenges. And I want to talk to the staff at all levels at the FLRA and find out what they think is going right and what they think is going wrong right now and what can we do about that.

In my experience, one way to improve employee morale and to get employees and staff on your side is to just really communicate in an open and fair way with them and let them know that you care about what they have to say and that you respect what they have to say. And I don't suppose I would always agree with what everyone on the staff says. I am sure there would be a great many different views and opinions about priorities and about what is working and what is not. But I intend to collect as much information as I can from the people who have been there much longer than I have been—because I have not been there at all, frankly—and try to find out what is going on and what we can do to improve morale. If morale is so poor, why is it so poor? And what is within our power to do to improve that? And I do not really know the answer in detail right now as I sit here, but I do know I am going to figure it out when I get over there. And I am going to look to the people, the person right next to me and the other people who are there, who know about what is going on in that agency and let them know I want to know what they think. We will do whatever we can within our power and within our budget to try to increase morale and make this, as you said in your opening remarks, an employer of choice, an employer that people want to go to, rather than an employer that people realize is last on the bottom of the employee morale list and so maybe they are not really eager to work there.

Senator AKAKA. Thank you.

Ms. Pope, you have been working at the FLRA since 1980. What do you believe are the biggest human capital challenges facing the FLRA? And what steps do you believe need to be taken to address these challenges and improve employee morale?

Ms. POPE. The biggest challenge in my view is the human capital issue. I believe what has happened over the years is the extensive vacancies and extended vacancies over a number of years at all levels have impacted morale. There is a real crisis, if you will, with regard to whether we have the appropriate level of staff and in

what positions to get our job done, to accomplish our mission effectively and efficiently.

What I have done over the years is to work with my staff to try to produce timely, quality decisions to meet the performance goals of the agency. I look forward to working with Mr. Beck, should he become chairman and we are both confirmed, to engage collaboratively to address the issues. One of the things that the survey talked about in terms of improving morale is the need for employee engagement. So I am very happy to hear his views with regard to how to address morale because I do believe and share the view that getting the stakeholders into the room and hearing their views and sharing information regarding budget constraints—getting employee engagement, developing strategic plans and performance goals, and creating the understanding that management is interested in giving them the tools to accomplish those goals—will go a long way in terms of improving employee morale at the agency and employee satisfaction.

I have been at the agency for 28 years, and it is disheartening to know that we rank last. It is disheartening to know that we are possibly an agency that cannot retain or recruit the best and the brightest to come to work with us. But I do know the FLRA has an important mission and one that is more critical as we move forward with potential pay reform and personnel changes.

So I look forward to working with Mr. Beck to address the issues and the challenges facing the agency.

Senator AKAKA. Thank you for that.

Other than issues relating to human capital, what do each of you believe are the biggest challenges facing the FLRA? And what steps do you plan to take to address them?

Ms. POPE. Mr. Beck referred to the issue that we have a significant backlog of cases in the agency, so the biggest challenge, in my view, is the fact that currently, because of staffing issues and other issues, we are not meeting our own performance goals. We are not providing our customers timely, quality resolution of their disputes. So I would like to work together with the chairman to address those challenges, to develop strategies to bring the case writers and the senior management in the room to talk about how best to develop and look at our work processes, to see where we can improve our productivity and address the quality and timeliness of our decisions.

Senator AKAKA. Thank you. Mr. Beck.

Mr. BECK. Senator, I did mention that backlog, and I think it is something that we need to take a very immediate and very serious look at. Let me put it this way: One of the questions I want to consider, if I am confirmed and go to the agency, is whether we can do a little more at the agency to help the development of the kind of disputes that they are bringing to us. One way to permit us to work on the existing backlog is to see if we can reduce the number of cases that are being filed. I don't know, but within the parameters of the statute, we may be able to do a little bit more to try to help agencies and their labor organizations to get along a little bit better, to play a little bit more nicely, to come to agreement on more issues that otherwise might become cases that come to the Authority for decision.

And as I understand it, the agency has several methods of alternative dispute resolution that can be brought to bear once a case is filed. I wonder if the statute permits us to reach out just a little bit further, to the point even before cases are filed. I honestly don't know the answer to that, perhaps the answer is no. But in a sense, the Authority seems to me under the statute to have some residual authority that might go beyond simply deciding the cases that are presented to it, and we may be able to provide some training or some education and information to managers, employees, and labor organizations that are out there in the Federal sector so that we can maybe avoid having some of the disputes arise in the first place.

Senator AKAKA. Thank you. Over the past 8 years, there have been numerous proposals to change the structure of the FLRA and its role and responsibilities. Both the Departments of Defense and Homeland Security proposed having internal agency panels decide labor cases instead of the FLRA. There was also a proposal by the Senior Executives Association to merge the FLRA, the Equal Employment Opportunity Commission (EEOC), and the Merit Systems Protection Board (MSPB) into a single Federal employee appeals agency.

What are your views on these proposals and do you believe that there are any structural changes that need to be made to the FLRA or the process for adjudicating unfair labor practices? Ms. Pope.

Ms. POPE. In my experience, it is the FLRA that is uniquely poised and trained to be the neutral arbiter of Federal workplace disputes. So I was concerned, obviously, about the legislation you mentioned that would have narrowed our jurisdiction in a lot of cases and eliminated our jurisdiction in many others.

I continue to believe that it is the FLRA in its current structure that should continue to have the jurisdiction over Federal workplace disputes. I believe with budget constraints—certainly internally the FLRA has an ongoing obligation to look to ensure that its structure is the most efficient, the most productive. Internally we may need to assess whether we have the right people in the right jobs, in the right positions, and the right work processes to get the job done effectively. There should be an ongoing strategic assessment which includes employees and their representatives and career and presidential management at all levels.

Senator AKAKA. Well, what about the process for adjudicating unfair labor practices?

Ms. POPE. I have not taken a personal position on the merger of the agencies, but I have been a part of the agency in the past when that has been presented as an issue to the FLRA by Congress. We worked with those other agencies to address and identify the areas where we have separate and distinct jurisdiction and separate and distinct expertise to address those issues. So, in my view, the work process that is currently a part of our regulatory structure is sufficient.

Now, one of the things we have done over the years is to look to see where our regulations could be revised to better serve the parties. And we have made changes, introducing formal Alternative Dispute Resolution (ADR) principles and policies, as well as pro-



viding opportunities for training, education, and facilitation in the area of representation cases and petitions before they are filed.

So, our own regulatory process could be reviewed and should be reviewed to address how charges are filed and where they are filed. And moving further to electronic filing and managing technology to more effectively handle our caseload and more effectively enable the parties to know how to file charges and what their rights are is something that I would endorse for internal review.

Senator AKAKA. Mr. Beck.

Mr. BECK. Senator, the proposals and the possibilities that you referred to—of course it is not in vogue to use this phrase, but I will anyway—would really be above my pay grade. If I become a member and chairman of the Authority, it will not be up to me to say whether such a merger should take place. Of course, that will be between the Congress and the next President.

As I look at that proposal that you mentioned of really merging the agencies and creating sort of a monolithic agency to deal with Federal sector employment issues, in my own mind I immediately think about the situation I am very familiar with in the private sector. And as you know, the FLRA is modeled on the National Labor Relations Board (NLRB), and in most ways structurally it functions like the National Labor Relations Board. And the EEOC also exists to be available to private sector employers and employees, and it deals with their disputes as well.

And so we really have an analogous system of divided responsibilities between the agencies in the private sector that I am very familiar with, and I am not aware of anyone who is seriously suggesting that the NLRB and the EEOC should be merged to deal with private sector employment issues. And based on my experience, it would not be a good idea. And so that is really the best viewpoint I think I could bring to bear my own self on the suggestion of merging the agencies in terms of Federal sector employment matters.

I suppose that as a matter of policy, of course, it would be for the Congress to make the policy decisions, but I suppose merging the agencies into a monolithic agency to deal with all issues might have the apparent virtue of simplicity. But I suppose the virtue of expertise might be lost as well, because as Ms. Pope said, the FLRA has particular expertise, and we all know that the MSPB has certain particular expertise as well, and it has a certain portfolio of responsibilities which is distinct. And the same is true for the EEOC.

And so, as I think this through while I am sitting here, it strikes me that quite a bit of beneficial expertise might be lost.

Senator AKAKA. In addition to proposing changes to the process for adjudicating unfair labor practices, the Administration has proposed changes to the substance of Federal labor law: The rights of labor unions, the rights of management, what matters can be negotiated, and what remedies are available.

What are your thoughts on these proposed changes? And what changes, if any, do you believe need to be made to the rights and protections afforded to employees and management under the Federal labor management statute?



Mr. BECK. I have made Ms. Pope answer every question first, so I guess I will take this one. My answer, unfortunately, has to be very brief to that, Senator, and I am certainly not one to duck questions. But I must say that I have given a lot more thought in recent years to private sector labor relations than I have to the somewhat different nuances of Federal sector relations. As I sit here, I just do not really feel like I am capable of opining on whether certain substantive changes to rights and responsibilities of management and labor would be a good idea or a bad idea.

If I go to the agency and I learn something more than I do know about Federal sector labor law in particular, I will be more than happy to come speak with you. I would love to testify again, Senator, if you think I might have anything of value to say on this subject, or meet with you and other Members of the Committee informally. Once I have developed a little more expertise on these questions, I certainly am quite willing to be a resource to you if that would ever be of benefit.

Senator AKAKA. Any comment, Ms. Pope?

Ms. POPE. I do not have any statutory changes and amendments that I would identify. I note that the statute has served us well for almost 30 years, and we have a significant body of case law elucidating the statute and the rights and responsibilities of the parties.

To the extent there may be pay and personnel changes that may test the statute that certainly were not contemplated when the statute was enacted, it will be up to the FLRA and their interpretation of the law to apply it to any current situations that were not contemplated at the time the statute was enacted. And with respect to other changes, the FLRA, at the direction of the chairman, at the direction of the Administration, would address and look to speak to any possible amendments that may be proposed by Congress or the Administration.

Senator AKAKA. Well, as you know, the chairman of the FLRA is to be the chief executive and administrative officer of the Authority. The Department of Justice Office of Legal Counsel has issued opinions stating that under such a designation the chairs of boards and commissions, like the FLRA, are responsible for the day-to-day administration of the policies of the boards. Substantive policy-making and regulatory authority is vested in the boards as a whole. However, these opinions recognize that any number of the day-to-day business practices may affect the board's policies and regulatory authority.

Could each of you comment on whether you draw the line between the responsibilities of a member of the FLRA and the chairman of the FLRA? Ms. Pope.

Ms. POPE. As a sitting member, I feel like I should go first in that answer. My response is I begin with the statute, which clearly delineates the role of a chairman and the role of a member. I believe and have benefited from Administrations that looked to be collaborative with members in addressing our statutory responsibility to provide leadership with respect to Federal sector labor-management relations. Also, there is a clearly defined role as the budget officer, having fiduciary responsibility, that rests with the chairman.

Senator AKAKA. Mr. Beck.

Mr. BECK. Yes, Senator. There are some clear distinctions, and I look forward, if I am confirmed, to learning more about the precise contours of those distinctions. But it is clear that Congress intended a distinction in some respects between the member who serves as chairman and the other non-chairman members of the FLRA. The statute was passed in the late 1970s originally and then was amended 4 or 5 years later because, as originally passed, it had not designated the chairman as the CEO and administrative officer.

And I think that certain Members of Congress, based on my review of the legislative history, such as Senator Stevens, for example, and Congresswoman Schroeder, came to the floor and said that we think that there is a lack of accountability and there is a certain amount of inefficiency going on at this relatively new agency because there is no individual who is clearly and unequivocally tasked with, say, budgetary responsibilities, human resources responsibilities, and purchasing responsibilities. So they did at that time add in that language that the chairman is the CEO and administrative officer. So, clearly, the chairman is supposed to have some duties and some responsibilities that are distinct from and greater than what the members do in terms of just managing the agency.

With that said, though, while one person needs to be accountable, one person does not need to make all decisions from on high unilaterally without any input from anyone else. And that is not my management style, and I do not think, generally speaking, it is an effective management style. And so I don't know what others who have gone before me may have done, but what I would like to try to do, if I become the chairman of this agency, is to work with Ms. Pope, and if we get another member at the agency, to work with that member as well, and to work with the staff and others in a very kind of open-door, communicative, collaborative way so that as much as possible we can get some kind of consensus, or near consensus, on what needs to be done, at least on the big picture items.

And if somebody has to decide how many paper clips are we going to buy this year, I will be happy to decide that, and probably other folks don't need to be bothered with that sort of question. But when it comes to major questions about managing this agency, I think that doing so in as collaborative a way as possible is obviously the way to go, and that is particularly true for me, frankly, because I have not spent the time at this agency that some other people have, that Ms. Pope has, for example.

Senator AKAKA. Well, I want to thank both of you for your responses. Before we close I would like to ask if either of you have any further remarks you would like to make about FLRA or your position in it, and what you would like to see come about at the FLRA. Ms. Pope.

Ms. POPE. I have always held in high regard the FLRA and its mission and the responsibilities of the presidential appointees at the agency. I look forward to continuing in that role, if confirmed, and would be extremely excited and proud to be a part of turning around the agency, so that if I ever had the fortune of coming before you again, we are not ranked 31st of 31 small agencies, but

we are ranked No. 1. So I am excited about the future of the agency and look forward to being a part of it, if confirmed.

Senator AKAKA. Mr. Beck.

Mr. BECK. I want to associate myself with Ms. Pope's remarks and say essentially the same thing, Mr. Chairman. I think some things need to be done at this agency, clearly, and I look forward, if confirmed, to figuring out in short order what they are and doing the best that all of us can to make whatever changes are going to bring this agency up in terms of not just employee satisfaction and engagement, but in terms of processing cases, carrying out our core function of processing cases and resolving impartially and promptly the disputes that the parties bring to the agency. And I would like to also ask that maybe if you don't mind too much, I will come knock on your door at some point, and maybe some of the other Members of this Committee who are interested in what is going on at the FLRA because you have been looking at this agency longer than I have. And I would really value, not only collaborating and hearing from the people who are at the agency, like Ms. Pope and other folks, folks who are on the staff over there, but I would like to maybe be able to sit down, formally or informally, with you, or any other Members who might be interested, to get your views as well.

Senator AKAKA. Well, let me respond to you and tell you my door is open.

Mr. BECK. Thank you, Senator.

Senator AKAKA. And I want to thank you both for your responses, and I feel your mission is a very important one. It is important because, as you succeed, there will be more productivity, people will be working better, and that is why we are all here. And so I want to thank each of you for being here today and congratulate you again on your nominations. I have no further questions at this time.

The hearing record will remain open until the close of business tomorrow for Members of this Committee to submit additional statements or questions they may have. I know you both are anxious for your nominations to move forward. It is my hope that the Committee and the Senate will take action in the near future. Again, I want to thank you for bringing your families and supporters here today, and thank you again for your responses. This will be helpful to us in dealing with your nominations. And I will talk to the Committee and try to make every effort to move them as quickly as we can.

Ms. POPE. Thank you, Mr. Chairman.

Mr. BECK. Thank you, Senator.

Senator AKAKA. Thank you very much. This hearing is adjourned.

[Whereupon, at 3:30 p.m., the Committee was adjourned.]



## APPENDIX

### BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

#### A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.) Carol Waller Pope; Carol W. Pope; Carol Pope; Carol A. Waller
2. **Position to which nominated:** Member, Federal Labor Relations Authority
3. **Date of nomination:** March 12, 2007
4. **Address:** (List current place of residence and office addresses.)  
no office address.
5. **Date and place of birth:** August 21, 1952; Pittsburgh, PA
6. **Marital status:** (Include maiden name of wife or husband's name.) Divorced
7. **Names and ages of children:** None
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.  
  
Northeastern University School of Law, Boston, MA – attended 9/1975 to 5/1978. Juris Doctor Degree awarded 5/1978  
  
Simmons College, Boston, MA – attended 9/1970 – 5/1974. B.A., Psychology and Education awarded 5/1974  
  
Westinghouse Junior and Senior High School, Pittsburgh, PA; 1964 – 1970. Diploma
9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)  
  
See Attachment #1.
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.  
  
None

REDACTED

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

See Attachment #2.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Member, Bar of the Commonwealth of Massachusetts; United States Court of Appeals for the First and Fifth Circuits; and the U.S. Supreme Court. American Bar Association; Society of Federal Labor Relations Professionals

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

Volunteer, 1996 Clinton/Gore Campaign  
Volunteer, 2004 Kerry For President Campaign

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

See Attachment #3

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognition for outstanding service or achievements.

See Attachment #4

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Article in Journal entitled, Careers and the Minority Lawyer, Spring 1999. A copy of the Article is attached as Attachment #5.



16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

See Attachment #6(a)

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

See Attachment #6(b)

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

It is my belief that President Bush selected me for this nomination because of my prior experience and expertise as a Member and career employee at the Federal Labor Relations Authority (FLRA). I possess keen knowledge of the law and its application; litigation and management experience; proven decision-writing expertise and a commitment to public service.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

See Attachment #7

**B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.  
  
No.
2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.  
  
No.
3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.  
  
No.
4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.  
  
None

#### E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

## AFFIDAVIT

Carol Waller Pope, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Carol Waller Pope

Subscribed and sworn before me this 20 day of March,  
2007

[Signature]

Notary Public

Exp 7-29-07

Carol Waller Pope  
Biographical and Financial Information

#### INDEX OF ATTACHMENTS

Attachment #1	Response to Question #9, Part A, Biographical Information
Attachment #2	Response to Question #11, Part A, Biographical Information
Attachment #3	Response to Question #13(c), Part A, Biographical Information
Attachment #4	Response to Question #14, Part A, Biographical Information
Attachment #5	Response to Question #15, Part A, Biographical Information
Attachment #6(a)	Response to Question #16(a), Part A, Biographical Information
Attachment #6(b)	Response to Question #16(b), Part A, Biographical Information
Attachment #7	Response to Question #17(b), Part A, Biographical Information
Attachment #8	Response to Question #1, Part E, Financial Data
Attachment #9	Response to Question#7, Part E, Financial Data

Carol Waller Pope  
Biographical and Financial Information

ATTACHMENT #1 -- Employment Record

Member, Federal Labor Relations Authority  
Nominated by President William B. Clinton, confirmed by the Senate.  
Federal Labor Relations Authority, Washington, DC  
October 2000 to December 2006

Assistant General Counsel for Appeals, Office of the General Counsel  
Federal Labor Relations Authority, Washington, DC  
October 1998 to October 2000

Director of Appeals and Special Programs, Office of the General Counsel  
Federal Labor Relations Authority, Washington, DC  
June 1996 to October 1998

Executive Assistant to the General Counsel, Office of the General Counsel  
Federal Labor Relations Authority, Washington, DC  
July 1994 to June 1996

Attorney, Boston Regional Office, Federal Labor Relations Authority  
Boston, MA  
February 1980 to July 1994

Attorney, U.S. Department of Labor, Office of the Solicitor, Employee Benefits Division  
Washington, DC  
January 1979 to February 1980

Job Developer, New Careers in Mental Health Program, Boston University School of  
Medicine  
Boston, MA  
June 1974 to August 1975



Carol Walter Pope  
Biographical and Financial Information

ATTACHMENT #2 --Business relationships

Trustee, Simmons College, Boston, MA

Corporator, Simmons College, Boston, MA

Director, DC Employment Justice Center, Washington, DC (non-profit)

Director, Madison Park Development Corporation, Boston, MA (non-profit community housing)

Director, Lower Roxbury Community Corporation, Boston, MA (non-profit community housing)

Director, Madison Park Housing Corporation, Boston, MA (non-profit community housing)

Director, Madison Park Economic Development Corporation, Boston, MA (non-profit community housing)

Carol Waller Pope  
Biographical and Financial Information

ATTACHMENT #3 -- Political Affiliations and Activities

2007

Tony Towns for DC City Council	50.00
21 <sup>st</sup> Century Democrats	25.00

2006

Democratic Legislative Campaign Committee	50.00
21 <sup>st</sup> Century Democrats	50.00
Democratic Leadership Campaign	35.00
Allyson Schwartz for Congress	50.00

2005

Tom Reilly Committee	250.00
(Massachusetts Democratic Gubernatorial Primary Candidate)	

2004

Democratic National Committee	50.00
Allyson Schwartz for Congress	25.00
Kerry for President	2,000.00
Kerry for President Volunteer	

2000

Gore 2000	250.00
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Carol Waller Pope  
Biographical and Financial Information

ATTACHMENT #4 -- Honors and Awards

American Bar Association - Federal Service Leadership Award, 2005

Carol Waller Pope Leadership Scholarship Award (for students -- created by Simmons College in honor of my volunteer leadership), 2005

National Partnership for Reinventing Government Hammer Award, 1999

Office of Personnel Management, Federal Executive Institute, Commencement Speaker, 1997

Special Achievement Award, Federal Labor Relations Authority, 1981

Superior Accomplishment Award, Federal Labor Relations Authority, 1991, 1992, 1999

Sustained Superior Performance Award, Federal Labor Relations Authority, 1988, 1989, 1999

Sustained High Quality Performance, Federal Labor Relations Authority, 1997

Special Act Award, Federal Labor Relations Authority, 1997, 1998

Certificate of Appreciation, Federal Labor Relations Authority, 1999

Simmons College Alumnae Service Award, 1998

Commonwealth of Massachusetts State Senate Citation, 1993

Big Sister Association of Greater Boston, 1993

Carol Waller Pope  
Biographical and Financial Information

ATTACHMENT #5 Published Writings

Article on my career published in Journal entitled, "Careers and the Minority Lawyer,  
Spring 1999 (copy provided)

ATTACHMENT #6(b)-Speeches – No copy provided

1985 – 1999	Numerous training presentations and speeches to federal agencies and federal unions on their statutory obligations, rights and responsibilities under the Federal Service Labor-Management Relations Statute.
June 1998	Luncheon speech delivered to audience including Simmons College President and Alumnae upon receipt of Alumnae Service Award. Speech topic: my professional career and volunteer service.
June 2003	FPML, Annual Conference, Speech entitled, Current Issues in Federal Sector Labor Law and Labor Relations Phoenix, AZ
February 2006	Speech to Simmons College students delivered at ceremonial dinner conferring Carol Waller Pope Leadership Award scholarship to student recipient. Speech topic: leadership.
October 2006	Luncheon speech to Administrative Law Judges Association. Luncheon topic was current issues in Federal sector Labor Law and the operation of FLRA.

Carol Waller Pope  
Biographical and Financial Information

**ATTACHMENT #7 Background and Employment Experience**

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**MAJOR CAREER ACCOMPLISHMENTS**

Presidential appointment and Senate confirmation to federal government leadership position (first Federal Labor Relations Authority career employee to receive appointment to Member position); Development and implementation of innovative peer review/quality review process to adjudicate annual caseload of over 400 appeals cases; led legal team to revise federal regulations to incorporate improved case filing/processing procedures and alternative dispute resolution; Awarded Vice-President Al Gore's Hammer Award for government innovation; Led design and implementation of strategic plan, a plan recognized as a model plan by the federal government small agency council; Development of ethical conduct for employees policy; Public speaker and trainer in areas of federal sector labor law, employee relations and dispute resolution.

**PROFESSIONAL EXPERIENCE**

**MEMBER, FEDERAL LABOR RELATIONS AUTHORITY. OCTOBER 2000 – PRESENT**

Appointed by President William J. Clinton and confirmed by the Senate in October 2000, to a five-year term.

**Responsibilities:** One of three Members of the Federal Labor Relations Authority responsible for administration of the Federal Service Labor-Management Relations Statute which regulates labor-management relations for over 1.2 million federal, non-Postal service employees worldwide.

Issue final administrative decision to: resolve negotiability disputes; resolve appeals of arbitration awards; resolve appeals of administrative law judge decisions involving unfair labor practice complaints; and determine the appropriateness of units for labor organization representation. Authority decisions are subject to judicial review in the United States courts of appeals and the United States Supreme Court. Key dissenting case decisions I authored have been upheld by the DC Court of Appeals.

Manage and supervise the work and professional development of a staff of seven employees, including six attorneys. Twenty-five years of experience in labor and employment law and policy and labor relations; rule-making, senior management experience in strategic planning and assessment, policy and program development and implementation, alternative dispute resolution, facilitation and training.

Carol Walter Pope  
Biographical and Financial Information

**ASSISTANT GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL,**  
Federal Labor Relations Authority, Washington, DC, August 1996 to October 2000.

- Managed caseload of over 400 appeals of unfair labor practice charge dismissals
- Managed design, implementation and assessment of five year strategic plan
- Public speaking, training and facilitation to resolve disputes and to improve labor-management relationships

**EXECUTIVE ASSISTANT TO THE GENERAL COUNSEL,** Federal Labor  
Relations Authority, Washington, DC, July 1994 – August 1996

- Policy development and assessment
- Led team of Administrative Law Judges, Regional Counsels and Attorneys in revision of FLRA Rules and Regulations
- Recipient of Vice-President Al Gore's Hammer Award

**ATTORNEY,** Federal Labor Relations Authority, Boston, MA,  
February 1980 – July 1994

- Investigated and prosecuted unfair labor practice charges
- Designated Hearing Officer in representation case hearings

**ATTORNEY,** U.S. Department of Labor, Office of the Solicitor, Employee Benefits  
Division, Washington, DC, January 1979 – February 1980

- Represented Deputy Solicitor in employee compensation claims before Administrative Law Judges and in U.S. courts of appeal
- Litigated Federal Tort Claims



U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Carol Waller Pope to be a Member of the Federal Labor Relations Authority

I. Nomination Process and Conflicts of Interest

- I. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I currently serve as a Member. I have held this position since my nomination by President William J. Clinton and confirmation by the Senate in October 2000, except during a brief period just prior to my 2007 nomination by President George W. Bush, when I was retired from the FLRA. I believe that my nearly 30 years' experience working in various capacities in the Federal Labor Relations Authority makes me uniquely qualified to be a Member of the FLRA.

I began my professional career, and spent nearly 20 years, in the FLRA's Office of the General Counsel. There, I was responsible for investigating and prosecuting alleged unfair labor practices as well as processing petitions for elections and other representation matters. I also worked in the Office of the General Counsel Headquarters Office, culminating in my position as Assistant General Counsel for Appeals. Throughout my tenure in the FLRA Office of the General Counsel, I witnessed the benefits that result when labor and management understand their rights and responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Statute), and form productive relationships.

As Member, I have been responsible for resolving labor-management disputes filed with the Authority under the Statute, including arbitration, negotiability, representation, and unfair labor practice cases. I have endeavored to interpret and apply the Statute fairly and impartially in each case. This has resulted in several decisions where I disagreed with a majority of the Authority Members and wrote in dissent. Of the 15 Authority decisions that, according to the FLRA Office of the Solicitor, received "unfavorable" review in Federal Courts of Appeals during the past 5 years, I dissented in 11 of the decisions. I have also been responsible for managing my office consistent with the FLRA's strategic plan and performance goals and objectives. I am pleased to report that from 2000 until 2007, during which time the Authority was organized in a way that required each Member to manage an office responsible for processing one-third of the Authority's caseload, my office met or exceeded relevant performance goals, thereby contributing to agency-wide performance. As an example, during the most recent fiscal year (FY06) when I managed a separate Member staff, my staff was responsible for closing 46 percent of all the cases closed on the merits by the Authority.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a Member of the FLRA?

The role of a Member, consistent with § 7105 of the Statute, is to serve as a part of a quasi-judicial body known as the "Authority."<sup>1</sup> A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously, and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute.

As an employee of the FLRA in both a career and political capacity for almost 30 years, I have developed an understanding of the law and have contributed to the development of a significant body of case law interpreting the Statute. My knowledge of the law coupled with a practical understanding of the important roles both labor law and labor relations have in an effective and efficient government qualify me to serve as a Member.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a Member of the FLRA? If so, what are they and to whom have commitments been made?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

No.

## **II. Role of a Member, FLRA**

6. What is your view of the role of the FLRA?

<sup>1</sup> The term "Authority" refers to the component of the FLRA that consists of the three Members who have adjudicatory responsibility. The term "FLRA" refers to the entire agency, which is comprised of the Authority, the Office of the General Counsel and the Federal Service Impasses Panel.

The FLRA is an independent, administrative Federal agency that was created by the Statute. The Statute allows certain non-postal Federal employees to organize, bargain collectively, and participate through labor organizations of their choice in decisions affecting their work lives.

Section 7105 of the Statute, 5 U.S.C. § 7105, *Powers and duties of the Authority*, states in part:

The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

The primary statutory responsibilities of the FLRA include: (1) resolving complaints of unfair labor practices, (2) determining the appropriateness of units for labor organization representation, (3) adjudicating exceptions to arbitrator's awards, (4) adjudicating legal issues relating to duty to bargain/negotiability, and (5) resolving impasses during negotiations.

7. What is your view of the role of a Member of the FLRA?

The role of a Member, consistent with § 7105 of the Statute, is to serve as a part of the quasi-judicial body known as the Authority. A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously, and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute. Members, pursuant to the Statute, also appoint an executive director and such regional directors, administrative law judges and other individuals necessary for the proper performance of agency functions.

Under the leadership and direction of the Chairman, as CEO of the FLRA, a Member may also provide input regarding policy and guidance affecting the operation of the FLRA and government-wide labor-management relations.

8. In your view, what are the major challenges currently facing the FLRA and the Authority? What did you do as a Member, and what do you plan to do, if confirmed, to address these challenges?

In my view, the major challenges currently facing the FLRA and the Authority are: (1) improving the productivity, quality and timeliness of case decisions; (2) assessing whether, when and how to fill vacant positions; (3) addressing the effects of jurisdictional/organizational uncertainties; and (4) improving employee morale overall. These challenges are, to some degree, interrelated.

Since becoming a Member in 2000, my focus has been to manage my staff and office resources to issue quality, timely decisions consistent with the Statute, Authority precedent and the Authority's performance goals. From 2000 until 2007, during which time the Authority was organized such that each Member was required to manage an office responsible for processing one-third of the Authority's caseload, my office met or exceeded relevant performance goals, thereby contributing to agency-wide performance. As an example, during the most recent fiscal year (FY2006) when I managed a separate Member staff, my staff was responsible for closing 46 percent of all the cases closed on the merits by the Authority. If confirmed, I will continue to work with the other Members to issue quality, timely decisions that operate to inform and assist Federal employees, unions and managers in understanding and exercising their rights and responsibilities under the Statute.

As a Member, I do not have independent hiring authority. Instead, with the limited exceptions noted below in connection with Question 12, decisions to fill vacancies and the classification and grade level of those positions, if filled, are made solely by the Chairman, as CEO of the agency. I did and will continue, in consultation with my Chief Counsel, routinely assess whether and when to request authorization to fill vacant positions within my authorized staffing levels in order to maintain case productivity to meet the Authority's performance goals. Previously, when additional staff was justified, I requested authority to recruit and select in accordance with the hiring protocol designated by the Chairman. When my office caseload did not support additional staff, I did not request authorization to increase my office staff. If confirmed, I will continue to manage my caseload and human resources responsibly and I will work with the Chairman and other Member, as directed by the Chairman, to provide input to determine staffing levels needed to fulfill the FLRA mission.

Career vacancies and vacancies at the leadership level throughout the FLRA have adversely affected employee morale, in my view. In addition, morale has been affected by the uncertainty of possible legislative and regulatory changes at agencies such as the Department of Homeland Security (DHS) and the Department of Defense (DoD) that would operate to reduce FLRA's statutory jurisdiction and caseload. If confirmed, I will work at the direction of the Chairman to successfully address these challenges.

In my view, the FLRA should undertake efforts to develop strategies to: (1) assess and improve work processes to maximize technology, minimize costs and improve timeliness and quality consistent with the Statute and the President's Management Agenda; (2) enhance alternative dispute resolution techniques and services for timely and meaningful case disposition; (3) review existing regulations for possible revision; (4) develop recruitment and internal training tools; (5) manage attrition through leadership development and succession planning; and (6) improve employee morale.

9. What will be your long-term priorities a Member of the FLRA?

**If confirmed, my long-term priorities will include working with the other Member and Chairman to issue timely, quality decisions in accordance with the Authority's annual performance goals and providing input, upon request by the Chairman, to develop strategies to address the challenges set forth in the previous question.**

10. Describe your vision of what the relationship should be between the FLRA, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

**Congress has established each of the listed agencies with a distinct statutory mission in the area of Federal sector employee and labor relations. I have no basis to consider any changes in the respective missions of the agencies or their relationship.**

11. What do you believe is the appropriate role of a Member of the FLRA, and how does that differ from the role of the Chairman?

**The role of a Member, consistent with § 7105 of the Statute, is to serve as a part of the quasi-judicial body known as the Authority. A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously, and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute.**

**In addition to performing the adjudicatory responsibilities of a Member, the Chairman has additional administrative and fiduciary duties as the FLRA's Chief Executive and Administrative Officer. The Chairman has ultimate budget responsibility and accountability.**

12. The federal sector labor management relations statute provides that the Chairman is the "chief executive and administrative officer of the Authority." To what extent and in what respects do you believe a Chairman should fulfill this role in collaboration with the other Members of FLRA? For example, in what circumstances do you believe the Chairman should make hiring and other management decisions by consensus, under what circumstances after consultation, and under what circumstances unilaterally and without consultation? Do you believe Members of the FLRA should have access to all information pertaining to the organization and administration of the FLRA?

**A Chairman, as the Chief Executive and Administrative Officer of the FLRA, has ultimate decision making authority in virtually all administrative and fiduciary matters. The manner in which those decisions are reached and implemented will**

vary, depending upon the nature of the issue and the needs of the Chairman. With respect to the development of FLRA policies and guidance, collaboration among the Presidential and career management of the FLRA may be useful. In addition, depending on the issue, collaboration with other stakeholders, such as employees and their representative may prove useful. I note that collaboration, in this regard, appropriately can be limited to information gathering and sharing and does not necessarily require consensus decision-making. In that regard, a Chairman retains ultimate decision-making authority. Although hiring decisions involving regional directors, the executive director and administrative law judges require, by Statute, involvement of all of the Members, other hiring decisions can be made unilaterally, with input from other Members at the election of the Chairman.

Members, along with the other Presidential leadership of the FLRA, should be informed of matters affecting the performance of their statutory responsibilities. It is up to the Chairman to determine when and how such information should be provided. Historically, prior Chairmen have found collaboration in the gathering and sharing of information as well as consensus decision-making effective in the development, management and assessment of strategic plans and performance goals for the Agency. However, not all information related to the operation of the Agency can or should be shared with the Members. For example, confidential matters involving the Inspector General, the Administration, and/or pending litigation involving the agency or agency employees cannot always be shared with the Members. It is incumbent upon the Chairman to determine when and how to collaborate with the Members and others and when the dissemination of information will prove useful in the development and/or implementation of a policy or decision.

### III. Policy Questions

13. In a study of federal-employment satisfaction, the Partnership for Public Service determined that the FLRA ranks last – 31st out of 31 small agencies. Why do you believe employee satisfaction is so low at the Authority, and what would you do, as a Member, to address this situation?

The 2007 Federal Human Capital Survey Report revealed that FLRA's overall index score was 18.1, resulting in a ranking of 31 out of 31 small agencies that participated in the survey. This ranking was based on low rankings in eight out of ten key indicators: (1) Employee Skills/Mission Match; (2) Strategic Management; (3) Teamwork; (4) Effective Leadership; (5) Performance Based Rewards and Advancement; (6) Training and Development; (7) Support for Diversity; and (8) Work/Life Balance.

It is my belief that employee satisfaction has been adversely affected by extended vacancies at all levels of the agency and by employee uncertainty regarding possible



office closures and a projected reduction in case filings if the DHS and the DoD personnel system changes were to be implemented.

If confirmed, I will work at the direction and under the leadership of the Chairman to improve employee morale and satisfaction by developing and implementing strategies to address the areas recommended by the survey analysis: employee engagement; effective leadership; increased employee participation; increased feedback on work; and employee involvement in decisions affecting the work.

14. One way to reduce case processing time is to reduce the number of adjudicated cases. Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities? Please explain.

I believe that there are opportunities to reduce filings and/or to resolve cases without the need for a decision. For example, FLRA regulations provide that a post-petition conference will be conducted by the FLRA to narrow and possibly resolve the issues raised in a petition for review of negotiability issues. The post-petition conference has been used successfully to resolve some issues presented by the petition and in some instances, to resolve the entire case without the need for a decision by the FLRA.

In addition, I believe that training provided by the FLRA to customers can, by facilitating parties' understanding of their rights and responsibilities under the Statute, reduce the number of case filings and/or reduce the issues presented in the filings. Historically, the FLRA routinely offered such training, including training for arbitrators who resolve disputes in the Federal sector, and such training was uniformly well received.

Finally, the advantages of pursuing ADR, to resolve or, in some instances, prevent disputes, are many. In most cases a voluntary settlement reached by the parties operates to settle the immediate dispute in a more timely fashion than a decision, thereby preserving resources of the Authority to address other cases through issuance of more timely decisions. In addition, ADR processes often operate to improve communications between the parties and enhance the labor-management relationship, which can, in turn, reduce future case filings.

15. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under federal service labor-management law. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that, although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

The FLRA has successfully employed ADR to assist the parties in voluntarily resolving their disputes for many years. The FLRA has formally integrated ADR processes in its representation, unfair labor practice and negotiability regulations. In addition, the FLRA introduced an ADR mechanism known as the "settlement judge program" to facilitate the resolution of cases pending before the Office of Administration Law Judges. As a result, the FLRA provides voluntary settlement opportunities at various phases in the processing of a case. ADR assistance can also be requested prior to the filing of a representation petition.

Participation in all of the FLRA's ADR processes is completely voluntary. No undue pressure is applied to the parties to enter into a settlement agreement.

In my experience ADR is a useful tool. Although not all issues can be resolved voluntarily, where ADR is successfully employed, the full cost of litigation, including employee time away from their jobs, is spared.

16. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

I am unable to assess the current state of Federal labor-management relations. In moving forward, it may be appropriate for the FLRA to conduct a survey, similar to ones conducted in the past, to attempt to assess this and develop strategies to make improvements.

17. The Committee has received complaints that an extraordinary percentage of FLRA cases in recent years have been overturned on appeal, and that almost all of the appeals have come not from agencies but from unions. Do you believe this description of the situation is correct, and, if so, what do you believe are the reasons for this situation?

According to the FLRA Office of the Solicitor, during the most recent 5 fiscal years (beginning in FY2004 and to date in FY2008), there have been 35 decisions issued by Federal Courts involving Authority decisions. Of this total, 15 decisions (43 percent) were unfavorable to the Authority. Looking at the statistics on a fiscal year basis, 84 percent of the judicial decisions issued during FY2004 were unfavorable to the Authority. During FY2005, 42 percent of the decisions were unfavorable and during FY2006, 28 percent were unfavorable. During FY2007, 67 percent of the judicial decisions were unfavorable to the Authority; so far this fiscal year, only two judicial decisions have been issued and both were favorable to the Authority. Of the 15 unfavorable judicial decisions issued during the most recent 5 fiscal years, all but one resulted from a union appeal. I note that in 11 of the 15 cases that resulted in unfavorable judicial decisions, I dissented to the underlying Authority decision.

The reasons for unfavorable treatment of Authority decision in the courts vary. A few common threads emerge from the court decisions, however. In particular, in several cases, the Authority decision was not upheld because the Authority majority had failed in its decision to adequately address precedent that conflicted with the decision. See *NFFE, FD-1, IAMAW, Local 951 v. FLRA*, 412 F.3d 119, 124 (2005) ("In sum, though the FLRA must either follow its own precedent or 'provide a reasoned explanation for' its decision to depart from that precedent . . . here it has done neither."); *NTEU v. FLRA*, 404 F.3d 454, 457-58 (D.C. Cir. 2005) ("The Authority's failure to follow its own well-established precedent without explanation is the very essence of arbitrariness."); *NTEU v. FLRA*, 399 F.3d 334, 340 (D. C. Cir. 2005) ("The Authority's decision fails to address this precedent."); *NFFE, FD-1, IAMAW, Local 1442 v. FLRA*, 369 F.3d 548, 552 (D.C. Cir. 2004) ("We are unable to reconcile the Authority's reasoning with its own case law.). In two other decisions, the courts found that the Authority majority based its decision on findings that were not supported in the record. See *NTEU v. FLRA*, 437 F.3d 1248, 1255 (D.C. Cir. 2006) ("Because the Authority's determination . . . is based on findings that are not supported by the record and, in fact, appears to be contradicted by it . . . we reverse[.]"); *NAGE Local RS-136 v. FLRA*, 363 F.3d 468, 477 (D.C. Cir. 2004) (Court stated that Authority majority "finding is not supported by substantial evidence[]" and "looks like an ill-conceived afterthought."). Finally, in two of the foregoing cases, the courts found that the Authority majority's decisions were inconsistent with basic principles of collective bargaining embodied in the Statute. See *NFFE, FD-1, IAMAW, Local 951 v. FLRA*, 412 F.3d 119, 125 (2005) ("the FLRA has produced a result precisely opposite to the one Congress intended; it has restricted collective bargaining and converted the management rights provisions from 'narrow exceptions' into majority obstacles to collective bargaining."); *NFFE, FD-1, IAMAW, Local 1442 v. FLRA*, 369 F.3d 548, 554 (D. C. Cir. 2004) ("We believe the Authority's reasoning in this case reflects an inappropriate willingness to erect barriers to collective bargaining that are inconsistent with the text and purposes of the [S]tatute. Thwarting Congress's intent to promote collective bargaining, such barriers are not 'in the public interest' because they hamper realization of the benefits that such bargaining produces.").

18. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

It is the purview of the Administration and Congress to determine what, if any, changes should be made to the Statute.

19. What kinds of effects, if any, do you believe a blended workforce of federal employee and federal contract personnel is having on federal labor-management relations?

I am not aware of the effects of a blended workforce on labor-management relations in the Federal sector. I note that, under the Statute, 5 U.S.C. § 7106(a)(2)(b), management has the right to "make determinations with respect to contracting out," and that, occasionally, cases arise requiring the Authority to interpret and apply this section of the Statute. *See, e.g., NAGE Local R1-203, 55 FLRA 1081, 1086-88 (1999)* (Authority held that agency was not required to bargain over a proposal prohibiting the agency, in certain circumstances, from contracting out work within 1 year of the date of a reduction-in-force).

#### IV. Relations with Congress

20. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes

21. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I will communicate and work with Congress in response to any request by Congress. It is the responsibility of the Chairman, as Chief Administrative and Executive Officer to timely file reports with Congress that are required by government-wide rules and regulations.

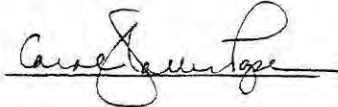
#### V. Assistance

22. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

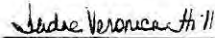
Yes. I have consulted with FLRA managerial employees in the Authority component, the Office of the Executive Director and the Office of the Solicitor.

**AFFIDAVIT**

I, Carol Waller Pope, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



Subscribed and sworn before me this 05 day of September, 2008.



Notary Public

Deldre Veronica Hill  
Notary Public, District of Columbia  
My Commission Expires 4/30/2013



United States  
**Office of Government Ethics**  
 1201 New York Avenue, NW, Suite 500  
 Washington, DC 20005-3917

March 21, 2007

The Honorable Joseph I. Lieberman  
 Chairman  
 Committee on Homeland Security  
 and Governmental Affairs  
 United States Senate  
 Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol W. Pope, who has been nominated by President Bush for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated January 22, 2007, from Ms. Pope to the agency's ethics official, outlining the steps Ms. Pope will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with any action she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Pope is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick  
 Director

Enclosures



## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

## A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.) Thomas Martin Beck
2. **Position to which nominated:** Member, Federal Labor Relations Authority
3. **Date of nomination:** June 28, 2007
4. **Address:** (List current place of residence and office addresses.)
 

Home: **REDACTED**

Office: Jones Day  
51 Louisiana Avenue, NW  
Washington, D.C. 20001
5. **Date and place of birth:** April 25, 1966; Louisville, Kentucky
6. **Marital status:** (Include maiden name of wife or husband's name.)
 

Wife: Amanda H. Beck (formerly Amanda T. Host)
7. **Names and ages of children:** n/a
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
 

University of Virginia School of Law; attended 1990-92;  
JD received May 1992

George Mason University School of Law; attended 1989-90

University of Virginia; attended 1984-88; BA received May 1988

Kentucky Country Day High School; attended 1980-84;  
diploma received June 1984

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Partner, Jones Day, Washington, DC, January 2003 to present

Associate, Jones Day, Washington, DC, August 1992 through December 2002

Summer Associate, Jones Day, Washington, DC, summer 1990

Law Clerk to the Chairman, Occupational Safety and Health Review Commission, Washington, DC, summer 1990

Legal Assistant, Spriggs and Hollingsworth, Washington, DC, August 1988 to August 1989

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

n/a

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Partner, Jones Day

Director, Kentucky Metal Products, Inc. (now dissolved)

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Member, American Bar Association

Member, Fairfax Bar Association

Member, Republican National Lawyers Association

Member, Federalist Society

Member, National Rifle Association

Member, Kappa Alpha Order

Co-Founder and Outside General Counsel,  
Wave of Courage Foundation, Inc.

Volunteer and outside legal counsel, Fairfax Court Appointed  
Special Advocates

Supervising Attorney, George Mason University School of Law  
Clinic for Legal Assistance to Servicemembers

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

n/a

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

Currently working for the McCain 2008 presidential campaign as a founder and organizer of the Lawyers for McCain network.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

\$500 to Citizens for Arlen Specter

\$250 to Friends of George Allen

\$2,300 to John McCain 2008

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

n/a

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Provided separately.

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.
- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.
  - Confidentiality: Sharing and Accessing Case Information, presentation sponsored by the Virginia Court Improvement Program, June 1, 2007
  - Assisting Students With Disabilities in the 21st Century, panel discussion, sponsored by American University's Washington College of Law, March 8, 2007
  - Employment Law Developments in the Health Care Industry, presentation, Symposium on Labor and Employment Law for Health Care Providers, February 5, 2007
  - How to Prepare for Labor's New Initiatives-Corporate Campaigns and Traditional Organizing, American Society for Healthcare Human Resources Administration seminar, October 14, 2006
  - Medical Records Confidentiality, presentation to Fairfax Court Appointed Special Advocates, September 28, 2006
  - Occupational Safety and Health Law in the United States, presentation to officials from Zhejiang Province, China, September 12, 2006
  - How to Succeed in Settlement Negotiations, live presentation and webcast to the Washington Metro Area Corporate Counsel Association, June 14, 2006
  - Legal Ethics for the Litigator: A Case Study, Lecture at the Syracuse University College of Law, April 3, 2006

- Overview of U.S. Labor Law, presentation to representatives from the Chinese Ministry of Labor and Social Security, sponsored by the National Committee on U.S.-China Relations, October 10, 2005
- Employment Law Developments in the Health Care Industry, presentation, Symposium on Labor and Employment Law for Health Care Providers, February 24, 2005
- Retaliation Claims in Employment Law, presentation, American Conference Institute Seminar for Employment Practices Insurers, January 31, 2005
- Emergency Preparedness and Community Right-to-Know Act (EPCRA) and the Occupational Safety and Health Act (OSHA), presentation, Environmental Law Institute's Annual Boot Camp, November 13, 2002

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?
- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that I was selected for, and am qualified for, this position principally because of my extensive experience in matters of labor law and labor relations. Since graduating from the University of Virginia School of Law 15 years ago, I have been involved in the private practice of law with the global law firm Jones Day. The vast majority of that time has been spent in the area of labor and employment law. During this time, I have had the good fortune to work with – and against – some highly capable labor lawyers, and I have been called upon by large, sophisticated clients to help them solve some of their thorniest labor problems. I have extensive experience in dealing with grievances, arbitrations, and other disputes between unions and management; unfair labor practices; and collective bargaining and related questions of negotiability and impasse – many of the same issues that are presented to the Authority.

**B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No, aside from possibly continuing to teach one class per year at the George Mason University School of Law as an adjunct professor on an unpaid basis.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None of which I am aware.



2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

In my capacity as a private citizen, I have occasionally written to my Congressman and Senators to express my views on pending legislation and matters of public policy.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

In 1985, when I was a 19-year-old college student at the University of Virginia, I was arrested by the University Police and charged with disorderly conduct. I was acquitted in the Circuit Court.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

In 1997, I was the petitioner in my uncontested divorce proceeding in the Circuit Court for Fairfax County, Virginia. The divorce was granted in August 1997.

In 1995, in response to the Secret Service's unannounced closure of Pennsylvania Avenue near the White House, I filed a complaint in the United States District Court for the District of Columbia challenging the Government's authority to

implement such a street closure in such a fashion. Very shortly after filing this complaint – that is, within two or three days, as I recall – I reconsidered my action, concluded that it was impetuous and probably pointless, and voluntarily dismissed the complaint before the Government responded.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

n/a

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

n/a

#### E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

THOMAS M. BECK being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Thomas M. Beck 7-5-07

Subscribed and sworn before me this 5<sup>th</sup> day of July, 2007

Alvada S. Vaccaro  
Notary Public  
My Commission Expires  
7/31/09

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Thomas M. Beck to be a Member of the Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I believe the President nominated me for this position principally because of my experience in matters of labor law and labor relations. Since graduating from the University of Virginia School of Law 16 years ago, I have been involved in the private practice of law with the global law firm Jones Day. Most of my work over those 16 years has been in the area of labor and employment law. During this time, I have had the good fortune to work with and against some highly capable labor lawyers, and I have been called upon by sophisticated institutional clients to help them resolve some of their thorniest labor problems. I have extensive experience in dealing with the grievance and arbitration process; unfair labor practices; and collective bargaining and related questions of negotiability and impasse -- many of the same issues that are presented to the FLRA.

It's possible that the President also took into account certain other aspects of my background, such as my volunteer work as a Court Appointed Special Advocate for abused and neglected children, and my teaching on legislation and public policy at George Mason University School of Law. While these sorts of activities do not increase my knowledge of labor law, they widen my perspective and enhance my ability to deal with a wide variety of challenges and individuals.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a Member of the FLRA?

As I stated in response to Question 1, I have spent the last decade and half dealing directly with the very types of labor relations disputes that come before the FLRA. I have handled dozens of labor arbitrations; have represented clients in numerous unfair labor practice proceedings; and have advised clients about countless issues relating to collective bargaining and the interpretation and enforcement of collective bargaining agreements.

In my many years of representing clients in labor and employment matters, I have

never represented a federal agency and have never represented a labor union. I am confident that I will be able to decide cases in an unbiased manner.

4. The President has indicated his intention to appoint you as Chairman of the FLRA if you are confirmed as a Member. What specific background and experience affirmatively qualify you to serve as Chairman?

In addition to deciding cases impartially and expeditiously as a Member of the Authority decisional component of the FLRA, the Chairman is also, by law, the agency's chief executive and administrative officer. As CEO, the Chairman bears overall administrative responsibility (e.g., budget, human resources, purchasing, Congressional relations) for all components of the FLRA, including the Authority decisional component, the Office of the General Counsel, and the Federal Services Impasse Panel. The Chairman should empower and lead the FLRA's staff in accomplishing the mission of the agency effectively and efficiently. My experience in private practice has taught me how to lead a team of professionals toward a common goal, most typically in situations where I have managed teams of lawyers (often in different cities) working on complex litigation.

5. Have you made any commitments with respect to the policies and principles you will attempt to implement as a Member of the FLRA? If so, what are they and to whom have commitments been made?

I am committed to increasing both the morale and the productivity of the agency and to the principle that the FLRA should issue fair and impartial decisions promptly. However, I have not made commitments to anyone about specific policies or principles that I would implement as Chairman.

6. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

I do not anticipate that the need will arise for me to recuse myself on any issue due to an actual or perceived conflict of interest. That said, if any possible conflict were to present itself, I would seek advice from ethics counsel and err toward recusing myself if there appeared to be a real or perceived conflict of interest.

## **II. Role and Responsibilities of the Chairman of FLRA**

7. What is your view of the role of the FLRA?

Ultimately, the role of the FLRA is to promote labor relations in the federal sector

by impartially and expeditiously resolving disputes between federal agencies and the labor unions that represent the employees of those agencies.

8. What is your view of the role of the Chairman of the FLRA?

As noted above in response to Question 4, in addition to being a Member of the quasi-judicial Authority component of the agency, the Chairman is the agency's chief executive and administrative officer, tasked with oversight of the administrative operations of all components of the FLRA. As the CEO, the Chairman must ensure that the agency has the resources and processes in place -- and that the staff is properly guided, trained and motivated in the use of those resources and processes -- to accomplish its mission.

9. In your view, what are the major challenges currently facing the FLRA and the Authority? What do you plan to do, specifically, to address these challenges?

I do not yet have an insider's perspective on the operations, effectiveness or current challenges of the FLRA. However, there seems to be a prevailing view that the single greatest challenge facing the agency is the backlog of undecided cases. Presently, there is a backlog of close to 400 cases, the great majority of which have been pending for more than 120 days. The core of the FLRA's mission is to decide disputes that are brought to it, and it appears not to be as productive as it could or should be in that regard.

It has been suggested to me that two other challenges that may be factors in the backlog have to do with human capital needs and agency morale. The number of employees currently at the FLRA is down by roughly one third compared to five years ago. More specifically, the number of Senior Attorneys and Case Writers that are integral to the process of rendering decisions has decreased from 16 to nine over the same period. In the 2007 "Best Places To Work" survey conducted by the Partnership for Public Service, the FLRA ranked 31<sup>st</sup> out of 31 small federal agencies. If the results of this survey are to be credited, they suggest that more can be done to engage the agency's employees.

Because I have not yet joined the FLRA, it is difficult to specify in detail the steps that I would take to address the current challenges. I would certainly seek to create an atmosphere of open communication and collaboration among the Members, between Members and staff, and among the various agency components. I would also immediately assess human capital needs, fill critical gaps in staffing, and consider whether any restructuring of the staffing functions might enable the agency to become more productive. Further, I would set measurable performance goals and put into place the methods and procedures that would enable the agency to meet those goals.

If confirmed, I will seek the views of those within the FLRA who, by virtue of their tenure and position, are familiar with the current challenges and are likely to have useful insight about how best to meet those challenges. I will also invite constructive criticism from the Congress and from the FLRA's constituencies -- the federal agencies and unions that come before the agency.

At every step, my ultimate aim would be to create an environment conducive to the impartial and expeditious resolution of disputes that are presented to the agency.

10. What will be your long-term priorities as Chairman of the FLRA?

My long term goals are generally outlined in my response to Question 9, above. If confirmed, I hope to enhance the productivity of the FLRA and the morale of its employees so that it can better accomplish its ultimate goal of promoting federal sector labor relations.

11. Describe your vision of what the relationship should be between the FLRA, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

The FLRA, MSPB and EEOC have distinct mandates and missions under law. They address different problems. For example, the FLRA adjudicates disputes between federal agencies and labor unions, while the MSPB resolves disputes about prohibited personnel practices that affect individual employees. Yet each of these agencies is involved in matters affecting the federal workplace and whether it operates in a fair and positive manner.

Because I have not yet joined the FLRA, I am not in a position to opine in detail about the relationship between it and the MSPB and/or EEOC. In general, I suspect that a certain degree of cooperation and information sharing among these agencies would be beneficial and appropriate, so long as such cooperation does not overstep statutory boundaries between the agencies. Collaboration with regard to providing information and training about workplace practices and about the respective missions of the agencies may also be useful to the federal workforce that these agencies serve.

12. What do you believe is the appropriate role of a Member of the FLRA, and how does that differ from the role of the Chairman?

As noted above in the response to Questions 4 and 8, the Chairman is, by law, the chief executive and administrative officer of the FLRA. Members are not given that role. A Member's principal role is to bring his or her independent judgment to bear in considering and deciding cases. Nevertheless, my own belief is that the



Chairman should consult regularly with his Member colleagues about the administration of the FLRA. In my case, in particular, as someone new to the FLRA, I would expect to consult often with the other Member or Members, who may have more experience and familiarity with the history and functioning of the agency.

13. The federal sector labor management relations statute provides that the Chairman is the "chief executive and administrative officer of the Authority." If confirmed and appointed as Chairman, to what extent, and in what respects, would you fulfill this role in collaboration with the other Members of FLRA? For example, would you try to make key hiring and management decisions by consensus with the other Members, would you make such decisions after consultation with them, or would you make such decisions unilaterally and without consultation?

When the Statute was originally passed in 1978, it made no distinction between the Chairman and the other Members in terms of their authority or role in managing the agency. The Statute was amended in 1984 to specify that the Chairman is the chief executive and administrative officer because Congress perceived that the lack of a single CEO had resulted in inefficiency and a lack of accountability. It is clear that final authority for the management of the agency rests with the Chairman; this is what Congress intended. Nonetheless, I view collaboration and consultation as useful tools, not as burdens to be avoided. I believe that collegiality and open communication among all three Members is of great benefit to the agency and its constituents. I anticipate that, if confirmed, I would actively seek the views of the other Members on significant management decisions.

14. Do you believe Members of the FLRA should have access to all information pertaining to the organization and administration of the FLRA, and would you, as Chairman, ensure that they are provided such information?

Yes.

### **III. Policy Questions**

15. The FLRA revised its strategic plan for Fiscal Year 2004-09 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular, that part of the goal relating to prompt resolution.

- a. What role do you see for yourself in helping achieve this goal?

As stated above in response to Questions 8 and 9, the Chairman must ensure that the FLRA has in place the resources and processes, in conjunction with a

motivated and well-trained staff, to decide cases fairly and promptly. The current backlog of cases indicates that there is room for improvement in terms of promptly resolving cases. If confirmed, my role will be to see that this happens.

- b. Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.

Because I have not yet joined the FLRA, I am not currently in a position to form clear opinions as to whether the FLRA should have additional goals. Further, any significant extension of the the FLRA's authority or mission must come from Congress.

Perhaps, working within its current statutory authority, the FLRA may seek to play a greater role in the resolution of labor disputes through alternative dispute resolution or labor relations training offered to unions and federal agencies. If confirmed, I would explore this possibility and determine whether it would be helpful to the FLRA's constituencies.

16. One way to reduce case processing time is to reduce the number of adjudicated cases. Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities? Please explain.

As noted above in response to Question 15, perhaps case filings might be reduced if ADR or improved labor relations training were provided to the management of federal agencies and federal sector labor unions. Through these modalities, the parties might be better able to resolve incipient disputes short of formal case filings. If confirmed, I will be in a position to better assess the relative advantages and disadvantages of this approach.

17. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under federal service labor-management law. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that, although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

In my 16 years of private practice, I have often seen ADR used to good effect. Other things being equal, litigation is expensive and tends to exacerbate labor-management tensions rather than relieve them. On the other hand, I have also observed that, when parties are not fully engaged in or committed to ADR, it can be a waste of time and resources. It's difficult to know beforehand whether ADR will be beneficial.

I personally have not observed that ADR creates undue pressure to reach settlement. In my experience, if the parties negotiate terms that they find agreeable, they settle. If not, they do not settle and they proceed with litigation. Whether in the private or federal sector, settlement should be voluntary. If confirmed, I will assess the effectiveness of existing ADR programs and explore whether there are opportunities to implement different or additional ADR programs.

18. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

Because my own experience thus far is in private sector labor-management relations, I am not in a position to opine about the state of federal labor-management relations. I suspect it is relatively healthy and constructive at some agencies, relatively poor at others, and susceptible of improvement everywhere. Whatever the current state of federal labor-management relations, if I am confirmed, I will do everything within my power and within the legal mandate of the FLRA to improve the current state of affairs.

19. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

Because I have not yet joined the FLRA and have not operated within the confines of the Statute, I am not in a position to opine about whether it can be improved. Further, changes to the Statute are within the purview of the Congress, not the FLRA or its Chairman. If I am confirmed and gain experience working with and under the Statute, I will be pleased to offer to the Congress my views on the Statute if invited to do so.

20. What kinds of effects, if any, do you believe a blended workforce of federal employee and federal contract personnel is having on federal labor-management relations?

I understand that, as a general proposition, some federal sector labor unions object to the increasing use of federal contract personnel. As a lawyer currently practicing in the private sector, this is not an issue about which I have formed clear opinions. If I am confirmed to the FLRA and this question comes before me in some fashion, I will consider it carefully and impartially.

IV. Relations with Congress

21. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

22. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I would hope to have open and regular communications with the Congressional committees and Members who have interest in and oversight responsibilities for the FLRA. I will make myself available to testify or to confer on a less formal basis as requested, and will welcome the views of interested Members who wish to comment on the management and operations of the agency.

V. Assistance

Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

The foregoing answers are my own. I obtained some information about the historical and current situation at the FLRA from its staff.

## AFFIDAVIT

I, THOMAS M. BECK, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Thomas M. Beck 8-31-08

Subscribed and sworn before me this 31 day of Aug, 2008.

Mary E. Warren 7023604  
Notary Public



MARY E. WARREN  
Notary Public  
Commonwealth of Virginia  
My Commission Expires 11/3/210



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

July 9, 2007

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Thomas M. Beck, who has been nominated by President Bush for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated June 27, 2007, from Mr. Beck to the agency's ethics official, outlining the steps Mr. Beck will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Beck is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert I. Cusick".

Robert I. Cusick  
Director

Enclosures





S. Hrg. 111-882

# NOMINATIONS OF HON. ERNEST W. DUBESTER, JULIA AKINS CLARK, AND RAFAEL BORRAS

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## HEARING

BEFORE THE

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

NOMINATIONS OF HON. ERNEST W. DUBESTER TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY; JULIA AKINS CLARK TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY; AND RAFAEL BORRAS TO BE UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

JULY 29, 2009

Available via <http://www.gpoaccess.gov/congress/index.html>

Printed for the use of the  
Committee on Homeland Security and Governmental Affairs



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## CONTENTS

Opening statements:	Page
Senator Akaka .....	1
Senator Voinovich .....	3
Senator Collins .....	17
Prepared statements:	
Senator Akaka .....	31
Senator Voinovich .....	34

### WITNESSES

WEDNESDAY, JULY 29, 2009

Hon. Ernest W. Dubester to be a Member, Federal Labor Relations Authority	4
Julia Akins Clark to be General Counsel, Federal Labor Relations Authority ..	5
Rafael Borras to be Under Secretary for Management, U.S. Department of Homeland Security .....	18

### ALPHABETICAL LIST OF WITNESSES

Borras, Rafael:	
Testimony .....	18
Prepared statement .....	87
Biographical and financial information .....	90
Letter from the Office of Government Ethics .....	98
Responses to pre-hearing questions .....	99
Responses to post-hearing questions for the Record .....	143
Letters of Support .....	153
Clark, Julia Akins:	
Testimony .....	5
Prepared statement .....	60
Biographical and financial information .....	63
Letter from the Office of Government Ethics .....	73
Responses to pre-hearing questions .....	74
Dubester, Hon. Ernest W.:	
Testimony .....	4
Prepared statement .....	36
Biographical and financial information .....	38
Letter from the Office of Government Ethics .....	48
Responses to pre-hearing questions .....	49



**NOMINATIONS OF HON. ERNEST W. DUBESTER, JULIA AKINS CLARK, AND RAFAEL BORRAS**

WEDNESDAY, JULY 29, 2009

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 3:07 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senators Akaka, Collins, and Voinovich.

**OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. The hearing of the Senate Committee on Homeland Security and Governmental Affairs will come to order.

Good afternoon and welcome to all of you here today.

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Ernest Dubester to be a Member of the Federal Labor Relations Authority (FLRA), Julia Clark to be General Counsel of the Federal Labor Relations Authority, and Rafael Borrás to be Under Secretary for Management, U.S. Department of Homeland Security (DHS), whom we will introduce later in the hearing.

Mr. Dubester attended Boston College and received his law degree at Catholic University. Mr. Dubester has been involved in public service since 1975. After graduating from law school, he worked as legal counsel to the National Labor Relations Board.

In 1993, President Clinton nominated Mr. Dubester to serve on the National Mediation Board (NMB), and the Senate unanimously confirmed him. He became the chairman of the NMB in 1993. Mr. Dubester also has taught law at the George Mason University School of Law and the Catholic University School of Law.

Ms. Clark graduated from Oklahoma Baptist University and received her law degree from the Washington College of Law at American University. For the past 14 years, she has served as general counsel to the International Federation of Professional and Technical Engineers, a union that represents dedicated Federal employees throughout the country, including many in my home state of Hawaii.

The positions for which Mr. Dubester and Ms. Clark have been nominated are among the most important to Federal employees. If

confirmed, I expect these nominees to be strong advocates for fair employment practices in the Federal Government.

I want to congratulate you both on your nominations to these important positions and welcome your families. I understand that you both have some family and friends in the audience, and I want to give you the opportunity to introduce them to the Committee.

Mr. Dubester, will you begin with your introduction?

Mr. DUBESTER. Thank you, Mr. Chairman. The most important member of my family is here, my wife, Karen Kremer. When I met her for the first time, about 22 years ago, she was working for Senator Howell Heflin on the Senate Judiciary Committee. Now she works for the Administrative Office of the U.S. Courts, and she recently reached the milestone of 25 years of Federal Government service.

Sitting directly behind her are two of our friends, George Honyara, who also happened to work for the Federal Government almost 25 years, and Jim Pope.

Senator AKAKA. Thank you. I want to welcome your wife, Karen, and your friends who are here. And I would also like to welcome all of your supporters who are here.

Mr. DUBESTER. Thank you.

Senator AKAKA. Will you please introduce your family and friends, Ms. Clark?

Ms. CLARK. Yes. Thank you, Chairman Akaka, for giving me that opportunity. My mother and father are here, Jack and Loreen Akins from Denton, Texas. My brother and sister-in-law, Tim and Debbie Akins, are here from Highland Village, Texas. My brother-in-law, Chris Clark, is here from St. Louis, Missouri. In addition, my step-daughter, Lisa Nichole Clark, is here, and my grandson, her son, Drake Clark, is here. And behind me is my husband, Nick Clark. Thank you.

Senator AKAKA. Welcome to all of you here today. I want to say aloha and welcome. We are happy to have all of you here today.

Mr. Dubester and Ms. Clark, your nominations come at a critical juncture for the FLRA. The FLRA is responsible for providing leadership in establishing policies and guidance relating to Federal sector labor relations. It also resolves complaints of unfair labor practices and decides issues involving Federal union representation.

These are very important responsibilities. For far too long, however, the FLRA has failed to carry out its mission. The FLRA has been without a general counsel since February 2008. Moreover, prior to October 2008, the FLRA had only one member. Last year, I am glad we were able to fill two of the seats; however, it is better to have a full complement. Personnel shortages have led to a serious backlog of cases at the FLRA, and I trust you will work to rein-vigorate the FLRA.

I am also concerned about low employee morale at the FLRA. In the Partnership for Public Service's 2009 Best Places to Work rankings, the FLRA ranked last among small Federal agencies. The FLRA received the lowest score in several categories, including effective leadership, strategic management, and employee training and development. Clearly, big changes are needed to address these serious issues. I look forward to hearing the nominees' thoughts on these issues.



During the past Administration, Federal employees and their representatives at times believed their views were not adequately considered when changes to Federal programs and workplace policies were made. In your roles, if confirmed, you can help rebuild strong partnerships between unions and management throughout the Federal Government, which I believe is necessary to help agencies best carry out their missions.

I am happy to have my good friend and partner, Senator Voinovich, here with me today, and he can speak from experience on some of these concerns. For many years, Senator Voinovich and I have sat on this Committee together and worked to address problems in the Federal workforce. Senator Voinovich has proven himself to be a champion of these issues.

Senator Voinovich, would you please make your opening statement at this time?

#### OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Senator Akaka. You have done a pretty good job of laying out the challenges here. I wonder if the same staff member who wrote your statement wrote mine. [Laughter.]

I am pleased to be here to review the qualifications of two individuals nominated by the President of the United States to fill important positions at the Federal Labor Relations Authority. From what I can see, the President has nominated two very qualified individuals for those positions.

I commend both of you for your willingness to serve your country at this important time in the FLRA's history. As you well know, the Authority faces significant challenges in its attempt to fulfill its statutory mandate to encourage "efficient operations of the Government" through positive labor-management relationships.

Senator Akaka and I have talked about this, but you are only as good as your team, and it is really too bad that the FLRA has fallen so far down that the Partnership for Public Service has said it is ranked last in overall employee satisfaction among small agencies. So you both are going to have a challenge to change that poor ranking, and I would be interested to get your insights into how you think you can get that done.

The FLRA's case backlog is intolerable. I ran into a couple of my good friends from the trade unions yesterday, and I said that I just wish, Senator Akaka, that somebody had called to tell us how far behind the FLRA had fallen in processing cases because maybe we could have done something earlier to get some needed folks over there. So that is another challenge that you have.

I understand that the FLRA has crafted some performance goals to try to eliminate the case backlog, and I think it is going to take that plan plus some innovative strategies for disposing of these pending complaints and appeals in a timely and conscientious manner while continuing to process the normal influx of complaints and appeals. It is not going to be an easy job.

So I commend you for your willingness to answer this newest call to service, and I thank you for your past sacrifices. And I want to thank your families for the sacrifices they have made over the years so that you can serve in the capacities that you have.

Senator AKAKA. Thank you very much, Senator Voinovich.

The nominees have filed responses to biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made a part of the hearing record, with the exception of the financial data.

It is on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, I ask the nominees to please stand and raise your right hands.

Do you swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DUBESTER. I do.

Ms. CLARK. I do.

Senator AKAKA. Thank you.

Let it be noted for the record that the witnesses answered in the affirmative.

Mr. Dubester, please proceed with your statement.

**TESTIMONY OF HON. ERNEST W. DUBESTER<sup>1</sup> TO BE A  
MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. DUBESTER. Thank you, Mr. Chairman, and thank you, Senator Voinovich.

I appreciate the opportunity to come before the Committee for its consideration of my nomination to be a Member of the Federal Labor Relations Authority. I also would like to thank all of the Committee's staff for their work and assistance in reviewing my nomination and for scheduling this hearing.

I think it is also important to recognize the presence here this afternoon of several people from the Federal Labor Relations Authority, including the current chair, Carol Waller Pope. And I know several key staff members from the FLRA are here as well, and I appreciate their attendance. I also want to add that it is my personal pleasure to appear this afternoon alongside of Julia Clark, the President's nominee to be the general counsel of the FLRA.

It is particularly an honor to appear before you as President Obama's nominee to be a member of the FLRA because I am strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the Federal sector. In my 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, nearly 20 of those years were in the Federal sector.

When I was still in law school and considering my first professional opportunity, I decided to join the staff of a Member of the National Labor Relations Board, as you pointed out, Mr. Chairman. In fact, it was during my tenure at the NLRB that Congress enacted the Federal Service Labor-Management Relations Statute, a law that, as the Committee knows, is generally modeled after the

<sup>1</sup> The prepared statement of Mr. Dubester appears in the Appendix on page 36.

National Labor Relations Act. And, indeed, this year marks the 30th anniversary of the FLRA.

As you also pointed out, Mr. Chairman, during President Clinton's Administration, I was privileged to serve as the Chairman and a Member of the National Mediation Board, the independent agency that oversees labor relations in the airline and railroad industries. There I was responsible for harmonizing the goals of another collective bargaining statute with the public demand for the highest standards of employee performance and the efficient accomplishment of the operations of government.

If confirmed, I will dedicate myself to working to ensure that the FLRA fulfills its mission by adjudicating disputes fairly, impartially, and expeditiously and by providing quality decisions that enhance the stability of Federal sector labor relations.

An important part of this effort will be to make sure that the Authority has the resources to fulfill its responsibilities. Indeed, if confirmed, I look forward to working with each and every person on the FLRA staff, including my colleagues on the Authority, as well as the Federal sector's labor and management representatives to help establish the FLRA as one of the stellar independent agencies within the Federal Government.

Again, I appreciate the opportunity to appear before you, and I will be pleased to answer any questions that you may have.

Senator AKAKA. Thank you very much, Mr. Dubester, for your statement.

Ms. Clark, will you please proceed with your statement?

**TESTIMONY OF JULIA AKINS CLARK<sup>1</sup> TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY**

Ms. CLARK. Thank you, Chairman Akaka, Senator Voinovich, and all of your gracious staff who have treated us with such courtesy and respect in this process. I truly appreciate everything you have done to bring this day about.

It is the greatest honor to be asked to serve one's country as a public official. If confirmed, I promise to do my utmost to fulfill my statutory responsibilities in the public interest. I understand the role of the General Counsel. The role is to investigate unfair labor practices and, where merited, to issue and prosecute complaints.

The General Counsel is also responsible for managing the employees of the Office of General Counsel, including all of the regional offices. In that capacity, that means also supervising the conduct of representation proceedings. The General Counsel is also part of the management team of the Authority and must work in a collaborative way with the chair and the other members. I feel that my background and experience has prepared me well for this role.

I was honored during the period of time between the election and the inauguration to be asked to serve as a part of the President's transition team that reviewed the FLRA. As I did that, I became very much aware and gained significant insights into the challenges that you described and the capacity of that agency to meet those challenges.

<sup>1</sup> The prepared statement of Ms. Clark appears in the Appendix on page 68.

Since 1995, I have been the general counsel of a national labor organization, and I am a part of that management team. In that role, I have had to supervise and provide leadership to management regarding employee relations and relations with our staff unions. And before that, I was also a prosecutor at the U.S. Department of Justice, and I understand very well the important role that the government plays in enforcing and carrying out public responsibilities.

I understand that the FLRA is facing an enormous challenge right now, and I look forward to the opportunity of bringing what talents I have to this job to make sure that this agency is, once again, a model agency and provides the services that the statute requires. Thank you.

Senator AKAKA. Thank you very much, Ms. Clark, for your statement.

I will begin with the standard questions this Committee asks of all nominees and ask for your responses.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. DUBESTER. No, Mr. Chairman.

Ms. CLARK. No.

Senator AKAKA. Second. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. DUBESTER. No.

Ms. CLARK. No.

Senator AKAKA. Third. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. DUBESTER. Yes, I do.

Ms. CLARK. Yes.

Senator AKAKA. Thank you very much.

Mr. Dubester, one of the most significant challenges facing the FLRA is the need to process cases in a more timely manner and reduce the large backlog of cases that currently exists. If confirmed, what role do you believe you can play in reducing this backlog of cases and restoring public confidence in the FLRA?

Mr. DUBESTER. Well, Mr. Chairman, the first point I think I would make, which is good news at least, is that my understanding is that already this year a meaningful effort has been made in that regard and that within the Authority, more decisions have been issued already this fiscal year than were issued in the previous two fiscal years.

I think part of the explanation for that, as I understand it, is there was already a plan in place to reduce that backlog, which, if I am confirmed to be a member, I would certainly join in. And it starts with collaborative working relationships among the members of the Authority as well as the staff. It includes addressing some of the oldest cases, and most of the cases in the backlog, I believe three-quarters of them, are what I think would be fairly characterized as older cases, and perhaps directly interacting with



the labor-management parties to see whether there was a way of dealing with those cases other than through actual decisions.

Consistent with the statute, the statute imposes a directive on the Authority to provide leadership and guidance to the labor-management participants. So I think another part of that effort would be to provide training to the labor-management parties about their statutory rights and responsibilities to give them better understanding. And I think one of the hopeful consequences of that would be perhaps it could lead to a reduced number of frivolous or less significant kinds of cases.

I think another program that needs to be mentioned is the FLRA's Alternative Dispute Resolution (ADR) program. And each component, as the Committee knows, has an ADR program. That program is voluntary for the labor-management participants to choose to participate in. I have a strong background in the use of ADR myself. I think that is a very effective way of helping to reduce constructively the number of future case filings, which will help the Authority to deal with the existing backlog.

Senator AKAKA. Thank you, Mr. Dubester.

As you probably know, there is a backlog of approximately 300 unfair labor practice complaint cases and approximately 700 unfair labor practice appeals at the FLRA. That is an issue that we look forward to addressing. After you are confirmed, I hope we can meet with you to determine how you are progressing on reducing this backlog.

Ms. Clark, I would like to hear from you on this issue as well. If confirmed as FLRA general counsel, what specific steps will you take to reduce the backlog of unfair labor practice complaint cases and appeals at FLRA?

Ms. CLARK. Yes, Mr. Chairman. The backlog of cases that you just described, the 300 pending unfair labor practice complaints, those are recommendations from the regional offices that have been fully investigated and recommended for prosecution, and they have been pending for some time. And it is the statutory responsibility of the general counsel to act on those complaints.

The 700 cases are all appeals from regional director decisions not to issue complaints. And, again, that case backlog of 700 cases has simply been pending with no action. And no action can be taken until a general counsel is confirmed.

I consider it one of the greatest challenges facing whoever takes this position, and if confirmed, my initial step will be to speak to senior staff about grouping those cases in ways that make sense and would allow us to triage, do the best we can to get those cases resolved and into litigation, perhaps settled, as quickly as possible.

Parties are not going to stop and have not stopped filing unfair labor practice charges, so that backlog is continuing to mount. But until we deal with it, we cannot possibly restore the confidence of management and union representatives and employees that an agency is there to impartially resolve their disputes. So I intend that backlog to be the very first focus of my attention, if I am confirmed.

Senator AKAKA. Thank you.

Mr. Dubester, as I stated in my opening statement, the FLRA finished last in the 2009 Best Places to Work rankings by the Part-

nership for Public Service for all small Federal agencies that submitted data, and this, of course, is of great concern.

What steps do you plan to take to improve working conditions at the FLRA and make it a more attractive agency to young people seeking Federal employment?

Mr. DUBESTER. Well, the observation that you point out is very disturbing to me because I think in any workplace, including Federal sector workplaces, the employees are the workplace's greatest asset. And so, that certainly is among the highest priorities that I see for the agency.

I think one of the first points that I am making here at this hearing is to let each and every member of the agency staff know of my strong commitment to the agency's mission, which, of course, requires an appreciation of the work and dedicated service that they are going to provide.

I think another important necessity within the workplace is to provide meaningful and effective communication among all staff members and, in my case, if confirmed, people within the Authority. I know that for fiscal year 2010, it is my understanding that the FLRA has established a performance goal involving human capital management. And one of the goals of that is to establish collaborative internal work groups so that employees have an opportunity to provide meaningful input.

I think another point, if confirmed, for me as a member of the Authority would be to foster and support the professional development of each and every member of the agency, and that would include providing meaningful opportunities for training so they could do their jobs even better.

So those would be some of the goals that I would have if confirmed.

Senator AKAKA. Thank you very much. Senator Voinovich.

Senator VOINOVICH. Ms. Clark, you were on the presidential transition team and had a chance to observe the state of Federal labor relations. At this stage of the game, you are coming on board. When you went through this review as part of the transition process, did the problems seem to be the result of a lack of people? Is the FLRA's budget adequate?

What are your observations? You are going to have a big job here, and I would like you to share with us just what your observations are and how you intend to take advantage of the opportunity you have had to review Federal labor relations during the transition process.

Ms. CLARK. Thank you for the opportunity to respond to that question. I wanted to say first that I do intend, as a first step, if confirmed, to work closely with the chair, the other members, and senior staff to make sure I really do understand the problems and collaboratively develop a plan. But my observations initially are—some of them fairly obvious—that these are civil servants we are talking about who really are there to do an important mission. And the long-term vacancies in the key positions of the other FLRA member, the general counsel, and the deputy general counsel, I believe, have contributed tremendously to the slide in morale.

I do note that staff has been decreased 50 percent from 2001 to the present time and the budget has also dropped significantly



from 2001 to the present time. I would note that the staffing does appear to be inadequate. The budget does appear to be inadequate. But as a first step, by filling these key positions, we are going to allow the hard work of all of the agents who have investigated these complaints and made recommendations to come to fruition. That should improve morale.

I think that communication is important and can be greatly improved and that as a leadership team, together with the chair and the other members, taking a hard look at how we can use our existing resources to provide training opportunities and staff resources should make a positive contribution.

But like Mr. Dubester, I truly do look forward and hope I have the opportunity to comment with greater facts and data about what we need to do in terms of staffing and budget. But my initial impression is that it is truly inadequate.

Senator VOINOVICH. Who compiles the FLRA's budget request?

Ms. CLARK. The chief executive of the agency is the chair.

Senator VOINOVICH. So in other words, you would have to work with the chair after making your observations to ascertain whether or not you have an appropriate budget to do the job that you have been asked to do and then try to make sure that the information gets to the Administration so that they can properly give you the resources to get the job done.

Ms. CLARK. That is correct. There is a high premium on working cooperatively, open communication, and I am committed to that.

Senator VOINOVICH. Did you have a chance to look at the salary schedule at the FLRA to find out whether or not you think it is adequate to attract the right people?

Ms. CLARK. There were some issues with respect to the salary schedule, a couple of key issues that had occurred in terms of people working side by side, in terms of the rank and file employees in the general counsel's office, doing the same jobs and being graded differently. A similar situation exists with respect to the top level management in the regions. The first step, really, is to make sure there is fairness in the existing pay scale, and I understand that great strides have been made in that direction already.

Having worked for the Federal Government and the Justice Department and being familiar with the salary schedules for GS employees, particularly litigation attorneys, I think that there probably is a need for some closer examination about whether the salary schedules for certain employees are at the appropriate level.

Senator VOINOVICH. One of the things that Senator Akaka and I have tried to do over the last 8 or 9 years is to give flexibilities to the departments in terms of hiring people. I would be interested, after you have had a chance to observe the FLRA's hiring operations, whether or not you think that you have the hiring flexibilities to get the job done and whether Mr. Berry at OPM is able to respond to your hiring needs.

It is interesting that the agencies that in terms of employee satisfaction are the top performers are the ones that were granted hiring flexibilities. Hopefully, this new hiring system that we are trying to establish by S. 736 will make a difference.

You both have advocated on behalf of labor unions. I ran into a couple of my union friends on the street, and they are really de-

lighted to have some people with union backgrounds nominated for positions at the FLRA.

How do you intend to maintain your impartiality and not have your former relationships with union folks influence your decision-making because I am sure there are going to be cases where you are going to make your former colleagues very unhappy. So tell me about that.

Mr. Dubester, do you want to start?

Mr. DUBESTER. Yes, Senator Voinovich.

Well, first I want to say I am proud of my former associations with some of those folks from labor organizations and look forward to working with them as well as the management representatives and Federal agencies in my new job. I am certainly mindful that, if confirmed, as a member of the Authority, I will be sitting in a quasi-judicial role, and I will have the responsibility of adjudicating disputes in a fair and impartial manner.

I think in my particular background, I would also point out to you that for the last 16 years I have been working as a neutral or as an academic, including working as a mediator and an arbitrator and, of course, teaching. And during the time I was working as an arbitrator, I was selected by labor-management parties and sometimes put on permanent panels. And I was on two permanent panels as an arbitrator selected by parties that I previously worked with during my tenure as chairman and member of the National Mediation Board for 8 years.

So those people that worked closely with me, both the labor as well as the management parties, selected me to work in that neutral capacity. I would like to think that the reason for that selection was because they had confidence that I could fulfill my duties in a professional, fair, and impartial manner.

So, again, I am appreciative of my former associations with labor organizations. Of course, the Federal statute has one of its primary purposes to be collective bargaining, which Congress has found is in the public interest. But I am also completely confident that I can, if confirmed, fulfill my responsibilities in a fair and impartial manner.

Senator VOINOVICH. Ms. Clark.

Ms. CLARK. Thank you, Senator Voinovich. I was very fortunate that my first job out of law school was to work as a prosecutor at the U.S. Department of Justice, and through that experience, I learned about the importance of the public trust and the enormous authority and responsibility of the Federal Government, and I came to understand that what all citizens rely on is that we fulfill our responsibilities as public officials in ways that maintain the public trust. Whether they are pleased or disappointed with the result, the importance is that our work is transparent, is fair and consistent and impartial. That is my guide, and it always has been throughout my career no matter where I have been employed.

As a part of the transition team, I was required to execute an ethics agreement that since that time has limited my ability to appear before the Authority and also to maintain confidences with respect to the work that was performed there.

I feel comfortable that we have been through the ethics process, and we have a highly qualified and cautious and careful ethics offi-

cer at the Federal Labor Relations Authority. So I feel very comfortable that I have all the support I need, the background I need, and the experience I need to fulfill the public responsibility in the way that it should be. And I believe that all of my colleagues and co-workers—management and labor—understand that and are only asking that I fulfill my public responsibilities with fairness and impartiality.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich.

The FLRA plays a key role in Federal sector labor relations. Due to recent personnel shortages, it has been difficult for the FLRA to serve as a neutral party to resolve disputes between labor and management.

If confirmed, what will you do to address that personnel shortage and ensure that the FLRA is able to carry out that important function?

Ms. CLARK. I understand the question to be that given the shortness of staff at the FLRA and the backlog, what is expected to be an increasing workload, how are we going to manage. And I think that it will require great cooperation on the part of the political appointees and senior staff to fairly assess the situation, share resources, and come up with creative strategies.

It is going to require open dialogue and a partnership with the staff union at the FLRA and also, I think, application, wherever we can, of technology improvements to improve our case processing in ways that allow us to do more with less and then provide you with the kind of information you need to give us, in the medium and longer term, the kind of budget resources we need to staff up.

Senator AKAKA. Mr. Dubester, some have said that the current state of labor-management relations in the Federal sector is as poor as it has ever been. I believe that the new Administration is committed to addressing that problem.

What do you believe should be done to improve the relations between employees and the unions that represent them and the Federal agencies?

Mr. DUBESTER. Well, Mr. Chairman, I think that the lack of confidence by the stakeholders, the labor and management representatives, is in many ways related to what you have previously referenced as the low employee morale within the agency. And I think it comes from the lack of confidence in recent years as to whether or not the FLRA has the adequate resources, both in terms of budget authority as well as in terms of human manpower, if you will, to fulfill its mission.

So the previous question addresses that. And I think, as you know, the chair is the chief executive and administrative officer of the agency. So if confirmed as a member of the Authority, I will certainly assist her in any way possible to, again, ensure that we have adequate resources, both budgetarily as well as increased staffing. And I think by doing that, that would be a big first step, both in improving employee morale as well as in improving the confidence that labor-management representatives have in the FLRA's ability to fulfill its responsibilities.

Senator AKAKA. You mentioned the need for adequate resources in your opening statement.

Mr. DUBESTER. Yes, I did, Mr. Chairman.

Senator AKAKA. And this is true. Without the personnel to do the work, there is a problem. And, hopefully, that problem can be eliminated.

Ms. Clark, the FLRA general counsel may prescribe regulations providing for informal methods to resolve alleged unfair labor practice charges prior to issuing a complaint.

What informal methods of resolution do you believe are most effective in resolving these disputes prior to the issuance of an unfair labor practice complaint?

Ms. CLARK. Yes, Mr. Chairman. I am aware that in the past such authority has been used. It was the decision of a subsequent general counsel to not use that authority and change those regulations through the appropriate mechanisms.

It is my professional opinion, though, that particularly in labor relations, where the parties work together everyday to attempt to achieve a common mission, which is in the public interest, that anything we can do to assist those parties in clearly understanding their legal responsibilities and resolving disputes through means other than litigation is in the public interest.

So I would welcome the opportunity, if I get the chance, to take a hard look at what was done in the past, how successful it was, what changes occurred when those pre-complaint resolution procedures were not available, and consider establishing the opportunity for parties to resolve disputes pre-complaint. I am very open to that and would like to look at it more closely.

Senator AKAKA. Thank you. This is my final question, and it is addressed to both of you.

We have discussed the many challenges facing the FLRA. If confirmed, what will be your long-term priorities while at the FLRA?

Mr. Dubester.

Mr. DUBESTER. Well, as I said in my opening statement, Mr. Chairman, I look forward to working with every member of the FLRA staff and my colleagues, as well as the labor-management representatives. And my long-term goal, after tackling the challenges that we have discussed in our questions and answers here today, is to help to make the FLRA one of the stellar independent agencies within the Federal Government.

I happen to be a big sports fan. And if you are a sports fan, a lot of times you watch situations where teams in various sports finish last one year, and then amazingly the next year they finish first, and they go on to win perhaps the world championship.

I am a big one in that last-to-first kind of a metaphor. You have made reference to the human capital survey where, for a variety of reasons, apparently the FLRA employees made the FLRA last in that survey. Well, I am going to make that conversion from last to first within the FLRA. And that would be my long-term goal, maybe even my short-term goal.

Senator AKAKA. Thank you. Ms. Clark.

Ms. CLARK. I share Mr. Dubester's goal. And from preliminary conversations with Chairman Carol Waller Pope and Member Thomas Beck, I think that this is a team that shares this goal, and that it really is incumbent upon us to make the Federal Labor Relations Authority a model for other labor relations systems, one



that we can all be proud of and that fulfills the statutory purpose that has been enacted that finds collective bargaining in the Federal sector to be in the public interest. And the place to start is to restore confidence in this agency as an impartial, timely dispute resolution agency.

So in the short-term and long-term, I look forward and hopefully get to participate in this team effort to make the FLRA a model again.

Senator AKAKA. Thank you very much. Senator Voinovich.

Senator VOINOVICH. Ms. Clark, I think you have talked about the importance of consultation and cooperation. And, of course, you have a chairman responsible for FLRA administrative matters. But I would suggest that it might be good for you and Chairman Carol Waller Pope to maybe walk around the agency for a while talking to people about how they feel about their work environment and get their thoughts and recommendations on how they could do a better job.

I found in my experience when I was mayor and governor that I had a team of individuals who were quite smart and knew management. They went in and talked to agency employees to get their thoughts on how the agency could be improved or their environment could be improved. And so, as a result of that, some of the recommendations that came through for agency reforms were actually recommendations from employees who had been at an agency for years but nobody had ever sat down to talk to them to find out how they felt about their agency. And I think that approach would be really helpful to you, particularly if you are going to start trying to reestablish some employee morale at the FLRA.

The other issue, Mr. Dubester, you talked about was alternative dispute resolution, and I think that is terrific. Where does ADR come in? Do you encourage the agencies when they have a problem to engage in ADR or does ADR occur when they come up to the board?

Mr. DUBESTER. Well, each component of the agency has an alternative dispute resolution program, including the Office of the General Counsel, the Authority, and the Federal Service Impasse Panel. So it could arise at various stages, before either charges or petitions are filed with the Office of General Counsel or even after cases have come to the Authority in efforts to resolve matters without having formal decisions issued.

Senator VOINOVICH. The question I have—and I should be more familiar with it, and I am not—

Mr. DUBESTER. Sure.

Senator VOINOVICH [continuing]. Is that you have various Federal agencies. Are you telling me that Federal agencies have alternative dispute resolution functions where the management would say to somebody, you are unhappy about your work environment and we have something available, namely ADR, that can resolve your concerns before you file your complaint?

Mr. DUBESTER. Well, they do. As a matter of fact, what you are referring to, Senator Voinovich, does not involve the FLRA directly. That involves particular agencies.

Senator VOINOVICH. It is the agency before they get—

Mr. DUBESTER. Under law, every agency has some kind of an ADR program to deal with their internal workings, at least, usually employment matters, so they can resolve them in a more informal manner where the disputing parties have the ability to make decisions themselves without resorting to a more formal adjudicative process.

In the case of matters that would come before the FLRA, we are dealing with situations where the parties involved have a collective bargaining relationship, so they have mechanisms in place there. The alternative would be whether informally—though, as you suggest, communication, just dialogue, informal dialogue, processes that do not require formal processing, in the case of the Authority, formal decision-making—they can voluntarily work together collaboratively to try to craft solutions without resorting to either formal decisions or formal processing.

Again, in the appropriate situations, I think that could be very useful. It is a very good mechanism for improving communication and a very good mechanism for improving the relationships between labor representatives and management representatives from various agencies.

Senator VOINOVICH. I would be interested to see a survey of where complaints originate in the Federal Government and any patterns that exist.

Is part of your responsibility to survey agencies to see whether or not the vehicles they have within the agency are doing the job that they are supposed to be doing or could be improved so that you could cut back on the number of cases that get filed with the FLRA?

Mr. DUBESTER. Sure. Well, if confirmed, as a member of the Authority, because of my strong interest in ADR, as we said, I would try to get a better understanding of what we currently are doing. Part of this goes to external outreach, if you will, to the parties. And I think that is, again, consistent with the statutory directive to provide leadership to the labor-management representatives, which I think can help to provide stable and constructive labor relations.

I know that the use of ADR, based on information that I reviewed, has gone up and the percentage of voluntary resolutions has been quite successful. But I think that goes to outreach. It is analogous to your suggestion, Senator, about going around to staff within the agency, from people within the FLRA, including members of the Authority, the general counsel.

I think it is also part of external outreach and showing that you are receptive and open-minded to hearing from the labor-management parties as to what is going on in their lives and business, sharing with them, to the extent they are unfamiliar with it, the availability of ADR as a tool to resolve their problems; providing them training in ADR to help them with more effective communication and interpersonal relations, which I think, even if they do not use the ADR processes, will reap great benefits just in terms of their day-to-day working labor-management relations.

So I think those are ways, I believe, that the FLRA is already working with the parties, but I hope would continue and maybe even increase in use.



Senator VOINOVICH. Good.

Senator AKAKA. Thank you very much, Senator Voinovich.

I want to thank you all. At this time, there are no further questions for Mr. Dubester and Ms. Clark. There may be additional questions for the record, which we will submit to you in writing. The hearing record will remain open until the close of business Friday for Members of this Committee to submit additional statements or questions.

I want to thank you, Mr. Dubester and Ms. Clark, for being here and for bringing your families, friends, and supporters. I am pleased to be able to hold a hearing for such well-qualified nominees.

It is my hope that the Committee will take up your nominations very soon and your nominations will be considered by the full Senate very shortly. Thank you very much.

Mr. DUBESTER. Thank you very much.

Ms. CLARK. Thank you.

Senator AKAKA. I would like to call on our next witness, Mr. Borrás. Will you please come forward?

Welcome to this part of today's hearing as the Committee on Homeland Security and Governmental Affairs meets to consider the nomination of Rafael Borrás to be Under Secretary for Management at the Department of Homeland Security.

Mr. Borrás has been nominated to this important position with over 20 years of Federal, local, and private sector management experience. It is my hope that this diverse experience will guide the nominee well, should he be confirmed.

As you know, I, along with my friend Senator Voinovich, feel that the Under Secretary for Management is an important position because he or she oversees the Department's budget, finances, procurement, human capital, information technology (IT), facilities, as well as performance measures. The role is so important that I co-sponsored Senator Voinovich's bill, the Effective Homeland Security Management Act, which would elevate this position to a term-appointed deputy secretary with a fixed 5-year term.

This legislation, which was considered by this Committee this morning, would promote more focused and robust management at DHS, which is critical to improving the cohesiveness, efficiency, and effectiveness of the Department's action. Even if our bill is not enacted this year, I trust that Mr. Borrás will use his position to implement sound management practices.

The Department of Homeland Security has been on the Government Accountability Office (GAO) high-risk list since 2003 because of the challenges it faces through its continued transition from over 20 distinct entities into the third largest department in the Federal Government. Since its creation, DHS has been one of the biggest management challenges in the Federal Government.

Mr. Borrás, you will be coming to an agency that continues a long struggle to integrate and become one DHS. You will have been left several management reform projects to take over. I have no doubt from our discussions with you that you have your own enthusiastic ideas as well, and I look forward to hearing more about those ideas today.

As you know, one of my primary concerns at DHS has been that of accountability. But today, there are far too many contractors at DHS and not enough Federal employees to oversee them. It is essential that we fix the contractor/federal employee mix to ensure that there are enough career professionals to carry out the critical missions of this department. It is also important that agencies look to innovative methods to leverage the diverse talent of the Federal workforce to fulfill critical mission gaps.

In particular, a problem throughout the Federal Government, but especially important at DHS, is the acquisition workforce. These are the professionals who are responsible for the development and execution of billions of dollars worth of contracts every year. Unfortunately, as this Committee has heard in several hearings, the government is losing acquisition professionals to retirement or other employers, and it is not recruiting and training new ones quickly enough. This is an issue that my Oversight of Government Management Subcommittee will continue to address in the near future.

More broadly, DHS, with the rest of the Federal Government, faces looming workforce challenges as baby boomers retire. DHS must attract the next generation of employees, proud of Federal service and committed to the Department's mission. This will require seeking out talent with unique skills from both outside and within the government. These efforts can best be achieved by ensuring the use of veterans' preference, a diverse workforce, and a commitment to working with employee unions and groups.

Again, Mr. Borras, I want to thank you for your willingness to take on the challenges that you will surely face in this position. It is my hope that you will work closely with this Committee as we move forward in addressing the strategic management challenges facing DHS.

At this time, I would like to call on Senator Voinovich for his opening statement.

Senator VOINOVICH. Thank you, Mr. Chairman. And I want to also welcome you, Mr. Borras, and thank you for being here today. We look forward to hearing about your qualifications and your desire to serve.

Senator Akaka, since DHS was established in 2002, management issues have existed and persisted, and we have been concerned about these issues ever since. In 2003, the Government Accountability Office included implementing and transforming DHS on its list of areas at high risk to fraud, waste, abuse, and mismanagement because when DHS was created, it became responsible for transforming 22 agencies into one department with over 200,000 workers. Failure to effectively address management challenges at DHS could have serious consequences for our national security.

The truth of the matter is that the creation of DHS is probably the most formidable management challenge ever undertaken by the Federal Government, even beyond the management changes that were made in the Department of Defense.

In December 2005, the DHS Inspector General issued a report warning of major management challenges facing DHS. The Homeland Security Department's own Performance and Accountability Report, released in November 2006, states that the Department did not meet its strategic goal of "providing comprehensive leadership

and management to improve the efficiency and effectiveness of the Department." In 2007, the Homeland Security Advisory Council Culture Task Force Report also detailed persisting organizational challenges within DHS.

This year, GAO retained implementing and transforming DHS on its high-risk list because the Department has not yet developed a comprehensive plan to address the transformation, integration, management, and mission challenges it faces. And I mentioned this to you during our earlier meeting, Mr. Borrás. I have been trying to get GAO and the Department to agree on some metrics to determine whether DHS, in fact, is moving forward with this transformation.

Because of such issues, Senator Akaka and I have spent much of our time on the Oversight of Government Management Subcommittee examining DHS management issues, and last year we included a provision in the Implementing Recommendations of the 9/11 Commission Act of 2007 that requires the DHS Under Secretary for Management to have extensive executive level leadership and management experience, strong leadership skills, a demonstrated ability to manage large and complex organizations, and a proved record in achieving positive operational results.

As Senator Akaka mentioned, we did vote a bill out of Committee today that would provide for a 5-year tenure for this individual because we feel that kind of tenure will help us make the management transformation that needs to be made at DHS.

Mr. Borrás, I look forward to hearing specific examples about how you think you meet each of these statutory requirements because, again, ensuring the effective management of DHS remains one of my top priorities and will stay at the top of my list until I tip my hat at the end of next year.

Senator AKAKA. Thank you, Senator Voinovich. Senator Collins.

#### OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

I am here because I, too, view this position as being absolutely critical to the success of the Department of Homeland Security. As both the Chairman and the Ranking Member have pointed out, this is an enormously complex department. It has more than 200,000 employees. It is comprised of approximately 23 agencies that were brought together from a host of other departments and agencies when we passed the legislation creating the Department of Homeland Security.

It has not been a smooth process to integrate all of these agencies and bring them together toward the common goal of protecting our Nation. So this position and having an individual with strong management experience is absolutely critical to the success of the Department.

I do have some concerns and questions that I want to ask, and I appreciate the opportunity to be here today.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Collins.

Mr. Borrás has filed responses to a biographical and financial questionnaire, answered prehearing questions submitted by the

Committee, and had his financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made a part of the hearing record with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, Mr. Borrás, I ask you to please stand and raise your right hand.

Do you swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BORRAS. I do.

Senator AKAKA. Thank you.

Let the record note that the witness answered in the affirmative.

Mr. Borrás, will you please proceed with your statement?

**TESTIMONY OF RAFAEL BORRAS<sup>1</sup> TO BE UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. BORRAS. Thank you, Mr. Chairman, Senator Voinovich, Senator Collins, and other distinguished Members in this room. I am humbled and honored to appear today before you as you consider my nomination by President Obama to serve as the next Under Secretary for Management at the U.S. Department of Homeland Security.

Thank you for your consideration of my nomination. I also thank the President for the opportunity to once again serve this great country and Secretary Napolitano for her confidence in me and her support throughout this confirmation process.

I also thank this Committee and its Members for being guardians of the Department of Homeland Security. While I have only been an observer of this Department, your efforts obviously have safeguarded the institution and its mission, provided intelligent and thoughtful oversight, and legislatively ensured that the Department's management functions are properly considered in the context of government-wide policies.

Not only were you responsible for the creation of the Department, you have led the fight in finding DHS a home at St. Elizabeths. You have ensured the Department grew more resilient as a result of your investigation into Hurricanes Katrina and Rita and your subsequent legislative and oversight work reforming the Department. And I have learned from listening to those in the Department that you have instilled an understanding of the need to set goals and measure progress so the Department can be accountable to you and the American taxpayer.

As an observer, I have also noticed that the Department's interactions with the Committee, both the Members and the staff, have fostered a climate of bipartisan collaboration devoid of partisan rancor. If confirmed, I look forward to working with you to ensure that this Department fulfills the vision of the Secretary and this Committee: One DHS that is integrated, efficient, and a Department that understands and executes its mission.

<sup>1</sup> The prepared statement of Mr. Borrás appears in the Appendix on page 87.



There is no professional challenge or reward greater than ensuring that the Department of Homeland Security achieves its mission. If confirmed, I know that I will have the immense responsibility of providing management support to the mission of protecting America.

As you consider my nomination, I ask that you consider the totality of my 27 years in public, private, and nonprofit sectors as a leader and a manager. I also have an intimate understanding of the challenges that the Department's State and local partners face each and everyday due to my work for the cities of Hartford, Connecticut, and New Rochelle, New York. I have held a wide variety of management positions that have allowed me to lead such diverse organizations as administration and finance, human resources, information technology, acquisition, and security, each of which is represented by the lines of authority that report to the Under Secretary for Management.

If confirmed, I have three principal areas of focus for the Department of Homeland Security: Financial management, acquisition management, and human capital management. My approach to these areas of focus would be to provide an integrated solution that would link an emphasis on financial management, acquisition review and transformation, and a holistic approach to human capital management that would help drive DHS toward improved management, accountability, and performance.

Thank you, Mr. Chairman and Members of the Committee, and I look forward to answering your questions.

Senator AKAKA. Thank you very much, Mr. Borrás. I will begin with the standard questions this Committee asks of all nominees.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BORRAS. No, sir.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BORRAS. No, Mr. Chairman.

Senator AKAKA. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. BORRAS. I do.

Senator AKAKA. Thank you very much. And before I begin my questions, I would like to give you the opportunity to introduce your family and others who are here.

Mr. BORRAS. Thank you, Mr. Chairman.

First of all, I would like to make the Committee aware that I am joined this afternoon by my wonderful wife who is seated behind me, Ivelisse; my daughter, Nicole, who represents our five children, and that is a management feat in itself.

I am also joined by my new friend, Elaine Duke, who is the current Under Secretary for Management at the Department and who has ably provided stewardship during this time of transition and has been of great benefit to me as I have come to learn DHS. I also have here a colleague of mine who serves with me on the Mont-

gomery County Ethics Commission, Gilles Burger, and I am pleased that he is here today with me.

Also, I would like to say that I am definitely in the presence of my mother and father, who passed away in the last couple of years but are with me each and every day. And it was their hard work, their dedication, and their encouragement that led me to public service. And I could not let this moment go without recognizing them today.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much. Because she has worked for a while with us, and we have worked well with her, I just want to welcome Elaine Duke to the Committee.

Mr. BORRAS, as you may know, the Government Accountability Office has faulted the Department of Homeland Security for its overreliance on contract personnel. DHS has said that it plans to in-source more positions in the future.

What would you do to right size the mix of contract personnel and Federal employees?

Mr. BORRAS. Mr. Chairman, I would say that, if confirmed, I would apply the same techniques and the judgment I have used throughout my long career, beginning in the city of Hartford, where we undertook a very comprehensive right-sizing strategy to realign the government.

I do not think inherently there is anything wrong with having a blended workforce. What is problematic is having a workforce that is made up of contractors that may not have the proper management controls and oversight in place. The utilization of contractors, like any other form of acquisition, requires strong requirements, a strong indication of the expected outcome, and I also believe a sunset feature.

If we hire contract workers, we should have a clear understanding of what they are going to do to contribute to the mission, specifically how we will manage and oversee them, and what is the end date. I believe that it is very important to ensure that we do not have contract workers who are performing either inherently governmental or nearly governmental functions. I also believe that addressing this issue would be among one of my highest priorities, again, if confirmed.

Senator AKAKA. Thank you.

Let me follow up with one issue that has consistently come up in talking about contractors at DHS, and that is the lack of clear statistics regarding the numbers and types of contractors in use by the Department.

If confirmed, would you be willing to assess the current number of contractors and provide this Committee transparent accounting of how many and what kind of service contractors are at DHS?

Mr. BORRAS. If confirmed, Mr. Chairman, I believe that the identification of those contractor resources is essential to understand precisely our workforce needs. I do not believe at this time that the Department can adequately represent a number that identifies the exact number of contract workers that are performing work at the Department of Homeland Security.

All of these issues are related to our workforce, whether it be acquisition workforce, IT workforce, where we have so many contrac-



tors currently performing support functions. There is a great need to enhance and build the Department's acquisition workforce, IT workforce, and human capital management workforce.

Until we have a proper accounting of the number of contract employees we have, what role and functions they are performing, and begin to assess how we can migrate back to government employees, we would be unable to make that proper assessment. And I would be, if confirmed, unable to provide a clear direction to this Committee as to what the course of action would be without that information and that data.

Senator AKAKA. Mr. Borrás, one issue that the Oversight of Government Management Subcommittee has focused on for many years is the issue of recruiting a new generation of Federal workers. As I am sure you are aware, the baby boomers are aging and the Federal Government faces a great retirement wave.

Just this morning, this Committee passed favorably a bill that I sponsored with Senator Voinovich to streamline and make more manageable the Federal hiring process. Some of the issues we have tried to address are the length and complexity of the process, workforce planning at agencies, and the use of technology in the process.

Can you share your assessment of the current hiring process and what steps DHS could take to improve it?

Mr. BORRAS. Mr. Chairman, I have spoken with the chief human capital officer and other individuals in the Department to understand what is the perception of impediments to the hiring process and what steps are currently being taken.

I understand that there is a system that was put in place, Talent Link, when complete, to be able to provide cradle-to-grave management of the hiring process. The hiring process certainly begins with the outreach and the networking to new and potential employees. It also extends into the on-boarding process, when we bring new employees on.

In my experience, I have found that one of the ways to build an effective workforce is through the introduction of that employee to the new agency. So how we manage bringing on employees, what I call the care and feeding of employees, during that hiring process, ensuring that it goes smoothly and efficiently, goes a long way toward establishing a good relationship with a brand new employee.

So I believe these systems have to be evaluated. And if confirmed, I would certainly take a very hard look at what programs are in place and assess what needs to be done to improve that hiring process.

Senator AKAKA. Thank you very much. I will now ask Senator Voinovich for his questions.

Senator VOINOVICH. Senator, if it is all right, it would be all right if Senator Collins could ask the questions before I do.

Senator AKAKA. Certainly. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman, and thank you, Senator Voinovich.

Mr. Borrás, I have a number of concerns about your failure to pay taxes on time and in full, in light of the responsibilities of the position for which you have been nominated. So I want to ask you

a number of questions to get the facts out and also, I hope, to ease the concerns that I have.

Let me start by asking, do you personally take responsibility for filing the tax returns for you and your wife?

Mr. BORRAS. Yes, I do, Senator.

Senator COLLINS. Do you file a joint return?

Mr. BORRAS. A joint return; yes, ma'am.

Senator COLLINS. It is my understanding that on your 2005 income tax return, you failed to include \$9,301 in income for your wife's part-time work.

Did you receive a W-2 form for this income?

Mr. BORRAS. Senator, I believe I did.

Senator COLLINS. Can you explain to the Committee why you did not report more than \$9,300 of your wife's income?

Mr. BORRAS. Senator, the issue you have raised is one which I certainly regret having had occur. I have disclosed that information and made all the details available to the Committee. I am happy to continue to answer those questions.

The responsibility for the omission, including that document, in my tax return that year is solely mine and one which certainly I regret. And the oversight was clearly one that is certainly regrettable. Not only did it happen for my 2005 filing; in my 2006 filing, I committed the same error, both of which I provided details.

Senator COLLINS. Well, we will get to 2006 in a moment. I want to first establish the facts for the 2005 income tax return.

It is my understanding that on your return for 2005, you listed \$270 for expenses associated with your wife's attempt to establish a beauty business.

Is that correct?

Mr. BORRAS. I did put that there; however, that expense was not allowable due to the amount of income, so it was not a part of my filing.

Senator COLLINS. What I am trying to better understand is why you would look to take a deduction and yet miss reporting more than \$9,000 of income.

Mr. BORRAS. Senator, once again, I would say that my error was in an oversight of one W-2 that was in the total of \$9,000 or so. And I simply cannot provide you a better response other than I failed to include that on my filing.

Senator COLLINS. And it is my understanding that you also failed to report \$50, granted not a huge amount like the \$9,000, in income from an annuity in 2005.

Is that correct?

Mr. BORRAS. There was one 1099-INT, an interest annuity of \$50. That is correct.

Senator COLLINS. So that year, you did not report income from an annuity for which you had a 1099 form and more than \$9,000 for which you had a W-2 form.

Is that an accurate summary of 2005?

Mr. BORRAS. That is an accurate summary.

Senator COLLINS. And then in March 2008, you paid \$3,184 plus \$405 in interest to settle the problems with your 2005 return.

Is that correct?

Mr. BORRAS. That is correct.

Senator COLLINS. Now let us turn to 2006.

In 2006, did you receive a form indicating a withdrawal of \$5,884 in taxable income from your wife's IRA?

Mr. BORRAS. I have stated that I do not specifically recall receiving that 1099-R.

Senator COLLINS. But you did fail to report that income; is that correct?

Mr. BORRAS. That is correct.

Senator COLLINS. And in addition, in 2006, did you fail to include some interest income for which you had a 1099 form?

Mr. BORRAS. That is correct.

Senator COLLINS. And how much was that?

Mr. BORRAS. The total was about \$980.

Senator COLLINS. Finally, on your 2006 taxes, you were late in paying about \$14,000 in taxes owed. Could you explain how that delinquency came about?

Mr. BORRAS. It was my understanding that when I filed my taxes in 2007 for 2006, the full amount of tax owed, which was \$14,286, would be deducted from my taxes. Shortly after filing, I noticed that there had not been a large deduction taken from my checking account, and I followed up with the Internal Revenue Service (IRS) to inquire why that had not been deducted.

So as a result of my following up with the IRS and my conversations with them, I made an electronic payment for that \$14,000 online as I was speaking with the IRS agent on the phone.

Senator COLLINS. Well, the Turbo Tax form shows that you only paid \$286 rather than \$14,286. That is a huge difference.

When was this cleaned up? When were the taxes and penalties and interest paid on the 2006 return?

Mr. BORRAS. In the beginning of June. I do not have the exact date, Senator.

Senator COLLINS. What concerns me is a pattern of carelessness here. You have been nominated for a job that is enormously complex and that is going to require great managerial experience and great attention to detail. We could spend hours talking to you about the management challenges.

If there had been just one incident or one form overlooked, I would certainly understand that. Anyone can make a mistake. But I am concerned about a pattern of significant lapses with regard to your taxes.

I realize my time has expired, but if you have any explanation, if there are extenuating circumstances that the Committee should be aware of—for example, we have had a nominee who was deployed in Iraq at the time that he missed some tax payments. That is an extenuating circumstance.

If there are extenuating circumstances or some justification for this pattern, I need to know it.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Collins.

Senator COLLINS. Thank you.

Senator AKAKA. Senator Voinovich.

Senator VOINOVICH. Yes. I would like to follow up on that line of questioning by Senator Collins.

The job for which you have been nominated requires an individual with broad vision and attention to detail. In conversations with Committee staff, it became clear you did not review your tax return before filing it.

In written questions before the hearing, I asked "In what ways will your attention to detail at DHS be different and improved from your attention to detail regarding your personal matters." And since your response failed to address mistakes with your Federal tax returns, I will ask it again.

For the record, in what ways will your attention to detail at the Department be different and improved from your attention to detail regarding personal matters?

All of us have responsibilities. I just cannot understand this pattern, and it gives me pause. If you are not paying attention to details regarding your personal matters, are you going to pay attention to the duties of this position, read financial audits and surveys on employee morale and so forth?

Mr. BORRAS. Senator, my response to you would be that I certainly have acknowledged making mistakes 2 years in a row. Certainly, I have filed my taxes in both of those years, regrettably, with errors. But recognizing those mistakes, I did take corrective action; certainly have had no problem with 2007 and 2008 filings. And I filed taxes for over 30 years, and I have no pattern of making those kinds of mistakes.

In addition, I would certainly want to say that in my 27 years of professional work, progressive responsibility at local government, in the Federal Government, and in the private sector, there has never been any issue related to attention to detail, anything about my performance that has indicated any level of concern.

I have managed successfully very difficult financial situations, at the local, the Federal, and even the private sector level, I believe with distinction. I have been commended for that. I have never had an investigation that has challenged or questioned my financial management, and I stand behind my professional record and believe that it speaks for itself.

Again, I recognize and I regret the errors I made in 2006 and 2007.

Senator VOINOVICH. In my opening statement, I referenced our efforts to ensure that the DHS Under Secretary for Management is qualified to manage the complicated portfolio, including by setting statutory requirements for the DHS Under Secretary for Management.

You referenced your positions at the Department of Commerce and the General Services Administration as "significant management responsibilities."

What specific management responsibilities did you personally have in each of those jobs?

Mr. BORRAS. Well, Senator, my position at the Department of Commerce was as a Deputy Assistant Secretary for Administration, which is the one that I referenced in my response to these questions.

Deputy Assistant Secretary for Administration oversees the departments of finance, budget, at that time, we called it personnel, information technology, security, and acquisitions. That is depart-

ment-wide management responsibility for a budget of approximately \$4.5 billion in a department of about 35,000 employees.

Clearly, I saw that position and I would view that position as being one of considerable responsibility for the charge of affairs for the Department of Commerce, and I believe I served in that role with great distinction.

When I was privileged to serve as regional administrator for the General Services Administration, the Mid-Atlantic region, my position had responsibility for the Public Building Service, the Federal Technology Service, and the Federal Supply Service for the Mid-Atlantic region, for Europe, Africa, and the Middle East.

I had approximately 1,500 employees and an annual budget for my region of about \$1.1 billion. We served all of the Federal agencies in the Mid-Atlantic region, in Europe, Africa, and Middle East, providing services that you, Senator, would be very well aware of with the General Services Administration. And, once again, I would categorize those responsibilities as certainly being significant in carrying out the affairs and supporting the affairs of the Federal Government.

Senator VOINOVICH. Can you give me an example of how you have achieved positive operational results in a difficult climate, such as the climate you are going to face at DHS, in both human capital and procurement challenges?

Mr. BORRAS. Senator, throughout my career in public service, much of my work has required the management of very difficult financial circumstances. When I joined the city of Hartford as a deputy city manager—and a deputy city manager is, in effect, a chief operating officer of the municipal government—we were facing extremely difficult financial situations where we were having budget deficits on an annual basis projected at about 15 to 20 percent of our total budget.

This was due in part to declining tax revenues. The city of Hartford was in a state of decline, both financially and—

Senator VOINOVICH. Excuse me. What time is that again? Refresh my memory. I forgot.

Mr. BORRAS. From the years of 1991 to 1993; those 3 years, 1991, 1992, and 1993.

Those challenges required a fundamental change in the way that we managed and functioned in local government. We undertook a very comprehensive, what we called, right-sizing approach where we had to evaluate each and every program that the city of Hartford managed, to evaluate its effectiveness, to be able to make some judgment as to whether or not we could continue to fund and fund at the same level or whether there were new ways to accomplish some of the things that we were doing.

Additionally, we had incredible public safety needs as crime was increasing, drug use and selling, and drug-related crime was increasing in the city of Hartford. So we also had to fund additional initiatives in public safety. So we had a very difficult time of balancing the typical guns and butter ratio, having to increase funding for public safety and find ways to reduce the size of government. And we were able to do that very effectively and balance our budgets and not raise taxes.



So I am very proud of my work during that period of time of working very hard to evaluate the performance of the programs. We eliminated programs; we restructured others. And we were commended by the business community for developing the first responsible budget, which had not been done to that extent prior in Hartford's history.

Upon coming to the Federal Government and joining the Department of Commerce, my first assignment, Senator, was the Secretary specifically asked me to go serve at the Minority Business Development Agency to "clean up the agency," to review its operations, to make recommendations for changing the way the operation worked, and to evaluate what constituted performance. I am very proud to say that after my first year there, we got a clean financial statement from the Inspector General, and we made radical changes to the way the Minority Business Development Agency operated.

The Secretary also asked me to take the agency through the budget process because there was no director at that time. So he asked me to serve as the acting director. All of these were prior to my coming over and becoming the deputy assistant secretary.

So I had to effectively review the operations of the Minority Business Development Agency, work on a plan for new performance measurements; once again, right size. We eliminated some positions from the agency. And then I was re-asked to join the Secretary's staff as deputy assistant secretary.

There in particular, my focus was on standardization and processes, where I worked very hard to find holistic solutions to improving the efficiency and management of the department. And I am very proud that during that time, we developed a process called Concept of Operations, which integrated the work of the finance department, the budget department, and acquisition to work with each and every one of our 11 bureaus and agencies to better manage the acquisition process to improve efficiencies, improve the time that it takes to complete the acquisition and the overall program effectiveness.

Senator VOINOVICH. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich.

Mr. Borrás, we have held several hearings on pandemic influenza preparedness, including one last month focused on the Federal workforce. During the early stage of H1N1 outbreak, Customs and Border Protection and Transportation Security Administration employees, who interact with hundreds of travelers daily, received conflicting guidance on whether they were permitted to use personal protective equipment such as face masks. I asked the Department to clarify their guidance for employees, and I have not yet received a response.

What steps will you take to ensure that the Department's employees receive clear and consistent guidance on their rights and responsibilities if H1N1 resurges this fall as expected?

Mr. BORRAS. Mr. Chairman, the issue of the Department's response to a potential pandemic outbreak and the use of protective gear certainly would be a very strong priority for the Under Secretary of Management. And if I am confirmed, I would work very



closely with the Office of Health Affairs (OHA) to ascertain the level of threat to our workforce employees.

We would work closely with the Occupational Safety and Health Administration (OSHA) to determine what level of protection is required. And, again, if confirmed, I would follow the advice of OHA and the folks at OSHA to implement a uniform and consistent policy that would provide clear guidance to the employees on how they should provide for their personal protection during a potential pandemic outbreak.

Senator AKAKA. Mr. Borrás, the Oversight of Government Management Subcommittee has been very involved in the oversight of the acquisition management structure at DHS. When Mr. Schneider was Under Secretary, he was the Chief Acquisition Officer, which is separate from the Department's Chief Procurement Officer. However, there historically has been only a dotted line of authority between the Chief Procurement Officer, the Chief Acquisition Officer, and the component acquisition officers.

Can you tell me what you believe the relationship between the Under Secretary for Management, the Chief Procurement Officer, and the component acquisition officers should be?

Mr. BORRAS. Mr. Chairman, my understanding of the roles and responsibility of the Under Secretary for Management is that individual serves in the capacity as the chief acquisition officer for the Department. Furthermore, that position has a direct reporting relationship to the Chief Procurement Officer for the Department.

Currently, the way the Department is organized is that there is a dotted line relationship between the Chief Procurement Officer and the Chief Procurement Officers of each one of the individual component agencies. I believe that, if confirmed, I would certainly want to review the extent to which adequate controls and oversight are in place to effectively manage the Department's acquisition, to effectively identify risks, and that the proper controls are in place to ensure that the Department manages its acquisition process as efficiently as it can.

I do know that the Department has an acquisition review board, which is a very useful tool in managing and identifying risks in the acquisition process. I have stated prior that I believe the most important phase of the acquisition process is the requirements phase, so I believe it is very important that in the acquisition life cycle, management put considerable attention on working with the component agencies to understand and make sure that the requirements are clear and the outcomes are also equally clear so that we have an effective acquisition process.

So if confirmed, that would be among my highest priorities, to evaluate the existing working relationship and make recommendations, if required, to improve that process.

Senator AKAKA. I mentioned in my opening statement that DHS has been on the high-risk list ever since its establishment. Because of this, Senator Voinovich and I requested that GAO look deeper into management integration efforts at DHS. Work done to date has shown that the Department still faces significant challenges in integrating over 20 separate agencies into what Secretary Napolitano has referred to as one DHS.

What experience have you had in your career, in the public and private sectors, that you believe has prepared you to take on this particular integration challenge?

Mr. BORRAS. Thank you. I appreciate the question, Mr. Chairman, because it is fundamentally how I see my career and the evolution of my career, one of progressive responsibility, beginning with my work with integration activities at the city of Hartford, continuing through my work at the Department of Commerce and the General Services Administration. My priority as an executive and as a manager has always been to look for operational efficiencies and integration strategies that will bring the operation into closer alignment.

At the outset, you mentioned the concern of GAO. I take GAO's concern very seriously. In fact, I reached out and spoke with the Acting Comptroller General, Gene Dodaro, recently to better understand GAO's position and concerns relative to inadequacies in management at the Department of Homeland Security. And he reaffirmed for me what I believe to be the principal areas of concern in rectifying the management deficiencies at DHS.

First of all, we spoke at great length about the need for standardization and process. There needs to be a uniform process. As you have so aptly described, the Department was put together with the combination of 22 different agencies, Mr. Chairman, each of which brought its own legacy systems for management.

So right now there is a lack of standardization within the Department. That hampers the Department's ability to function effectively and also to draw statistical information, data, from the agency in a very efficient manner because there is a lack of standardization.

Not only do we have to have standardization, if confirmed, I would focus on repeatability, which is a term that Gene Dodaro used and I certainly agree with. Not only do we have to have standard practices, we have to be able to do them over and over again. So we have to make sure we have consistency in those practices. So I believe those are very important elements.

The GAO and Gene Dodaro in particular has mentioned his concern, the GAO's concern, about the workforce issues, specifically the acquisition workforce and the IT workforce. My initial assessment is that both of those indicate to me a severe challenge in meeting the objectives of the Department, of strengthening management due to perhaps a lack of inadequate resources.

So if confirmed, I would certainly want to evaluate the number of personnel that are available to support those very functions in the Office of the Chief Financial Officer, information technology, and acquisition management to ascertain whether we have the effective resources to be able to do that; review the current processes that are in place to determine whether they are adequate enough; and, quite frankly, also to establish a very good and open relationship with GAO.

Senator AKAKA. Mr. Borrás, this will be my final question.

As you are aware, DHS has faced challenges with poor employee morale and has scored generally low on the best places to work in the Federal Government.

What do you believe are the reasons DHS faces such challenges, and if confirmed, what specific steps do you believe are necessary to improve DHS as a Federal workplace?

Mr. BORRAS, Mr. Chairman, I have looked at the Federal Human Capital Survey, and much like this Committee has expressed concern, it certainly is of concern to me that the employees of DHS, in their response to that survey, rate near the bottom of all of Federal Government. So that is of great concern, and I understand certainly the concern of this Committee.

I chose to look at it also, though, for where the positives are and where can we build for the future. One of the most powerful signals of the result of that survey of the extent to which the employees support the mission of the Department. So I believe they scored very high. Probably 90 percent or greater are in alignment with the mission. So it is very important, if confirmed, to be able to capitalize on that strong mission identification that employees have and begin to address some of their other critical issues.

I believe in my experience in looking at workforce morale issues, Mr. Chairman, they tend to fall in a couple of categories. One is a general sense of equity. Do employees feel they are adequately and equitably being compensated for the work they perform? That is something that has to be looked at very carefully.

Supervision is another very important component. Frontline supervision has a tremendous impact on the morale of employees. I think it is critically important that we look at how we train our supervisors, what levels of support are provided to the supervisors. They have such an important role in determining the job satisfaction of employees. Also, we have organized employee groups that we need to communicate with, we have to align with, and we have to have good relationships with.

So communication, relationship building, looking at issues of fairness and equity, and responding to the great mission identification of the employee base are all powerful tools, Mr. Chairman, that will enable us to work hand in hand to be able to improve the employee morale in the Department.

I am heartened by the enthusiasm and the commitment that Secretary Napolitano brings to that issue. She has conveyed to me on numerous occasions that is among her most important priorities for creating a unified one DHS.

Senator AKAKA. Thank you very much for your responses. I want to thank you for bringing your family, friends, and supporters here today. I want you to know that there may be additional questions for the record, which we will submit to you in writing. The hearing record will remain open until close of business Friday for Members of the Committee to submit additional statements or questions.

Again, I thank you for your responses to this Committee, and we will be considering your nomination as soon as we can here in the Senate.

Thank you very much. This hearing is adjourned.

Mr. BORRAS. Thank you, Mr. Chairman.

[Whereupon, at 5:01 p.m., the Committee was adjourned.]



## APPENDIX

**Nomination Hearing for the Honorable Ernest W. DuBester to be Member, and Ms. Julia  
Akins Clark to be General Counsel, Federal Labor Relations Authority  
&  
Mr. Rafael Borrás to be Under Secretary for Management, Department of Homeland  
Security  
Statement of Senator Daniel K. Akaka  
Committee on Homeland Security and Governmental Affairs  
July 29, 2009**

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Ernest DuBester to be a member on the Federal Labor Relations Authority (FLRA) and Julia Clark to be General Counsel of the FLRA.

Mr. DuBester attended Boston College and received his law degree at Catholic University. Mr. DuBester has been involved in public service since 1975. After graduating from law school, he worked as legal counsel to the National Labor Relations Board.

In 1993, President Clinton nominated Mr. DuBester to serve on the National Mediation Board (NMB), and the Senate unanimously confirmed him. He became the Chairman of the NMB in 1993. Mr. DuBester also has taught law at the George Mason University School of Law and the Catholic University School of Law.

Ms. Clark graduated from Oklahoma Baptist University and received her law degree from the Washington College of Law at American University. For the past fourteen years, she has served as General Counsel to the International Federation of Professional and Technical Engineers, a union that represents dedicated Federal employees throughout the country, including many in my home state of Hawai'i.

The positions to which Mr. DuBester and Ms. Clark have been nominated are among the most important to Federal employees. If confirmed, I expect these nominees to be strong advocates for fair employment practices in the Federal government.

The nominations of Mr. DuBester and Ms. Clark come at a critical juncture for the FLRA. The FLRA is responsible for providing leadership in establishing policies and guidance relating to Federal sector labor relations. It also resolves complaints of unfair labor practices and decides issues involving federal union representation. These are very important responsibilities. For far too long, however, the FLRA has failed to carry out its mission. The FLRA has been without a general counsel since February of 2008. Moreover, prior to October 2008, the FLRA had only one member. Last year, I am glad we were able to fill two of the seats, however, it is better to have a full complement. Personnel shortages have led to a serious backlog of cases at the FLRA. I trust both nominees, if confirmed, will work to reinvigorate the FLRA.

I am also concerned about low employee morale at the FLRA. In the Partnership for Public Service's 2009 Best Places to Work Rankings, the FLRA ranked last among small Federal agencies. The FLRA received the lowest score in several categories, including effective

leadership, strategic management, and employee training and development. Clearly, big changes are needed to address these serious issues. I look forward to hearing the nominees' thoughts on these issues.

During the past Administration, Federal employees and their representatives at times believed their views were not adequately considered when changes to federal programs and workplace policies were made. In your roles, if confirmed, you can help rebuild strong partnerships between unions and management throughout the Federal Government, which I believe is necessary to help agencies best carry out their missions.

Welcome to the second part of today's hearing, as the Committee on Homeland Security and Governmental Affairs meets to consider the nomination of Mr. Rafael Borras to be Under Secretary for Management at the Department of Homeland Security (DHS).

Mr. Borras has been nominated to this important position with over twenty years of federal, local, and private sector management experience. It is my hope that this diverse experience will guide the nominee well, should he be confirmed.

As you know, I, along with my friend Senator Voinovich, feel that the Under Secretary for Management is such an important position because he or she oversees the Department's budget, finances, procurement, human capital, information technology, facilities, as well as performance measurements.

The role is so important that I cosponsored Senator Voinovich's bill, the Effective Homeland Security Management Act, which would elevate this position to a term appointed Deputy Secretary with a fixed five year term. This legislation, which was approved by this Committee this morning, would promote more focused and robust management at DHS, which is critical to improving the cohesiveness, efficiency, and effectiveness of the Department's action. Even if our bill is not enacted this year, I trust that Mr. Borras will use his position to implement sound management practices.

The Department of Homeland Security has been on the Government Accountability Office's "high risk list" since 2003 because of the challenges it faces through its continued transition from over twenty distinct entities into the third-largest Department in the federal government. Since its creation, DHS has been one of the biggest management challenges in the federal government.

Mr. Borras, you will be coming to an agency that continues a long struggle to integrate and become one-DHS. You will have been left several management reform projects to take over. I have no doubt from our discussions that you have your own enthusiastic ideas as well, and I look forward to hearing more about those ideas today.

As you know, one of my primary concerns at DHS has been that of accountability. Today, there are far too many contractors at DHS, and not enough federal employees to oversee them. It is essential that we fix the contractor – federal employee mix to ensure that there are



enough career professionals to carry out the critical missions of this Department. It is also important that agencies look to innovative methods to leverage the diverse talent of the federal workforce to fulfill critical mission gaps.

In particular, a problem throughout the federal government, but especially important at DHS, is the acquisition workforce. These are the professionals who are responsible for the development and execution of billions of dollars worth of contracts every year. Unfortunately, as this Committee has heard in several hearings, the government is losing acquisition professionals to retirement or other employers, and it is not recruiting and training new ones quickly enough. This is an issue that my Oversight of Government Management Subcommittee will continue to address in the near future.

More broadly, DHS, with the rest of the federal government, faces looming workforce challenges as baby boomers retire. DHS must attract the next generation of employees, proud of federal service, and committed to the Department's mission. This will require seeking out talent with unique skills from both outside and within the government. These efforts can best be achieved by ensuring the use of veterans' preference, a diverse workforce, and a commitment to working with employee unions and groups.

Again, Mr. Borras, I want to thank you for your willingness to take on the challenges that you will surely face in this position. It is my hope that you will work closely with this Committee as we move forward in addressing the strategic management challenges facing DHS.

OPENING STATEMENT OF SENATOR GEORGE V. VOINOVICH  
 NOMINATIONS OF ERNEST DuBESTER TO BE MEMBER, FEDERAL LABOR RELATIONS  
 AUTHORITY, JULIE ADKINS CLARK TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS  
 AUTHORITY, AND RAFAEL BORRAS TO BE UNDER SECRETARY FOR MANAGEMENT, U.S.  
 DEPARTMENT OF HOMELAND SECURITY

JULY 29, 2009

Good afternoon, and thank you, Chairman Akaka. I am pleased to be here today to review the qualifications of two individuals nominated by the President to fill important positions at the Federal Labor Relations Authority (FLRA): Ernest DuBester, who has been nominated to serve as a Member of the FLRA, and Julie Adkins Clark, who has been nominated to serve as the Authority's General Counsel.

Mr. DuBester and Ms. Clark, I commend you for your willingness to serve your country at this important time in the FLRA's history. As you well know, the Authority faces significant challenges in its attempt to fulfill its statutory mandate to encourage "efficient operations of the Government" through positive labor-management relationships.

In the 2009 *Best Places to Work* rankings compiled by the Partnership for Public Service (PPS), the FLRA ranked last in overall employee job satisfaction among small agencies by a significant margin. As a former Mayor and Governor, I know firsthand that a motivated workforce is an effective workforce, and I hope to hear from the nominees today about how they will address employee morale issues at the FLRA.

The FLRA also faces a significant case backlog. Approximately 300 Unfair Labor Practice Complaints and 700 Unfair Labor Practice Appeals await disposition. I understand that the FLRA has crafted performance goals that aim to eliminate this backlog by fiscal year 2012.

While I applaud the FLRA's initiative in this area, I encourage the nominees, if confirmed, to pursue innovative strategies for disposing of pending complaints in timely and conscientious manner while continuing to process the FLRA's normal influx of complaints and appeals. In light of this significant case backlog, I am also interested to hear whether the nominees feel the FLRA has the human capital and budgetary resources necessary to fulfill its statutory obligation. I commend you for willingness to answer this newest call to service, and I look forward to your testimony. Thank you, Mr. Chairman.

Thank you, Mr. Chairman. I want to also welcome Mr. Borras and thank him for appearing before us today - we look forward to hearing about your qualifications and desire to serve.

Senator Akaka, you know that since DHS was established in 2002, management issues have existed and persisted. For example:

- In 2003, the Government Accountability Office included implementing and transforming DHS on its list of areas at high risk to fraud, waste, abuse and mismanagement because when DHS was created, it became responsible for transforming 22 agencies into one department and failure to effectively address management challenges could have serious consequences for our national security.
- In December 2005, the DHS Inspector General issued a report warning of major management challenges facing DHS.
- DHS' own Performance and Accountability Report, released in November 2006, states that it did not meet its strategic goal of "providing comprehensive leadership and management to improve the efficiency and effectiveness of the Department."
- In 2007, the Homeland Security Advisory Council Culture Task Force Report also detailed persisting organizational challenges within DHS.
- This year, GAO retained implementing and transforming DHS on its High Risk List because the Department has not yet developed a comprehensive plan to address the transformation, integration, management and mission challenges it faces.

Because of such issues, Senator Akaka and I have spent much of our time on the Oversight of Government Management subcommittee examining DHS management issues, and last year we included a provision in the *Implementing Recommendations of the 9/11 Commission Act of 2007* that requires DHS' Under Secretary for Management to have:

- Extensive executive level leadership and management experience;
- Strong leadership skills;
- A demonstrated ability to manage large and complex organizations; and
- A proved record in achieving positive operational results.

I look forward to hearing specific examples from Mr. Borras today about how he meets each of these statutory requirements because ensuring the effective management of DHS remains one of my top priorities. Thank you, Mr. Chairman.

OPENING STATEMENT OF ERNIE DUBESTER OF VIRGINIA TO BE A MEMBER  
OF THE FEDERAL LABOR RELATIONS AUTHORITY  
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
JULY 29, 2009

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to come before the Committee for its consideration of my nomination to be a Member of the Federal Labor Relations Authority (FLRA). I also would like to thank the Committee's staff for their work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would like to introduce my wife, Karen Kremer. When I first met Karen 22 years ago, she was working for Senator Howell Heflin on the Senate Judiciary Committee. She now works for the Administrative Office of U.S. Courts and recently observed a milestone of 25 years of federal government service. Sitting with Karen is our friend George Honyara, a retired federal government employee.

Mr. Chairman, it is an honor to appear before you as President Obama's nominee to be a Member of the FLRA. It is also a great pleasure to appear alongside Julie Clark, the President's nominee to be the FLRA's General Counsel.

I am strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the federal sector. In my 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, nearly 20 of those years were in the federal sector.

When I was still in law school and considering my first professional opportunity, I decided to join the staff of a Member of the National Labor Relations Board (NLRB). In fact, it was during my tenure at the NLRB that Congress enacted the Federal Service Labor-Management Relations Statute, a law generally modeled after the National Labor Relations Act. Indeed, this year marks the 30<sup>th</sup> anniversary of the FLRA.

During President Clinton's Administration, I was also privileged to serve as the Chairman and Member of the National Mediation Board, the independent agency that oversees labor relations in the airline and railroad industries. There, I was responsible for harmonizing the goals of another collective bargaining statute with the public demand for the highest standard of employee performance and the efficient accomplishment of the operations of government.

If confirmed, I will dedicate myself to working to ensure that the FLRA fulfills its mission by adjudicating disputes fairly, impartially, and expeditiously and by providing quality decisions that enhance the stability of federal sector labor relations. An important part of this effort will be to make sure that the Authority has the resources to fulfill its responsibilities.

Indeed, if confirmed, I look forward to working with each and every person on the FLRA staff, including my colleagues on the Authority, as well as the federal sector's labor and management representatives, to help establish the FLRA as one of the stellar independent agencies within the Federal Government.

Again, I appreciate the opportunity to appear before you and I would be pleased to answer any questions that you may have.

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

## A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)  
Ernest (Ernie) William DuBester
2. **Position to which nominated:**  
Member, Federal Labor Relations Authority
3. **Date of nomination:**  
June 4, 2009
4. **Address:** (List current place of residence and office addresses.)  
Residence: -REDACTED-  
Office: National Mediation Board, 1301 K St, NW, Ste 250E, Washington, DC 20005.
5. **Date and place of birth:**  
9/4/50; Passaic, NJ
6. **Marital status:** (Include maiden name of wife or husband's name.)  
Married to Karen Marie Kremer
7. **Names and ages of children:**  
No children.
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.  
Boston College, 1968-72, A.B. May 1972;  
Columbus School of Law, Catholic University of America, 1972-75, J.D.  
Received May 1975;  
Georgetown University Law Center, 1979-80, LL.M. (Labor Law) received May 1980.



- 9 **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer,

location of work, and dates of employment. (Please use separate attachment, if necessary.)

July 2005-Present: Mediator, National Mediation Board. Permanent duty station-Washington, DC. Primary responsibilities involve mediation of collective bargaining disputes in the airline & railroad industries. Work also includes grievance mediation, helping parties to resolve grievances without having to use the arbitral process. Also train parties in facilitated problem-solving and bargaining, grievance mediation, and specialized areas of negotiation requested by parties;

August 2001-July 2005: Distinguished Professor of Law (and Chair of Dispute Resolution Program), George Mason University School of Law (GMUSL), Arlington, VA. Developed curriculum, taught courses, and supervised co-curricula activities in the dispute resolution area. Taught a variety of courses including Negotiation, Mediation, and Alternative Dispute Resolution (ADR);

August 2001-July 2005: While at GMUSL, worked as an arbitrator & mediator of labor and employment matters;

November 1993-August 2001: Chairman (and Member) of the National Mediation Board (NMB). First nominated to the NMB by President Clinton on Sept. 24, 1993 and unanimously confirmed by the U.S. Senate twice.

Responsibilities included participation in issuance of representation decisions that determine and certify the employees' choice of representative, that determine the appropriate craft or class (bargaining unit), and that ensure that the process occurs without interference, influence, or coercion. This responsibility is similar to that performed by Members of the Federal Labor Relations Authority.

Responsibilities also included mediation of many national collective bargaining disputes in the airline & railroad industries.

Also, worked individually and jointly with fellow Board Members to introduce and promote innovative approaches to collective bargaining, including the creation of an ADR program that

- includes bargaining training, facilitation, grievance mediation, and interest-based bargaining;
- 1997-2001: Adjunct Faculty Member, Catholic University School of Law, Washington, DC. Taught Graduate courses in Collective Bargaining & Arbitration;
- 1984-1993: Legislative Counsel, AFL-CIO, Washington, DC. Primary responsibilities included core labor law & transportation issues. This encompassed most matters arising under federal employment laws such as the National Labor Relations Act, Railway Labor Act, OSHA, Federal Service Labor-Management Statute, and Civil Rights Laws;
- 1981-1984: Associate, Washington, DC law firm of Highsaw & Mahoney. Represented labor unions in labor relations, legislative, administrative, and civil rights matters. Handled many arbitrations and argued cases before numerous federal appellate and district courts;
- 1975-1981: Counsel, National Labor Relations Board. Served most of period as counsel to Chairman John Fanning. Analyzed and recommended disposition of cases, usually in the most difficult categories; performed special projects which served as a basis for the Chairman's or the Board's decisions in cases of significant precedent or procedures. Analysis of cases and preparation of opinions typically involved study of the trial record, assessment of statutes, prior opinions and legislative history, and making preliminary oral briefings to the Chairman and the full Board.
- Also worked as a field attorney in the NLRB's Regional Office, Los Angeles. Duties included trial work, brief writing, and case investigations (1978);
- Summer, 1974  
& part-time fall  
of 1974-spring  
of 1975: Legal Assistant, NLRB.
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.
- 1994: Representing the U.S. Government, Chaired the International Labor Organization's Tripartite Conference on the "Consequences

for Management & Personnel of the Restructuring of Railways" held in Geneva, Switzerland. Labor, management and the governments of fifteen countries were represented.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
  - 2005-2008: Board of Directors, Virginia Mediation Network (non-profit), Richmond, VA. No compensation;
  - 2003-2008: Board of Directors, Northern Virginia Mediation Services (non-profit), Fairfax, VA. No compensation.
12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.
  - Since 1976: New Jersey State Bar Association;
  - Since 1976: Florida State Bar Association;
  - Since 1980: District of Columbia Bar Association;
  - Off & on: American Bar Association (currently a Member);
  - Since 1976:
  - Since 1976: Boston College Alumni Club of Metropolitan Washington, DC. President- 1984-1992;
  - 2002-2009: Association of Conflict Resolution;
  - 1994-2001: University Club, Washington, DC;
  - Since 2003: Society of Federal Labor & Employee Relations Professionals (SFLERP);
  - Off & on: Labor & Employment Relations Association
  - Since 1994:
13. **Political affiliations and activities:**
  - (a) List all offices with a political party which you have held or any public office for which you have been a candidate.
    - None.

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

2008- Worked as a volunteer in Virginia for the Presidential campaign of Barack Obama. Services rendered include phone banks, canvassing, and literature distribution.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

2008 - \$500 to Presidential campaign of Barack Obama.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

While at the National Labor Relations Board, received Sustained Superior Performance Awards in 1979 and 1980 and a Commendation for Distinguished Service to the Chairman in 1980.

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

None.

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

None.

## 17. Selection:

- (a) Do you know why you were chosen for this nomination by the President?

In announcing his intent to nominate me for this position, the President expressed appreciation for my willingness to "join [the] administration in fighting for working families and putting America on a path to prosperity." As set forth more fully in my response to question 17(b), I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, with nearly 20 years of experience in the federal sector.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

As reflected by my response to question nine, I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and as an academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB), and experience with the Federal Labor-Management Statute (Federal Statute) as a mediator and arbitrator. It is also noteworthy that my practical experience is complemented by my Masters of Law in Labor Law from Georgetown University Law Center.

For nearly 20 years, I have worked for the federal government. During the Clinton Administration, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. At that time, I was responsible for implementing the spirit of one of the federal statute's primary purposes, namely, to promote the "efficient accomplishment of the operations of government."

The Federal Labor Relations Authority (FLRA), as the Committee knows, adjudicates disputes arising under the federal statute, deciding cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. I have considerable experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act- the law on which the federal statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued (at the NMB) representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasse, I have 20 years of direct collective bargaining experience working as a mediator and advocate. In addition, I have taught collective bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked several years as an arbitrator. Moreover, I taught arbitration for several years in law school.

Finally, the high-level nature of my prior experience with the federal government would be of assistance if I were to assume the responsibilities of a Member of the FLRA. I have worked with the Leadership, Committee Chairs, and Members – on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House at the highest levels, as well as working collegially with certain Cabinet-level Agencies.

#### B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?  
Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.  
No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?  
No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?  
No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?  
Yes.



6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No, though I became an additional focus of an ongoing ethics inquiry from November 2001 to April 2002. In May of 2001, I left the National Mediation Board (NMB) and was hired by George Mason University School of Law (GMUSL). An interdisciplinary academic Center for Dispute Resolution had recently been established between the GMUSL and another GMU school, the Institute for Conflict Analysis and Resolution. Apparently, questions were raised about the solicitation of funding for the Center which led to an Ethics inquiry by the NMB. As to me, apparently, the question was whether I had solicited funding for the Center while I was still a Member of the NMB. I did not solicit funds for the Center and, as to me, the matter was dropped (not referred for further investigation or prosecution). In fact, I continued to teach at GMUSL the next four years. In 2005, I was rehired by the NMB, the investigative entity, where I currently work.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. I was a plaintiff in a civil suit after I was injured in a car accident in 2002. I sued the person responsible for causing the accident. The case settled prior to trial in 2005.

In addition, in 1999, while I was a board member on the National Mediation Board (NMB), two female mediators brought a suit in U.S. District Court for the District of Columbia alleging that they had been discriminated against by certain senior level employees at the NMB. As a member of the Board, I was named as a defendant. However, the case involved no personal allegations related to me. The NMB eventually settled with the plaintiffs in 2001.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. N/A.
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

No additional information.

#### E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

- REDACTED -

## AFFIDAVIT

ERNEST W. DUBESTER being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Ernest W. Dubester

Subscribed and sworn before me this 29 day of June, 20 09

[Signature]

Notary Public

My commission Expires 9-31-09



United States  
**Office of Government Ethics**  
 1201 New York Avenue, NW, Suite 500  
 Washington, DC 20005-3917

June 26, 2009

The Honorable Joseph I. Lieberman  
 Chairman  
 Committee on Homeland Security  
 and Governmental Affairs  
 United States Senate  
 Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ernest W. DuBester who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Don W. Fox  
 General Counsel

Enclosures - REDACTED

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Ernest W. DuBester to be a Member of the Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as a member of the Federal Labor Relations Authority (FLRA)?

I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, with nearly 20 years of experience in the federal sector. In announcing his intent to nominate me for this position, the President expressed appreciation for my willingness to "join [the] administration in fighting for working families and putting America on a path to prosperity."

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a member of the FLRA?

As noted above, I have 35 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and as an academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB), and experience with the Federal Labor-Management Statute (Federal Statute) as a mediator and arbitrator. I have also earned a Masters of Law in Labor Law from Georgetown University Law Center.

For nearly 20 years, I have worked for the federal government. During the Clinton Administration, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. At that time, I was responsible for implementing a goal shared by the Federal Statute, namely, to promote the "efficient accomplishment of the operations of government."

The Federal Labor Relations Authority (FLRA), as the Committee knows, adjudicates disputes arising under the Federal Statute, deciding cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. I have experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act – the law on which the federal statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasse, I have 20 years of direct collective bargaining experience working as a mediator and advocate. In addition, I have taught collective bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked for several years as an arbitrator. Moreover, I taught arbitration for several years at a law school.

Finally, I have worked with the Leadership, Committee Chairs, and Members – on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House as well as working collegially with certain Cabinet-level agencies.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member of the FLRA? If so, what are they and to whom have commitments been made?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

No.

## **II. Role of a Member of the FLRA**

6. What in your opinion is the role of the FLRA, of the three-member Authority within the FLRA, and of a member of the Authority?

When Congress enacted Title VII of the Civil Service Reform Act of 1978, it established a permanent, full-time, independent and neutral agency to resolve disputes involving rights of Federal employees, labor organizations, and agencies so as to reflect the public demand for the highest standards of employee performance and the efficient accomplishment of the operations of Government. The FLRA's role is to execute five primary statutory responsibilities that include: resolving representation questions and, where appropriate, certifying unions as exclusive representatives based on the results of



secret ballot elections; resolving unfair labor practice complaints; resolving negotiability disputes; resolving exceptions to arbitration awards; and resolving impasses during negotiations.

The three-member Authority is a quasi-judicial body that adjudicates cases regarding the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. Each Member of the Authority has this adjudicative responsibility.

Moreover, consistent with its statutory directive to provide leadership in establishing policies and guidance to participants in the Federal labor-management program (5 U.S.C. Sec. 7105(a)(1)), each Member of the Authority also assists Federal agencies and unions in understanding their rights and responsibilities under the Statute through statutory training of parties.

In addition, each Member of the Authority is responsible for appointment of an Executive Director, regional directors, and administrative law judges as deemed necessary (5 U.S.C. Sec. 7105 (d)).

As noted below, however, only the Chairman serves as "the chief executive and administrative officer of the Authority" (5 U.S.C. Sec. 7104 (b)).

7. The Federal Sector Labor Management Relations statute provides that the Chairman of the Authority is the "chief executive and administrative officer of the Authority." What, in your opinion, should be the respective roles and prerogative of the Chairman and the members in management of the FLRA and in the administration of the Authority and of its decision-making processes?

As set forth above, all three Members of the Authority share equally in certain responsibilities. In other management or administrative matters, I envision the Member providing the Chairman with support and assistance in whatever way requested or deemed appropriate.

8. What do you believe are the biggest challenges facing the FLRA and the Authority? What steps do you plan to take, if confirmed, to address these challenges?

In my view, the biggest current challenges are meeting performance goals, especially to address the existing case backlog; ensuring that there are adequate resources to meet those goals; ensuring that employee morale within the Agency is high; and ensuring that there is confidence among all Agency stakeholders that the FLRA is performing its mission effectively.

I understand that the Authority already has an initiative to reduce, and eliminate, the backlog. If confirmed, I plan to work hard and to work collaboratively with my colleagues to ensure that performance goals are met.

If confirmed, I will support the Chair in any effort to ensure that there are adequate resources to meet performance goals. This includes working to ensure that the most modern and effective tools, including in the IT arena, are available to all Agency employees.

Regarding employee morale and stakeholder confidence, if confirmed, I will convey quickly my strong commitment to the mission of the FLRA. With employees, I will also convey my appreciation for their work and my support for the utilization of their talents to the greatest extent possible. This includes support for their professional development through appropriate training opportunities.

If confirmed, I will convey to stakeholders my receptivity to their ideas and suggestions regarding how the Agency can better serve their needs. I recognize that stakeholders have an enduring interest in the Agency's effective operations while those holding leadership positions at the Agency may change.

9. What will be your long-term priorities as member of the Authority?

If confirmed, I hope to address the challenges discussed in my response to question eight. In addition, my priority will be to ensure that accomplishments are enduring. In addition, hopefully, I will make a contribution in some small way to improving the quality of labor-management relations in the federal sector. Overall, my long-term priority is to work with my colleagues to establish the FLRA as one of the stellar independent agencies within the Federal government.

10. The federal labor-management and employment programs are administered by a number of different agencies and offices. Please describe what you believe the relative roles and relationships should be between the FLRA and (a) the Office of Personnel Management, (b) the Merit Systems Protection Board, (c) the Equal Employment Opportunity Commission, and (d) the Office of Special Counsel. Also, what do you believe the relative roles and relationships should be between the Authority and (i) the Federal Service Impasses Panel and (ii) the FLRA General Counsel?

Each of these other agencies and offices has a unique statutory mandate or charge. To the extent that the FLRA has related interests to these agencies and offices, I think that a collegial relationship with key leadership personnel from those agencies and offices, that includes the sharing of pertinent information of interest, can help us all to do our jobs more effectively.

The Federal Service Impasses Panel (FSIP), the FLRA General Counsel (GC), and the three-Member Authority, are distinct components within the FLRA. The FSIP resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment. The GC is responsible for the general management of the Office of General Counsel (OGC), including the management of the FLRA's seven Regional Offices. The OGC is the FLRA's independent investigator and prosecutor of unfair labor practice allegations and representation matters filed with the FLRA. The Authority's primary role is adjudicative. I believe that a collegial relationship among the people comprising the Authority, the FSIP, and the OGC, can contribute to the effectiveness of the Agency's operations. Such collegiality can also have a positive effect on employee morale and stakeholder confidence as discussed in my response to question eight.

11. You have extensive experience working with the National Mediation Board, both as a Member and Chairman. How will your experience with the Board assist you in serving as a Member of the Federal Labor Relations Authority and addressing federal sector labor relations issues?

As Chairman and Member of the NMB, I gained an appreciation of the importance of employee morale and stakeholder confidence and their relationship to the effectiveness of an agency's operations. When I began my tenure as Chairman of the NMB, both employee morale and stakeholder confidence were at a low point. During my first few weeks, I reached out to every Agency employee in order to get to know them and invite their input. Throughout my tenure, I tried to maintain an emphasis on the importance of individual professional development.

Similarly, with respect to the NMB's stakeholders, all the labor and management parties of interest, early in my NMB tenure we convened a series of focus groups facilitated by professionals to seek the parties' input as to how the NMB could better serve their needs. Throughout my tenure, I tried to maintain this receptivity to appropriate stakeholder input.

In addition, as Chairman and Member of the NMB, I had responsibilities for the management and administration of the Agency that included such matters as budget authority, staffing levels, and performance goals. I will support and assist the FLRA Chairman in any way requested or deemed appropriate.

I also worked collegially with other Agencies that had an interest in matters coming before the NMB. Finally, one of my NMB responsibilities was adjudicative, similar to that of an Authority Member.

### III. Policy Questions

*Federal Service Labor-Management Relations*

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

It is my sense that the relationships among various agencies and federal sector unions varies. I hope that a unified message from the three-Member Authority of its commitment to the Agency's mission and to addressing the challenges discussed in question eight will have a positive effect on Federal labor-management relations. It is also my hope that the Agency's statutory training of parties is beneficial.

The key word in this question is relations. I am a strong advocate for any mechanisms that place an emphasis on the importance of the relationship, particularly through more effective communication and dialogue. This would include use of the FLRA's ADR program, as discussed in question 23. It might also include a mechanism such as partnerships, as discussed in question 15.

13. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

I intend to work to the best of my ability given the existing statutory framework. If confirmed, I would study this issue and, if desired, consult with Members of Congress about any potential changes contemplated by Congress.

14. In many situations, federal employees work side-by-side with contract workers. Do you believe a blended workforce of federal employee and federal contract personnel is having an effect on federal labor-management relations, and, if so, what? Do you believe that changes are needed in labor-management policy, and, if so, what do you believe would be appropriate?

In general, the highest standards of employee performance are often achieved when employees who work side-by-side have the same status. A key consideration is the effect on employee morale.

15. President Bush revoked President Clinton's Executive Order on federal labor-management partnerships.<sup>8</sup> What are your views on labor-management partnerships based on your experience with the National Mediation Board and the National Labor Relations Board?

<sup>8</sup> Executive Order 13203 of February 17, 2001 (reprinted at 66 Fed. Reg. 11227, Feb. 22, 2001), revoking Executive Order 12871 of October 1, 1993, as amended by Executive orders 12983 and 13156, and revoking the Presidential Memorandum of October 28, 1999, entitled "Reaffirmation of Executive Order 12871 - Labor-Management Partnerships."

My only experience with labor-management partnerships occurred during my tenure as Chairman and Member of the NMB. Based on that experience, I believe that, as a companion to the collective bargaining process, such partnerships can help to improve the working relationships between labor unions and federal agencies.

The key, in my view, is the mindset that federal agency officials and employee representatives bring to the process. If those participants are willing to work collaboratively to learn new skills and techniques in interpersonal relations and more effective communication, then partnerships can assist in avoiding problems or resolving existing problems. Such an approach could also lead to a decline in some of the cases filed with the FLRA.

*Management of the FLRA and case processing*

16. FLRA revised its strategic plan for FY2004-2009 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular that part of the goal relating to prompt resolution.

It is my understanding that simplification of its strategic goals was designed to reflect the FLRA's purpose or mission namely, to process cases efficiently. Striving to establish meaningful measures for the various FLRA components in case processing (Authority, OGC, FSIP and certain executives within each component), the FLRA structured objectives based upon type of case (representation, unfair labor practice, arbitration, negotiability, and bargaining impasse). It is my understanding that structuring its case processing goals in this manner will enable the FLRA to track and align costs to specific categories of cases, and thereby better plan for future staffing and training needs.

- a. What role do you see for yourself as an Authority member in helping achieve this goal?

I would have a direct role in each of the Authority case processing performance goals for cases involving unfair labor practices, representation matters, negotiability issues, or exceptions to arbitrator awards.

- b. Do you believe additional goals should be articulated within the strategic plan? If so, please briefly state what those goals would be and what FLRA should do to achieve them.

The FLRA's Performance Plan for fiscal year 2010 includes a new goal of developing, managing, and utilizing the Agency's human resources to meet program needs. It is my understanding that this goal will seek to establish collaborative internal workgroups to address agency human capital needs, to improve employee

morale, to issue updated internal policy instructions, and to increase staffing levels. If confirmed, I will work collaboratively with my colleagues in support of this goal.

17. According to the FY2010 Performance Budget Submission to Congress, there has been a growing backlog of cases that are decided by the Authority. What is necessary to ensure that cases are investigated and resolved in a timely and fair fashion?

It is my understanding that the Authority has a backlog reduction strategy that includes a collaborative approach among Authority Members to manage the backlog, an initiative to contact the parties in the oldest cases, innovative decisional formats to streamline the process by which Members review decisions, training stakeholders in their statutory rights and responsibilities to reduce frivolous filings and to improve the quality of the parties' presentations, use of ADR to resolve disputes without formal decision-making thereby reducing litigation resources and costs, and staff training and development.

It is my further understanding that the Authority has a corrective action plan to address the backlog. Related to performance goals, this plan seeks to eliminate the backlog by fiscal year 2012.

18. The strategic and performance plans give much attention to the timely processing of cases. However, these plans are silent with regard to the quality of case processing and decisions.

- a. In your view, what is the relationship between the timeliness of case resolution and the quality of decisions?

In my view, timeliness is one objective measure of quality that is directly responsive to the Congressional finding within the Federal Statute that the public interest demands "the efficient accomplishment of the operations of Government."

- b. Do you believe that the quality of case processing and decisions should be measured? If so, how?

As an Authority Member, I would be interested in any appropriate measure of the quality of case processing and decisions. Based on my experiences at the NLRB and NMB, I believe that one assessment of quality is achieved through the performance appraisals of employees involved in decision writing and case processing.

- c. Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why.



Noteworthy in this regard is that the FLRA's Performance Plan for fiscal year 2009 identifies for the first time the responsible Senior Executives for each goal, thereby providing a direct link between SES performance and achievement of the Agency's strategic goals. This is one illustration of efforts to include checks on quality within performance goals.

19. One measure of quality not included in the strategic and performance plans is the outcome of court reviews of Authority decisions. Do you believe that such a quality measure might be of value? Why or why not?

If confirmed, I will be open to consideration of any appropriate measure of quality, including the outcome of court reviews. However, there may be reasons why courts may affirm or overturn Authority decisions that may have nothing to do with quality.

20. What is your understanding of, and opinion about, the FLRA's track record with regard to timeliness of decision making? What actions, if any, do you believe the FLRA should take to help process cases more expeditiously?

My understanding and opinion is that the FLRA's recent record needs improvement. To help process cases more expeditiously, two keys are ensuring an adequate budget authority, including for IT investments such as a case management and tracking system with performance accountability and analysis as well as increasing staffing levels so more FTE's could be assigned to decision writing and case processing.

While directed primarily to the backlog, many of the elements that are part of what I understand to be the Authority's Backlog Reduction Strategy and the Corrective Action Plan, discussed in my response to question 17, should also assist in more expeditious decision-making. Also, the Authority's new goal of Managing Human Capital should be of assistance.

21. Do you believe that reducing the number of adjudicated cases would help the FLRA to reduce case processing time? Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities?

Yes, reducing the number of adjudicated cases should help the FLRA to reduce case processing time somewhat. It is my understanding that the Authority, consistent with its statutory charge to provide leadership in establishing policies and guidance to participants in the FLRA's labor-management relations program, has a plan to train customers aggressively on their statutory rights and responsibilities with one consequence hopefully being the reduction of frivolous or unnecessary filings.

In addition, continued use of the FLRA's Collaboration and Alternative Dispute Resolution Program, as discussed below, will also resolve disputes without formal decision-making.

22. There has been increasing use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law. In this labor-management context, what do you believe are the advantages and disadvantages of ADR, from the point of view of the employee, of the employing agency, and of the public interest? What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

I have trained hundreds of labor-management representatives on the use of ADR techniques as well as teaching ADR and related processes in law school. Accordingly, I am a strong advocate for the use of ADR in appropriate situations.

In my view, there are mainly two situations in which ADR may not be advisable. First, to be effective, all parties of interest should be willing (voluntarily) to use ADR and to take training in problem-solving approaches that will include training on more effective communication and more effective interpersonal relations. If employees, employee representatives or agency officials are not open to changes in behavior and new approaches to resolving differences, then they may become disillusioned by ADR. In addition, there are some issues in disagreement that require a decision by a third party if the disputing parties are going to move forward in their relationship.

As the Committee knows, the FLRA's Collaboration and Alternative Dispute Resolution Program (CADR) is voluntary and is provided by all FLRA components. If confirmed, I will be a strong supporter of CADR within the Agency and I will be a strong advocate for its use whenever I speak to the labor-management representatives in the federal sector.

23. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last for all small federal agencies that submitted data. In your view, what can be done to help improve the situation at FLRA, and, if you are confirmed, what steps would you recommend to address these human capital challenges and improve employee morale?

If confirmed, I will express both within the Agency and in my contacts with stakeholders my strong commitment to the FLRA's mission and my appreciation for the work performed by all FLRA employees. I will also support the new performance goal for Human Capital Management and its emphasis on employee morale, employee training and development, and improved communication throughout the Agency.

IV. Relations with Congress

24. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

25. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I will communicate and work with Congress by responding to Congressional requests.

V. Assistance

26. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with the FLRA.

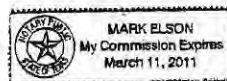
## AFFIDAVIT

I, Ernest W. DeBevoise, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Ernest W. DeBevoise

Subscribed and sworn before me this 2nd day of July, 2009.

Mark Elson  
Notary Public



**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Opening Statement of Julia Akins Clark  
Nominee for General Counsel of the Federal Labor Relations Authority**

I would like to express my appreciation for the opportunity to appear before the Committee for the purpose of being considered for confirmation as the General Counsel of the Federal Labor Relations Authority (FLRA). It is a great honor to be asked to serve one's country as a public official. If confirmed, I will do my utmost to fulfill my statutory responsibilities in a manner that will serve the public interest, by providing federal employees, unions and agencies with high quality labor relations services.

The FLRA General Counsel is primarily responsible for the protection and enforcement of employee, union and agency rights under the Federal Service Labor-Management Relations Statute (Statute) through the investigation of alleged unfair labor practices (ULP) and prosecution of ULP complaints. Further, the General Counsel has "direct authority over, and responsibility for" all employees in the office of General Counsel including the FLRA regional offices, which handle representation matters. In furtherance of these responsibilities the General Counsel may also provide training, guidance and leadership in the area of federal sector labor relations. The General Counsel is part of the FLRA management team, together with the FLRA Chair, Members and senior staff.

My professional experience has prepared me well for this role. I served on the Presidential Transition Project, Agency Review Team responsible for reviewing the FLRA during the time between the Presidential election and inauguration. This experience provided me with significant insights into short and long term challenges facing the FLRA and the capacity of the FLRA to meet those challenges. During my over

twenty years as a labor relations attorney, I gained significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including representation elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act, which may provide models for solutions to challenges facing the FLRA. As the General Counsel of the International Federation of Professional and Technical Engineers (IFPTE), I have been part of the organization's management team. I am accustomed not only to providing leadership, but working collaboratively with a leadership team to accomplish difficult goals. In addition, I advise elected and senior union officials at both the national and local level on management and employment matters, including management's responsibilities with regard to the organization's employment relationship with staff and labor relationship with staff unions. I have lead collective bargaining teams in complex negotiations in both private and public sector contexts. As a result of this experience, I have gained relevant experience with alternative dispute resolution methods. Finally, I have significant federal prosecutorial experience. From 1980-1985, I served as a Trial Attorney at the United States Department of Justice.

I have the deepest respect and admiration for federal government employees. It is my opinion that civil servants, be they rank-in-file employees, supervisors, mid-level managers, or high ranking career employees and political appointees, seek to serve the public interest, which includes compliance with the federal labor relations statute. I believe that it is incumbent upon the FLRA General Counsel to provide them with clear, up-to-date and accessible information about their labor relations rights and

responsibilities and assist them in resolving disputes regarding those rights and responsibilities in a fair, consistent and timely manner. If confirmed, I look forward to the opportunity to contribute to the overall mission of the federal civil service, by serving as the FLRA General Counsel.

I wish to express my appreciation to the Committee and staff for making this hearing possible and look forward to answering any questions.



## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

## A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)  
Julia Akins Clark. My maiden name is Julia LoRene Akins. I am known to my family, friends and coworkers as Julie.
2. **Position to which nominated:**  
General Counsel, Federal Labor Relations Authority
3. **Date of nomination:**  
June 4, 2009
4. **Address:** (List current place of residence and office addresses.)  
Home: -REDACTED-  
Office: 501 3<sup>rd</sup> Street, NW, Suite 701, Washington, D.C. 20001
5. **Date and place of birth:**  
August 29, 1956  
Shawnee, Oklahoma
6. **Marital status:** (Include maiden name of wife or husband's name.)  
Married to Nicholas W. Clark
7. **Names and ages of children:**  
Lisa Nichole Clark (stepdaughter) 37  
-REDACTED-
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.  
McLoud High School, McLoud, Oklahoma  
Attended 1970-1974, High School Diploma May 1974  
  
Oklahoma Baptist University, Shawnee, Oklahoma  
Attended summer 1973, and 1974-1977  
BA Political Science, *summa cum laude*, August 1977

American University, Washington College of Law, Washington, D.C.  
 Attended 1977-1980, J.D. May 1980

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Spring-Summer 1978, Investigator, D.C. Superior Court Pilot Program (provided pre-indictment investigative services to indigent defendants charged with felony crimes), Washington, D.C.

Fall 1978 – Spring 1980 (except summer 1979), Law Clerk, Arnold and Porter, Washington, D.C.

Summer 1979, Law Clerk, Federal Trade Commission, Washington, D.C.

1980-85, Honors Program Trial Attorney, Antitrust Division, Department of Justice, Washington, D.C.

1985-87, Associate, Blumenfeld and Cohen, Washington, D.C.

1987-88, Counsel, National Coalition for the Homeless, Washington, D.C.

1988-1995, Counsel, Federal and Legislative Affairs, International Federation of Professional and Technical Engineers, Silver Spring, MD

1995-Present, General Counsel, International Federation of Professional and Technical Engineers, Washington, D.C.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

1985-87, Associate, Blumenfeld and Cohen, Washington, D.C.

1987-88, Counsel, National Coalition for the Homeless, Washington, D.C.

1988- 1995, Counsel, Federal and Legislative Affairs, International Federation of Professional and Technical Engineers, Silver Spring, MD

1995-Present, General Counsel, International Federation of Professional and Technical Engineers, Washington, D.C.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Current Memberships:

Edgemoor Citizens Association

Bethesda Chevy Chase High School PTSA

International Federation of Professional and Technical Engineers, Local 4

NAACP

Lawyers Coordinating Committee- AFL-CIO

District of Columbia Bar Association

Former Memberships:

Westland Middle School PTA

Bethesda Elementary School PTA

Chesapeake Bay Foundation

Oklahoma Baptist University Young Democrats

Oklahoma Baptist University Athenians

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

None.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

2009 Hillary Clinton Committee \$50

2008 Obama for America \$1000

2008 Hillary Clinton for President \$490

2008 Democratic National Committee \$50

2008 Al Franken for Senate \$100

2007 Hillary Clinton for President \$100  
 2006 Brad Henry for Governor \$250  
 2006 Valerie Ervin for Montgomery County Council \$100  
 2004-09 International Federation of Professional and Technical Engineers  
 LEAP PAC \$750

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Robert S. Kerr Scholar in Public Affairs, Oklahoma Baptist University, 1974-77

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Copies of the following articles are provided:

*White Collar Exemptions*, Presented to the ABA Section on Labor and Employment Law, September 12, 2008

*Developments in NLRB Representation Cases: April 2005 through March 2006*.  
 Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 2006

*NLRA Protected Concerted Activity in Cyberspace: Union and Employee Use of Employer-Owned Technology for Organizing, Grievances, etc.* ABA, Technology Committee, Section of Labor and Employment Law, April 21, 2004

*NLRA Protected Concerted Activity in Cyber space*, Labor Law Exchange Volume 21, November 2003

*Use of Electronic Mail in Union Organizing Campaigns*, Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 2002

*Legal Developments under Chicago Teachers v. Hudson and Communications Workers v. Beck*, Presented to the Annual Conference of the AFL-CIO Lawyers Coordinating Committee, May 1999

*Pending Amendments to the Fair Labor Standards Act*, Presented to the ABA, Federal Labor Standards Committee, February 1996.

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics

relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

None of the speeches delivered in the last 5 years included written texts.

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

*The Role of Collective Bargaining in Protecting ALJ Qualified Judicial Independence*, Federal Administrative Law Judges Conference, April 17, 2009 (no written text)

*Union Perspectives on Current Issues in Federal Labor Relations*, Interagency Labor Relations Forum, approximately March 2007 (no written text)

*Role of Professional Associations in Influencing Public Policy*, Department for Professional Employees, AFL-CIO, March 15, 2005 (no written text)

*Knowledge Workers in the New Economy: from Cliché to Contract*, Chicago-Kent College of Law, April 20, 2004

*Use of Electronic Mail in Union Organizing Campaigns*, ABA, Technology Committee, Section of Labor and Employment Law, May 15, 2002

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe I was selected based on my background and experience in federal sector labor relations. For additional information, please see my response to question 17(b) below.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For the last twenty years, I have been a practicing attorney specializing in labor relations. I have significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including union elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act.

Since 1995, I have served as the General Counsel of the International Federation of Professional and Technical Engineers. I am part of the management team of

this labor organization. Further, in addition to my legal and management responsibilities, I have had significant experience leading collective bargaining teams in complex negotiations with a number of large federal government and private sector employers. In this capacity, I have been instrumental in the mutually beneficial resolution of many labor disputes.

From 1980-1985, I served in a prosecutorial capacity as an Antitrust Division Trial Attorney at the United States Department of Justice.



**B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?  
  
Yes
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.  
  
No
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?  
  
No
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?  
  
No
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?  
  
Yes
6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.  
  
No

**C. POTENTIAL CONFLICTS OF INTEREST**

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into

with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.
  - Consulted with House Committee on Oversight and Government Reform staff regarding a technical aspect of proposed amendments to the GAO Personnel Act.
  - Briefed staff of the House Committee on Oversight and Government Reform, the Senate Homeland Security and Governmental Affairs Committee, and the House and Senate Legislative Branch Appropriations Committees on union election and collective bargaining at GAO.
  - Consulted with staff of the House Committee on Oversight and Government Reform, the Senate Homeland Security and Governmental Affairs Committee, regarding the GAO Comptroller General selection process.
  - Assisted union representatives and individual employees in meetings with Senators regarding the Employee Free Choice Act by answering questions regarding technical aspects of the legislation.
  - Briefed Senators about how proposed Department of Labor regulatory changes would impact white collar employees' Fair Labor Standards Act coverage.
  - Assisted union representatives in briefings with White House, FAA officials and Members of Congress regarding the impact of the Boeing Company engineers' strike on the certification of commercial aircraft.
3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.  
  
No
2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I was a party in a divorce proceeding in D.C. Superior Court in 1981.

In 1995, I was a witness in an arbitration in which an IFPTE-affiliated local union, sought to recover overtime wages for its members. I testified on the question of whether union-represented workers were entitled to bring overtime claims under the arbitration clause of their collective bargaining agreement.

In addition, IFPTE was involved in routine litigation, arbitration, and agency administrative proceedings during my twenty year tenure. IFPTE and its affiliated labor organizations have been parties to litigation, arbitrations and agency administrative proceedings in connection with constitutional, statutory, collective bargaining and representation matters, as well as individual employment matters (e.g. pay, discipline, discrimination, promotions etc.). None of these proceedings involved actions taken or omitted by me, nor did I testify in any of these matters.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

**E. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

-REDACTED-

**AFFIDAVIT**

Julia Akins Clark being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Julia Akins Clark

Subscribed and sworn before me this 24<sup>th</sup> day of June, 2009

Katherine Jackson

**NOTARY PUBLIC**

**DISTRICT OF COLUMBIA**

**MY COMMISSION EXPIRES OCTOBER 14, 2013**

Notary Public



United States  
**Office of Government Ethics**  
 1201 New York Avenue, NW., Suite 500  
 Washington, DC 20005-3917

June 24, 2009

The Honorable Joseph I. Lieberman  
 Chairman  
 Committee on Homeland Security  
 and Governmental Affairs  
 United States Senate  
 Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Julie Akins Clark, who has been nominated by President Obama for the position of General Counsel, Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don W. Fox".

Don W. Fox  
 General Counsel

Enclosures - REDACTED

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Julia Akins Clark to be General Counsel of the Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as General Counsel for the Federal Labor Relations Authority (FLRA)?

I believe I was selected based on my background and experience in federal sector labor relations. For further information, see responses to questions 3 and 11 below.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No

3. What specific background and experience affirmatively qualify you to be General Counsel for the FLRA?

For the last twenty years, I have been a practicing attorney specializing in labor relations. I have significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including union elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act.

Since 1995, I have served as the General Counsel of the International Federation of Professional and Technical Engineers. I am part of the management team of this labor organization. Further, in addition to my legal and management responsibilities, I have had significant experience leading collective bargaining teams in complex negotiations with a number of large federal government and private sector employers. In this capacity, I have been instrumental in the mutually beneficial resolution of many labor disputes.

From 1980-1985, I served in a prosecutorial capacity as an Antitrust Division Trial Attorney at the United States Department of Justice.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel for the FLRA? If so, what are they and to whom have commitments been made?

No



5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

## **II. Role of the General Counsel for the FLRA**

6. What in your opinion is the role of the General Counsel and the Office of General Counsel?

The essential statutory role of the General Counsel is specified in 5 U.S.C. § 7104 (f) (2) (a) and (b) of the Federal Service Labor-Management Relations Statute (Statute). It is the responsibility of the General Counsel to protect and enforce employee, union and agency rights under the Statute through the investigation of alleged unfair labor practices (ULP) and prosecution of ULP complaints. The General Counsel has "direct authority over, and responsibility for" all employees in the office of General Counsel, including the seven regional offices of the FLRA. 5 U.S.C. § 7104 (f) (3). Finally, the FLRA Chair has delegated to the General Counsel responsibility under 5 U.S.C. § 7104 (f) (2) (c) for fulfilling the FLRA's responsibility to handle representation matters, *i. e.*, determine appropriate units, investigate and hold representation hearings, direct elections, and conduct and certify secret ballot elections. These responsibilities are carried out primarily by FLRA regional office staff under the direction of the General Counsel.

In addition to these statutory and delegated responsibilities, I believe the General Counsel should provide training, guidance and leadership in the area of federal sector labor relations to employees, unions and agencies. It is my opinion that civil servants, be they rank-in-file employees, supervisors, mid-level managers, or high ranking career employees and political appointees, seek to serve the public interest, which includes compliance with the Statute. It is incumbent upon the General Counsel to provide them with clear, up-to-date and accessible information about their rights and responsibilities under the Statute and assist them in resolving disputes regarding those rights and responsibilities in a fair, consistent and timely manner. I believe this purpose is served by providing training, published guidance, alternative dispute resolution services, and where necessary, timely formal investigations, hearings and decisions.

7. What do you believe are the biggest challenges facing the Office of General Counsel? What steps do you plan to take, if confirmed, to address these challenges?

The greatest challenges facing the General Counsel are: (1) addressing the backlog of approximately 300 ULP complaint cases (ULP charges that have been investigated and recommended for prosecution) and the backlog of approximately 700 ULP appeals (ULP charges that have been dismissed by Regional Offices and appealed to the General Counsel); (2) coping with the current and likely increasing workload and in light of attrition and budget constraints; and (3) improving FLRA employee morale.

Backlog: If confirmed, I will make elimination of the pending backlog the highest priority. I would ask first that career staff group the pending cases in ways that would expedite the General Counsel's review of their recommendations for disposition. It is my expectation that by collaborating with career staff we can triage and manage the backlog in a manner that will reassure the parties that the FLRA will, with in a reasonable period of time, be back in the business of providing timely ULP processing services.

Workload Management: The FLRA staff has decreased by 50% since FY 2001. The Office of General Counsel's (OGC) FTE number has declined over this period from 125 to 64. This reduction occurred primarily through attrition and the failure to fill vacancies. Similarly, the FLRA budget authority declined from 25.1 million in 2001 to 22.7 in 2009. Work load increases are anticipated as a result of a number of factors, including the return of customers who chose not to seek FLRA assistance given the lack of a fully functioning OGC. In addition, Presidential or Congressional actions under consideration (e.g. the grant of bargaining rights to Transportation Security Agency employees, restoration of labor management partnerships, and the Public Employee's Cooperation Act) would dramatically increase the demand for OGC services.

It will be very difficult to address the above-described backlog, newly filed cases and expected workload increases under these circumstances. A first priority will be filling vacant OGC positions to the extent permitted by the current budget. Consistent with budgetary limitations, existing staff must be provided with the tools (training, technology, and case handling support) to maximize their effectiveness and efficiency. If confirmed, I would collaborate with FLRA Presidential appointees, senior staff and OGC employees to utilize existing resources to improve performance and productivity.

Employee Morale: The pressing need to improve FLRA employee work satisfaction is, in my view, among the biggest challenges facing the next FLRA General Counsel. While I am not prepared without further investigation to identify or comment on all important contributing factors, I believe that the lack

of effective management caused by extended vacancies in key positions, including the General Counsel position, has severely diminished staff morale. If confirmed, I would work collaboratively with The FLRA Chair, Members, senior staff, and FLRA employee representatives to develop a plan to address the areas of dissatisfaction. Furthermore, it is my general view that the General Counsel can contribute positively to OGC employee morale by working diligently to fulfill the statutory mandate, providing leadership and guidance to staff, communicating effectively with staff, ensuring that staff vacancies are filled in a timely manner, providing staff with adequate resources, technology, training and advancement opportunities, dealing openly and in good faith with employee representatives, and implementing family friendly work policies.

8. What will be your long-term priorities as General Counsel?

If confirmed, my long term goal will be to restore customer confidence in the OGC as a responsive, fair, and impartial protector of employee, union and agency rights and responsibilities under the Statute. In this regard, I believe all undertakings of the General Counsel's office should be evaluated based upon their likely contribution to the promotion of stable, constructive labor relationships between employees and unions and unions and agencies. I believe that publishing clear, precise, up-to-date guidance and training materials, fully staffing the OGC (including Regional Offices), providing targeted training and critical resources to career staff, making effective use of alternative dispute resolution services, and taking full advantage of information technology will further this goal. It will be essential to maintain a dialogue with customers as well as monitor performance to measure progress toward this goal. If confirmed, it is my hope that by the end of my term, the FLRA will be considered a leader in labor relations and a model to which others can look to for ideas and innovation.

9. The position of FLRA General Counsel has been vacant since February 2008. Have there been effects of this office being vacant for well over a year? How would you plan to address these matters?

The obvious concrete consequence is an ever increasing backlog of ULP complaints and appeals awaiting disposition by the General Counsel. In addition, this extended vacancy has contributed to a dramatic slide in confidence in the agency and morale among agency employees. Furthermore, absent a General Counsel there is no OGC official authorized to provide policy leadership with regard to the protection of employee, union and agency rights and responsibilities under the Statute.

Among the most meaningful first steps I would take as General Counsel would be to adopt a plan to address the backlog within a reasonable period of time. My preliminary thoughts are described above. In addition, I would ensure that the position of Deputy General Counsel is filled as quickly as possible, and remains

occupied. An essential function of the Deputy is to fulfill the General Counsel's statutory and delegated responsibilities in the absence of the General Counsel. It would be a principal goal to make sure that the OGC is always staffed with an individual who can act in the absence of the General Counsel.

10. Please describe your vision of what the relative roles and relationships should be between the Office of General Counsel and other agencies with government-wide civil service responsibilities, including the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Office of Special Counsel. Also, what do you believe the relative roles and relationships should be between the Office of General Counsel and the Chairman and members of the Federal Labor Relations Authority?

Other Agencies: Each of the identified agencies – Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Office of Special Counsel – has a distinct role and responsibility. Each is authorized to play a vital role and make a significant contribution to the functioning of the federal government by managing federal personnel or ensuring compliance with federal employment laws. These agencies may collaborate on the effective use of resources, and developments in alternative dispute resolution techniques. As General Counsel, I would be open to opportunities to work collaboratively, where appropriate, with these agencies recognizing that these agencies may appear as parties in cases before the FLRA.

Chairman and Members: The FLRA Chairman is the Chief Executive of the agency and is responsible for all administrative and staff functions of the agency such as budget, personnel, finance and central services including information technology. The staff performing all of these functions report ultimately to the Chairman, along with the FLRA Solicitor. Further the Chairman, together with the Members make up the "decisional component" of the FLRA, which adjudicates negotiability appeals, exceptions to arbitration awards, petitions for review of Regional Director decisions in representation matters, and review of Administrative Law Judge decision in a ULP cases.

The General Counsel is a part of the FLRA management team together with the Chairman and Members, but also has a distinct and independent statutory function. As described above, the General Counsel has statutory authority for the investigation and prosecution of ULP allegations and direction of Regional Office operations, and delegated authority to direct the processing of representation matters. As the Chairman and Members are responsible for adjudication of appeals from OGC decisions, it is critical that the OGC safeguard its decisional independence thereby preserving the integrity and independence of both the OGC and the Authority decision-making processes.

At the same time, I would be committed to developing a collaborative relationship with the Chairman and Members regarding all other aspects of agency operations, e.g., budget, technology improvements, training, public relations, staffing, alternative dispute resolution programs, interagency cooperation and information sharing.

11. How does your prior experience prepare you to serve as General Counsel and to deal with the issues and challenges of this office?

Transition Team: I served on the Presidential Transition Project, Agency Review Team responsible for reviewing the FLRA during the time between the Presidential election and inauguration. This experience provided me with significant insights into short and long term challenges facing the FLRA and the capacity of the FLRA to meet those challenges.

Labor Relations Expertise: During my over twenty years as a labor relations attorney, I gained significant practical experience in all aspects of labor relations practice relevant to the FLRA General Counsel's statutory responsibilities, including representation elections and unfair labor practice case processing. In addition, I have significant labor relations experience under other statutory systems including the National Labor Relations Act and the Railway Labor Act, which may provide models for solutions to challenges facing the FLRA.

Leadership/Management Experience: As the General Counsel of the International Federation of Professional and Technical Engineers (IFPTE), I have been part of the organization's management team. I am accustomed not only to providing leadership, but working collaboratively with a leadership team to accomplish difficult goals. In addition, I advise elected and senior union officials at both the national and local level on management and employment matters, including management's responsibilities with regard to the organization's relationship with its staff unions.

Dispute Resolution: I have lead collective bargaining teams in complex negotiations in both private and public sector contexts. As a result of this experience, as well as other significant settlement negotiations, I have gained relevant experience with alternative dispute resolution methods.

Prosecutorial Experience: Finally, I have significant prosecutorial experience. From 1980-1985, I served as a Trial Attorney at the United States Department of Justice.

### **III. Policy Questions**

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?



The FLRA plays a crucial role in Federal sector labor relations. The FLRA has been weakened by attrition and budget reductions and paralyzed by vacancies in key positions. Consequently, employees, unions and agencies have been left without the benefit of this neutral third party to assist in the resolution of disputes. This void has adversely effected good labor relationships and aggravated difficult relationships.

I believe that a fully staffed and functioning FLRA can make a meaningful improvement in Federal sector labor management relations. In my responses to the questions above and those that follow, I further describe my views about FLRA priorities and goals.

13. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

I am not currently prepared to recommend amendments to the Federal Service Labor-Management Statute. Should I be confirmed, I am willing to engage in an open and collaborative approach to the evaluation of possible improvements and offer my views as appropriate.

14. In many situations, federal employees work side-by-side with contract workers. Do you believe a blended workforce of federal employee and federal contract personnel is having an effect on federal labor-management relations, and, if so, what? Do you believe that changes are needed in labor-management policy, and, if so, what do you believe would be appropriate?

The FLRA does not currently play a role in determining the appropriate balance between federal civil service employees and contract workers. The FLRA's role is to assist federal agencies and unions in their efforts to constructively address their interests through collective bargaining. I am committed to ensuring that the parties fulfill their bargaining obligations under the Statute.

15. If confirmed as General Counsel, you will have wide prosecutorial discretion in determining whether to pursue allegations of unfair labor practices and will operate, to a large extent, without review by the members of the Authority or any court. Federal courts have held that a decision by the General Counsel not to issue an unfair labor practice complaint is not judicially reviewable. Given this great responsibility, what factors will you consider in deciding whether or not to pursue unfair labor practice allegations?

The OGC has published criteria in its ULP Case Handling Manual for the exercise of prosecutorial discretion. These criteria include, but are not limited to, the seriousness of the violation, degree of harm to the bargaining relationship between the agency and the union, harm to employees, whether the violation is



an isolated one or part of a pattern, whether the violation has been cured, or whether the circumstances preclude an effective remedy, and whether the alleged violation presents a novel issue, the litigation of which may contribute important legal precedent. While these factors seem reasonable, I will evaluate the criteria and update it as needed with the assistance of senior staff. I believe that clear, published guidance based upon input from experienced senior staff regarding the exercise of prosecutorial discretion and transparent, consistent decision making will ensure that this important statutory responsibility is carried out in the public interest.

16. When Regional Directors determine, on behalf of the General Counsel, to issue an unfair labor practice complaint, they are required to make decisions on the remedy that will be sought in litigation. What kinds of remedies do you believe should be available to an aggrieved party and what type of evidence would be necessary to establish the appropriateness of each remedy?

The essential purposes of a remedy in a ULP proceeding are to recreate the conditions and relationships that would have existed had there been no unfair labor practice; and to deter future violative conduct, while not being punitive. It is important to note that OGC guidance in this area has been lacking for many years. If confirmed, I will consult with staff and issue updated guidance to Regional Offices and parties regarding OGC policy on remedies as quickly as possible. That guidance will be consistent with the Statute and Authority precedent in all respects.

The broad outline of an appropriate OGC remedies policy is prescribed by Statute and the Authority's interpretive decisions. If confirmed, my policy would be consistent with both. The Statute (5 U.S.C. § 7118 (a) (7)) provides the following specific remedies: cease and desist orders; orders requiring parties to negotiate a contract and to give it retroactive effect; and orders reinstating an employee with backpay. The Statute and Authority precedent also permit further innovative remedies, as long as the Statute is effectuated, the evidence establishes the need for such a remedy, and the remedy is not otherwise inconsistent with the Statute or other external law.

17. Do you have a sense for the issues and other factors that give rise to unfair labor practice (ULP) complaints? If so, what are the issues and other factors that underlie ULPs and what can be done to help reduce the number of ULP complaints?

Issues that frequently give rise to unfair labor practice allegations include: a party's refusal to respond to a request for information; unilateral implementation of changes to working conditions; bad faith bargaining; infringement on self organizational rights; discrimination/retaliation for engaging in protected activity; breach of the duty of fair representation; bypass of the exclusive bargaining representative; failure to provide the union with the opportunity to be

present at a formal discussion with represented employees; and failure to provide union representation at investigatory meetings.

Among the factors that contribute to the commission of ULPs by agencies and unions is the lack of a fully functioning OGC. Many ULP disputes are the result of misunderstandings about the applicable law and procedures. The General Counsel can contribute to a reduction in the number of ULP allegations, and consequently ULP complaints by educating FLRA customers about their rights and responsibilities under the Statute and FLRA processes. The OGC should publish clear, precise, up-to-date guidance and training materials, and provide outreach to customers (employees, unions and agencies) urging them to familiarize themselves with this information. It is reasonable to expect that as a result of these efforts, parties will be better equipped to avoid committing ULPs and file only meritorious claims. In addition, the General Counsel can provide leadership and guidance in alternative dispute resolution techniques that will serve to strengthen labor management relationships and support the parties' efforts to resolve disputes short of formal litigation.

18. The backlog of cases and difficulties meeting performance goals have been persistent problems for the Office of General Counsel. What is necessary to ensure that cases are investigated and resolved in a timely and fair fashion?

- a. In your view, what is the relationship between the timeliness of case investigation and disposition by the Office of General Counsel and the quality of decisions and actions taken?

I believe there is a strong correlation between timely case investigation and disposition and the quality of decision making. It is critical that OGC staff be allowed adequate time to investigate and dispose of allegations if we are to expect high quality results. However, ULP allegations do not arise in a static environment. Instead, facts and circumstances related to the allegations continue to change. Consequently, to have a meaningful and positive impact on labor relations, the OGC must carry out these functions in a timely manner. The General Counsel is responsible for providing guidance and monitoring and improving performance in this regard.

- b. Do you believe that the quality of case processing and disposition should be measured? If so, how?

I believe that the General Counsel, in consultation with staff, should endeavor to develop measures for quality of case processing and disposition. I understand the importance of developing quality measures and am committed to doing so should I be confirmed.

- c. Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why.

I believe that the OGC should develop performance goals related to case processing and decision quality. While I am not prepared to recommend specific goals at this time, I believe they should be developed in consultation with staff.

19. President Bush revoked President Clinton's Executive Order on federal labor-management partnerships. What are your views on labor-management partnerships? Generally, do you believe it is desirable to promote collaborative, as opposed to arms-length, labor-management relationships in the federal government?

Whether mandated by Executive Order, statute, or based upon bi-lateral agreement, labor-management partnerships can mutually benefit employees, unions and agencies and further the public interest. It is my view that collaborative labor management relationships are desirable and can result in mutually beneficial solutions to complex problems. Often collaborative decision making not only yields better outcomes, but also requires fewer resources than more formal rights oriented decision making.

20. Under 5 U.S.C. § 7118(a)(5), the General Counsel may prescribe regulations providing for informal methods by which an alleged unfair labor practice may be resolved prior to the issuance of a complaint. What kind of methods do you feel would be most effective in enabling the parties to resolve disputes prior to the issuance of a complaint?

It is premature for me to comment on specific regulatory proposals in this regard. However, as stated in response to other questions, OGC efforts to avoid the occurrence of factors that result in ULP allegations and resolve ULP disputes short of litigations are in the public interest. I would evaluate potential regulatory changes in light of their potential to achieve these goals.

21. There has been increasing use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law.

- a. What do you believe are the advantages and disadvantages of ADR, from the point of view of the employee, of the employing agency, and of the public interest?

In my view the advantages and disadvantages of ADR apply in largely the same way regardless of the stakeholder's point of view. Among the advantages are the preservation and improvement of labor management relationships by reaching mutually agreed, rather than imposed solutions and a reduction in litigation, which is a resource-intensive activity. On the other hand, each litigated ULP complaint provides an opportunity to clarify the

law, create precedent, and thereby provide parties with guidance on compliance with the Statute and/or deterrence from violating the Statute.

- b. What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

It is my view that the use of ADR to resolve workplace disputes contributes positively to labor management relationships and, therefore is in the public interest. Before making specific recommendations about changes to these policies and practices, I would collaborate with the Chairman, Members and FLRA staff, look to guidance from other successful ADR programs and make such recommendations at the appropriate time.

22. The Office of the General Counsel offers training on rights and obligations under the labor-management relations statute, relevant case law, and regulatory filing requirements. In addition, the Office of the General Counsel provides training in such areas as labor-management partnerships, relationship building, interest-based negotiations and problem solving, alternative dispute resolution design, labor relations strategic planning, and pre-decisional involvement. What do you think are the principal results that such a program should achieve? Do you have any views on the current training program, and have you considered what changes, if any, you would make?

I am aware of an extensive training program offered by the OGC prior to 2001. That program assisted parties in understanding their respective rights and responsibilities, building productive labor management relationships, ADR, and more. In my view the principal goal of such training is to promote stable, constructive labor relationships between employees and unions and unions and agencies. I do not have sufficient information to evaluate the current training program or recommend changes at this time. If confirmed, I would make it a priority to evaluate this program and, in consultation with staff, make appropriate changes and implement the best possible training program.

23. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last for all small federal agencies that submitted data. In your view, what can be done to help improve the situation at FLRA, and, if you are confirmed, what steps would you recommend to address these human capital challenges and improve employee morale?

While I am not prepared without further investigation to identify or comment on all important contributing factors, I believe that the lack of effective management caused by extended vacancies in key positions, including the General Counsel position, has severely diminished staff morale. If confirmed, I would work collaboratively with The FLRA Chair, Members, senior staff, and FLRA

employee representatives to develop a plan to address the areas of dissatisfaction. Furthermore, it is my general view that the General Counsel can contribute positively to OGC employee morale by working diligently to fulfill the statutory mandate, providing leadership and guidance to staff, communicating effectively with staff, ensuring that staff vacancies are filled in a timely manner, providing staff with adequate resources, technology, training and advancement opportunities, dealing openly and in good faith with employee representatives, and implementing family friendly work policies.

24. Much has been said about the graying of the federal workforce and the proportion of the workforce at or near retirement eligibility. Given the current situation within the Office of General Counsel, what role should succession planning play and what approach would you take to dealing with this challenge?

I am aware of the importance of succession planning to ensure that the OGC is staffed with appropriately trained and experienced employees at every level. I believe the General Counsel should consult with appropriate FLRA staff, obtain necessary factual data, and develop a succession plan in consultation with the FLRA Chairman, Members, senior staff, and FLRA employee representatives.

#### IV. Relations with Congress

25. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes

26. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

I am committed to communicating and working with Congress in carrying out my responsibilities at FLRA.

#### V. Assistance

27. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

These answers are my own. I also consulted with current FLRA personnel designated by the FLRA Chairman for this purpose.

**AFFIDAVIT**

I, Julia Akins Clark, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

J A Clark

Subscribed and sworn before me this 22<sup>nd</sup> day of July 2009.

Pamela R. Ordey  
Notary Public

Pamela R. Ordey  
Notary Public, District of Columbia  
My Commission Expires 11/30/2013

Executive Order 13203 of February 17, 2001 (reprinted at 66 Fed. Reg. 11227, Feb. 22, 2001), revoking Executive Order 12871 of October 1, 1993, as amended by Executive orders 12983 and 13156, and revoking the Presidential Memorandum of October 28, 1999, entitled "Reaffirmation of Executive Order 12871 - Labor-Management Partnerships."



S. Hrg. 113-430

# NOMINATIONS OF HON. CAROL W. POPE, HON. ERNEST E. DUBESTER, AND PATRICK PIZZELLA

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## HEARING

BEFORE THE

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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NOMINATIONS OF HON. CAROL W. POPE, HON. ERNEST W. DUBESTER,  
AND PATRICK PIZZELLA TO BE MEMBERS, FEDERAL LABOR RELA-  
TIONS AUTHORITY

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SEPTEMBER 25, 2013

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## CONTENTS

---

Opening statements:	Page
Senator Tester .....	1
Senator Portman .....	3
Senator Johnson .....	13
Prepared statements:	
Senator Tester .....	23
Senator Portman .....	25

### WITNESSES

WEDNESDAY, SEPTEMBER 25, 2013

Hon. Eleanor Holmes Norton, a Representative in Congress from the District of Columbia .....	2
Hon. Carol W. Pope to be Member, Federal Labor Relations Authority	
Testimony .....	4
Prepared statement .....	26
Biographical and financial information .....	28
Letter from the Office of Government Ethics .....	52
Hon. Ernest W. DuBester to be Member, Federal Labor Relations Authority	
Testimony .....	6
Prepared statement .....	54
Biographical and financial information .....	56
Letter from the Office of Government Ethics .....	77
Patrick Pizzella to be Member, Federal Labor Relations Authority	
Testimony .....	7
Prepared statement .....	79
Biographical and financial information .....	80
Letter from the Office of Government Ethics .....	104
Letter of Support for Ms. Pope from the Congressional Black Caucus .....	107



**NOMINATIONS OF HON. CAROL W. POPE,  
HON. ERNEST W. DUBESTER, AND PATRICK  
PIZZELLA TO BE MEMBERS, FEDERAL LABOR  
RELATIONS AUTHORITY**

**WEDNESDAY, SEPTEMBER 25, 2013**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:35 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Jon Tester, presiding.

Present: Senators Tester, Portman, and Johnson.

**OPENING STATEMENT OF SENATOR TESTER**

Senator TESTER. I will call to order this hearing of the Senate Committee on Homeland Security and Governmental Affairs. There will be at least one other person showing up today but I just want to thank, first of all, thank the nominees for being here.

We convened this afternoon's hearing to consider the nominations of Carol Waller Pope, Ernest DuBester, and Patrick Pizzella to serve as Members of the Federal Labor Relations Authority (FLRA).

Carol Waller Pope, Ernest DuBester, and Patrick Pizzella have all filed responses to a biographical and financial questionnaire, answered prehearing questions submitted by the Committee and have had their financial statements reviewed by the Office of Government Ethics (OGE).

Without objection, this information will be a part of the hearing record with the exception of the financial data which are on file and available for public inspection in the Committee offices.

Carol Waller Pope has over 30 years of experience at the FLRA and is the first and only FLRA career employee to serve as a member. Most recently, Ms. Pope served as the FLRA's Chairman from 2009 through January of this year.

Under her leadership as Chairman, the FLRA eliminated its case backlog, reduced the average age of pending cases by 57 percent and vastly improved employee satisfaction and morale.

Ernie DuBester has 35 years of experience in labor-management relations with nearly 20 years of experience in the Federal sector. He has worked as a public servant, advocate, mediator, arbitrator, and academic. Mr. DuBester currently serves as the Chairman of the FLRA and has been a member since 2009.

Patrick Pizzella has 21 years of experience in the Executive Branch and has held positions in management and administration at six different agencies including the Department of Labor (DOL), Office of Personnel Management (OPM), and the General Services Administration (GSA). Most recently, Mr. Pizzella served as the Assistant Secretary of Labor from 2001 to 2009. Additionally, Mr. Pizzella was an original member of the Chief Human Capital Officers (CHCO) Council.

I want to thank Ms. Pope, Mr. DuBester, and Mr. Pizzella for joining us here today.

When Senator Portman gets here, we will allow him to do his opening statement but I think I will just proceed with the oath.

Our Committee rules require all witnesses at nomination hearings to give their testimony under oath. Will the three nominees please stand, raise their right hands.

Do you swear that the testimony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth so help you, God?

Ms. POPE. I do.

Mr. DUBESTER. I do.

Mr. PIZZELLA. I do.

Senator TESTER. Let the record reflect that the witnesses answered in the affirmative.

We are going to go with your testimony. Each of you have 5 minutes for your oral testimonies. Your complete written testimony will be made a part of the record.

Ms. Pope, we will have you get started but first we have the honor to have Congresswoman Norton here today and so I will turn the floor over to you, Congresswoman.

**TESTIMONY OF THE HONORABLE ELEANOR HOLMES NORTON,  
A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF  
COLUMBIA**

Ms. NORTON. Thank you very much, Senator Tester. I want to say how much we appreciate this hearing. I am here to speak, of course, for Carol Waller Pope and my appreciation for the hearing comes from a fairly unusual circumstance.

Although I think it has been clear to the Administration that Ms. Pope was to be appointed, this career employee, for technical reasons, actually retired after 34 years of service because her holdover period expired and has to come back to Federal service.

We are particularly proud of Ms. Pope for what she has done in the agency and I am going to dispense with the usual credentials that one offers when you are presenting a nominee for the first time. I mean this is a nominee with a record, appointed by two Presidents for membership on the Authority, then as chair and now as chair.

She has been reappointed as chair it seems to me for reasons that the President could not ignore. She has taken an agency that had real management difficulties and turned it around. You mentioned one of the indications.

But here is an agency that Ms. Pope found in last place among small agencies in 2009 among best places to work in the Federal



Government. Then by 2010 she had already brought it up to 20th from 38th and an award for the most improved small agency.

Now, it has risen to 7th best and it ranks in the top five small agencies in teamwork and effective leadership.

Mr. Chairman, I think that summarizes why the President has nominated Ms. Pope; and if I may say so, Mr. Chairman, I think it is a good reason for this Committee to offer her to the Senate floor.

Thank you very much.

Senator TESTER. Well, thank you, Eleanor, for your very kind remarks and I would agree with your testimony.

Before we get you, Carol, I would ask as we hear from Ranking Member Portman and Senator Johnson if he has any opening comments.

#### OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman. I appreciate you holding the hearing; and to Congresswoman Holmes Norton, good to have you over here on our side of the Capitol; and that is meaningful that you would come all the way over here on behalf of Ms. Pope.

I am looking forward to the nominees telling us a little more about their background and also what they would like to do at the FLRA. I have been on the other side of that table as a nominee a couple of times. I know it is always interesting in the confirmation process.

But in this particular case, this comes at a very critical time obviously for the Federal Labor Relations Authority because it lacks a quorum and is unable to do its work which is to adjudicate disputes arising under the Civil Service Reform Act (CSRA) and to decide cases concerning the negotiability of collective bargaining agreement or proposals, also to hear appeals concerning unfair labor practices and representation petitions and all important work.

I am told that over the course of nearly 9 months the authority has lacked a quorum, it has developed a backlog of well over 100 cases that have yet to be considered and decided.

So, are you sure you want to do this? Because if you are confirmed, one of your most pressing priorities, obviously, is going to be to address that backlog and do it in an efficient and timely manner but also with high quality decisions.

It also is going to be essential to attend to some of the other statutory responsibilities, to establish policies and guidance regarding labor-management relations of the nearly 1.6 million non-postal Federal employees. So, it is a big job. I am glad the Administration and Congress are now taking the necessary steps to provide the quorum and to get FLRA back to work.

Even with a full complement of members, as Eleanor has just noted, there have been some challenges. We are all aware the authority came in dead last on the Partnership for Public Services best places to work in the Federal Government surveys in 2005, 2007, and 2009.

I am pleased to note that the FLRA has made significant strides in terms of its internal management. It now ranks, as I understand

it, 8 out of 29 small agencies for employee satisfaction. But I am sure we can all agree that there is a lot more to be done to be sure the agency works efficiently and it is a good place to work so you can attract the best and that we can be sure that we are helping foster lawful and productive relations between government managers and Federal employees.

So, thank you, Mr. Chairman, for allowing me to speak briefly. I look forward to the testimony from the nominees.

Senator TESTER. Thank you, Senator Portman, we appreciate your statement.

Eleanor, thank you for coming over. We appreciate your glowing remarks of Ms. Pope also.

And, you can proceed, Ms. Pope.

**TESTIMONY OF THE HONORABLE CAROL W. POPE<sup>1</sup> TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Ms. POPE. Thank you. Good afternoon. I want to thank the Committee and in particular Senators Tester, Portman, and Johnson for conducting this hearing. I also want to thank the Committee staff for their work and meaningful assistance, and finally I want to thank Congresswoman Norton for being here today as she has been on two prior occasions that I appeared before this Committee.

I admire her illustrious career in the law, civil rights, human rights, and public service as the first female Chairman of the Equal Employment Opportunity Commission (EEOC) appointed by President Carter in 1977.

While she found her place as an elected representative, I found mine as a member and Chairman of the Federal Labor Relations Authority. I am honored today and delighted to have been nominated by President Obama to serve for a third term as member and again serve as Chairman of the FLRA upon confirmation.

As you have noted, I have worked for the last 33 of my 34 years of public service at the FLRA; and I would be remiss if I did not—because the FLRA has been a home for me for so long—acknowledge all of the FLRA staff here in attendance. It is a testament to their interest in the mission of the agency and the process that engages and confirms their leaders.

In particular, I want to acknowledge General Counsel Julia Clark, who was appointed by President Obama and confirmed by the Senate in 2009; and I appreciate her being here today.

I also want to acknowledge my family, my sister, Linda White, who is representing all of my family, from Philadelphia. I am a Pittsburgher but she is from Philadelphia. And, my fiancé, Fred Grigsby, Jr., who is here from St. Maarten.

As I said, the mission of the FLRA is an important one. We have been described as a small but mighty agency because of the breath of our jurisdiction, 1.9 million non-postal employees.

We do a number of things primarily through our regional offices, training, investigations, prosecution of the statute, the Federal Service Labor-Management Relations Statute; and one of the mission matters that we take seriously is alternative dispute resolution to try to resolve disputes without costly litigation.

<sup>1</sup> The prepared statement of Ms. Pope appears in the Appendix on page 26.

We do that through a lot of effort that is put into education and training. It is our belief that if the parties understand their statutory rights and obligations, needless litigation will not occur. And so, we do a lot of work regarding education and training of the statute.

When I last appeared before this Committee on September 11, 2008, the FLRA was plagued with poor mission performance, hundreds of unresolved cases, and a dispirited workforce noted primarily for low morale. It was not a fun place to be because we got notoriety for being the last in the Federal employee viewpoint surveys.

Upon becoming Chairman in February 2009, I instituted an internal and external campaign known as the 3Rs—revitalization, reinvention, and re-engagement. This multi-pronged, multi-year initiative was geared toward revitalizing mission performance as the No. 1 goal and customer service, reinventing work processes and service delivery models and re-engaging our customers to better meet their needs for training and timely and quality dispute resolution.

While the 3Rs initiative helped focus our actions and our resources, the FLRA's success over the last 4 years would not have been realized without the hard work of all of its employees, including those that are mostly unseen and often underappreciated.

Our case intake and publications, human resources, administration, and budget offices—all FLRA employees here in Washington and Atlanta and Boston and Chicago, and Dallas, Denver, and San Francisco—are the agency's greatest assets. Together we were successful in eliminating the backlog of cases, revising regulations, and renewing a commitment to training, education, and alternative dispute resolution.

I would like to share one other perspective with you. Given the fact at the end of my holdover period in January 2013, the FLRA was a relatively young agency, 34 years old, and the fact that I joined in the agency as a relatively young attorney—age omitted from this presentation—I had then served the agency in increasingly responsible positions during 97 percent of its history.

So, my careers spans 97 percent of the history of the agency. Therefore, I own a unique perspective of both the good and the not-so-good of our history and there has been dramatic improvement.

The employees of the FLRA achieved these remarkable results but as Chairman I worked together with all of the Presidential appointees to provide the leadership and the resources for them to unleash their collective energy, skills, and talents.

Going forward, if confirmed, no matter what the challenge is, internal or external, financial, technological, or perhaps skill-based, as Chairman I will again work with my Presidentially appointed colleagues and employees to implement a shared vision that prioritizes our resources in order to deliver even better customer service.

I am honored to appear today with my fellow member nominees, Ernest DuBester and Patrick Pizzella. Chairman DuBester deserves praise for his management of the agency and the Authority for the last 8 months. Without a quorum of members issuance of decisions in pending cases before the Authority, approximately a

third of which are now exceeding our internal time targets for issuance of a decision, have been stalled.

Upon conformation, I am eager to join Member DuBester and to welcome nominee Pizzella to the FLRA family and get busy resolving this backlog of cases.

The FLRA must also continue to recruit, train, and retain a diverse workforce. With the looming possibility of governmentwide reorganizations and larger budget reductions, the FLRA must continually revise and enhance its work processes to ensure that workplace disputes are resolved in a manner that promotes effective and efficient government.

In closing, with respect to the FLRA's statutory mission and the role and responsibilities of the position to which I have been nominated, I would like to quote President Teddy Roosevelt who once stated, "far and away the best prize that life offers is the chance to work hard at work worth doing."

I welcome any questions that you may have.

Senator TESTER. Thank you for your statement, Ms. Pope.

Mr. DuBester, it is your turn.

**TESTIMONY OF THE HONORABLE ERNEST W. DUBESTER<sup>1</sup> TO  
BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. DUBESTER. Thank you, Mr. Chairman, Senator Portman, Senator Johnson. I greatly appreciate the opportunity to come before this Committee again for its consideration of my nomination. I also would like to thank the Committee's staff for their work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would also like to introduce my wife, Karen Kremer, who is here. This is the year of our 25th anniversary. When I first met Karen, she was working for Senator Howell Heflin on the Senate Judiciary Committee. So, this body will always have a special meaning for me in my personal life.

It is also a great pleasure to appear alongside my friend and colleague, Carol Waller Pope and my new friend and hopefully soon to be colleague, Pat Pizzella.

I also want to recognize the presence here this afternoon, in addition to our general counsel, Julie Clark, of quite a few people here from the FLRA. As Carol suggested, these dedicated public servants, as well as many FLRA staff who are not present, are the key to the FLRA's many accomplishments of the last 4 years.

It is an honor to appear before this Committee after being nominated again by President Obama. As you noted, I have served as a member of the FLRA for the last 4 years and have been privileged to serve as its Chairman since January.

When I last appeared before this Committee, then-Senator Akaka noted that big changes were needed because for far too long the FLRA had failed to carry out its mission.

With a serious backlog of cases existing then and low employee morale that has been referred to by Carol and Representative Norton, and I think by you, Mr. Chairman, I would say too that, indeed, big changes have occurred.

<sup>1</sup>The prepared statement of Mr. DuBester appears in the Appendix on page 54.

The last 4 years reflect many accomplishments at the FLRA based on an energetic period, as Carol put it, of the 3Rs—revitalization, reinvention, and re-engagement.

At the end of the last calendar year, not only had we completely eliminated our case backlog but we had eliminated all over-age cases. In addition, exercising our statutory responsibility to provide leadership in labor-management relations, we delivered a variety of training sessions to thousands of labor and management representatives in the Federal sector community; and with the agency focused on human capital initiatives such as training and development, performance management, and work life balance, as has already been suggested, employee morale I believe has improved dramatically.

And, for the last 2 years, we have ranked in the top 10 and we have received No. 3 rankings in the specific categories of teamwork and effective leadership. So, I know that is gratifying to many and certainly to Carol and myself.

So, Mr. Chairman, in my nearly 40 years of experience in labor-management relations, working as you noted in a variety of capacities with more than a majority of my professional life now in the Federal sector, I remain strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the Federal sector.

If reconfirmed, I will continue to work tirelessly so the FLRA is recognized as one of the stellar agencies in the Federal Government. And again, I appreciate the opportunity to be with you today and I would also be pleased to answer any questions that you have.

Senator TESTER. Thank you, Mr. DuBester. Mr. Pizzella.

**TESTIMONY OF PATRICK PIZZELLA<sup>1</sup> TO BE A MEMBER,  
FEDERAL LABOR RELATIONS AUTHORITY**

Mr. PIZZELLA. Thank you, Mr. Chairman.

Before I begin I would like to recognize my wife, Mary Joy, who previously served at the Department of Energy (DOE), the State Department, and the General Services Administration. So there is no shortage of Federal service in our family.

Chairman Tester, Senator Portman, and Senator Johnson, and other Members of the Committee, I want to thank you and your staff for all the courtesies you may have shown me as I prepared for this hearing.

Given the seriousness of the issues that surround you on the eve of the new fiscal year, I am especially appreciative of the time that you are taking to ensure that the Federal Labor Relations Authority operates at full strength.

This is the third time I have had the privilege of being nominated by a President for a position of public trust. I am honored the President nominated me to be a member of the Federal Labor Relations Authority; and if confirmed, I will dedicate myself to discharging of the responsibilities of the FLRA in accordance with laws, rules, and regulations.

<sup>1</sup>The prepared statement of Mr. Pizzella appears in the Appendix on page 79.



I began my tenure in Federal service in the early 1980s, and I believe my 21 years of experience in the Executive Branch will be an asset to the FLRA.

I will be happy to answer any questions you may have.

Senator TESTER. Thank you, Mr. Pizzella.

I appreciate all of your testimonies. We are going to start with standard questions that we ask all nominees.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. POPE. No.

Mr. DUBESTER. No.

Mr. PIZZELLA. No.

Senator TESTER. Do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. POPE. No.

Mr. DUBESTER. No.

Mr. PIZZELLA. No.

Senator TESTER. Do you agree with our reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Ms. POPE. Yes.

Mr. DUBESTER. Yes.

Mr. PIZZELLA. Yes, sir.

Senator TESTER. I want to thank you. And, would the clerk to put 7 minutes on the clock, and we will have as many rounds as necessary.

I am going to start with you, Ms. Pope. I am pleased we are able to hold this hearing today for all of you and I hope to get you all moving through the pipeline very quickly. As you all know too well, this lack of quorum on the authority has really prevented many cases from coming to an ultimate decision, and we owe Federal employees, we owe them to have a fully functioning FLRA.

So with that as a background, Ms. Pope, what is the biggest issue facing the FLRA today?

Ms. POPE. I would say for the authority side of the house it is our backlog of cases.

Senator TESTER. Uh-huh.

Ms. POPE. It was tremendous that we worked together pursuant to a corrective action plan that was approved by the Office of Management and Budget (OMB) to erase our backlog before; and I certainly want to make that our priority because it was demoralizing to our employees that we had a case backlog and that we were not performing our mission effectively and efficiently; and I know we can do it again because we have done it before.

We certainly have fewer cases now than we did before. In addition to issuing case, decisions that are currently backlogged, one of the important issues for the FLRA is to continue to maintain a staff that is nimble and trained because we do know that, as there are issues in government with regard to organizations, furloughs, closures that we see an increase in cases; and those are the most important cases for us to be able to address in a timely manner.



So, to eradicate our backlog, positions us to be able to handle the inventory as it comes in a timely way. Our internal time targets are 180 days; and when we were successful in erasing our backlog, we had reduced our average age to 50 days and we can do it again.

Senator TESTER. I would assume that the lack of quorum has contributed to that backlog and maybe contributed to the fact that the staff is not as nimble, I do not want to put words in anybody's mouth, but does not have the flexibility that you want. A fair statement, if you agree that is fine. Are there other things that the lack of quorum has done to impact the FLRA's ability?

Ms. POPE. I know that some of the senior leadership positions, particularly those reporting to a Member, staff attorneys on a Member's staff, out of respect for the Members opportunity to select their senior staff, in some regard those positions have been kept open.

I also believe that from my experience as chairman, I benefited from having a full complement of Presidential appointees to collaborate with on administrative matters, on budget matters. And so, it is important to the overall administration of the agency that we have a quorum of all Presidential appointees, particularly Members.

Senator TESTER. I would agree.

Mr. DuBester, I will ask you a question here. After spending a career working in various capacities which you have referenced and so did I, including the National Labor Relations Board, the National Mediations Board, and the FLRA, what experiences have you found most helpful to your role as a member on the FLRA?

Mr. DuBester. Well, there are so many of them; but if I had to single one out that I think has the broadest and deepest rippling effects, it would be serving for many years as a mediator and also acquiring, related to that, the special skills as a teacher and a trainer in the art of collaborative problem-solving.

And, I think we have put an emphasis for the last 4 years and will continue to do so to complement what I would call our traditionally regarded mission, if you will, with working with the agency and union reps that we serve to get them to think of us in non-traditional ways and to consider using our collaborative alternative dispute resolution skills, because by doing so we accomplish a lot.

We certainly help parties with their relationships but it is more than just about the personal human side of the relationship. We help them to solve a lot of their disagreements internally on their own without getting involved in protracted litigation proceedings, if you will, which are very costly.

So, we help them to conserve some of their scarce resources at a time when everyone feels the need to do more with less.

And so, we also have integrated the Alternative Dispute Resolution (ADR) into our own culture internally. Virtually every office, and certainly every component, starting with our impasse panel, which by definition is an alternative dispute resolution operation, our office of General Counsel, and even within the authority side we have an Office of Alternative Dispute Resolution and we work with the parties even involving some of the cases that we have jurisdiction over.

For example, with negotiability decisions we will put our alternative dispute resolution office staff in contact with the parties before we engage in formal decisionmaking, and often we are able to help them in a negotiability dispute either to resolve the case completely, to narrow the disagreements over a number of proposals or at least to narrow their differences within proposals.

And, I think that all, of this has a valuable effect not just for our mission performance but, if you will, throughout the Federal Government, because that is another piece about our mission that I think is sometimes overlooked.

And, if I could just add to the answer to the question that you asked previously about the greatest problem facing the FLRA, it is making sure that we have the adequate resources to perform our mission; and again why I think that is so important is it is not just about what I would call the seeming self-interest of the FLRA per se but we have responsibilities throughout the Federal Government to help provide for stable, constructive labor-management relations.

And if we are unable to do that, then there are consequences throughout the Federal Government. People at agencies with disputes are less able to perform their mission because they are either distracted by the costs of litigation or the time necessary to deal with those disputes.

So, I think that is an important recognition about the importance of our work too.

Senator TESTER. I appreciate your answer and I appreciate you delving into other areas too.

Mr. Pizzella, I was going to get to you but my time is about out. We are going to have another round so the next time around we will do it. Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman.

We talked earlier about this backlog and the Chairman just asked some questions about it. I was interested, Mr. DuBester, in your focus on adjudicating disputes, as you say in your testimony, fairly, impartially, and expeditiously; and you mentioned in your response to the question of collaborative dispute resolution.

I know through your career you have emphasized the importance of ADR in addressing conflicts that might otherwise go to litigation. Can you talk just a little about what hurdles remain, what role can it play in reducing the backlog at FLRA and what hurdles there are to having that happen. What, might be done to expand its use, for instance, more training to labor and management representatives to try to reduce frivolous filings and facilitate avenues for those parties to resolve disagreements even on their own? Is that part of what you would recommend or not?

And then if I might, Ms. Pope, you talked a little about what you did last time, which I think resulted in an 87 percent reduction in case inventory. You said it was an even larger inventory backlog.

What did you learn and what is your view on ADR? And do you share the perspective Mr. DuBester talked about earlier?

So, starting with you, Mr. DuBester.

Mr. DuBESTER. Thank you, Senator. Well, first on the current backlog, again just to provide context, as we recognized, the first phase I would say is to go back to 2009. We were facing a backlog then of approximately 450 cases within the authority component;

and I think, as Carol mentioned in her opening statement, a critical action plan had been put into effect to deal with that; and as I mentioned in my statement, by the end of last calendar year not only had we eliminated that backlog but we had completely eliminated any over-age cases.

So, the backlog that you are referring to now, of course, is the one created by the absence of a quorum this year. Any over-age case in my mind is a serious matter even if it is one.

We have a number of cases now that have started to constitute a backlog. It is less than 100 in my opinion. I think you should know, though, we have been operating—but for the very serious matter of not being able to issue decisions absent a quorum—we have been operating in all other respects in a normal fashion; and within the authority component, that means within our three respective staffs, they have been considering cases, moving them along, moving them to me for consideration.

And, every time I get a case on my desk, I vote on it, the point being that hopefully there is an efficiency in that so that with Carol and Pat, hopefully to be confirmed by the Senate, their work will be reduced or the authority's work will be reduced because it will have progressed to the next stage.

With respect to training, again two things about that. Training is very much an important part of what Carol and I have referred to as one of the 3Rs which is re-engagement although part of the training also involves our own people and our own staff.

But with respect to training and what I would call the collaborative problem-solving kind of skills, we have done that in a variety of ways. We have done that just from our own ADR office based on contacts and communications we have directly with management reps and union reps in the Federal sector.

We have also done that in concert with the National Council on Labor-Management Forums, which were created by the President's Executive Order (EO) to create those and the idea of creating, as a complement to collective bargaining if you will, more effective and efficient government operations hopefully doing so in a way that provides for a more cooperative and collaborative relationship.

So, a lot of training has been done as part of that initiative, and I think it is a very important part of our outreach, and we have done some of that on our own, as I said, and we have done some of that in concert with our sister agency the Federal Mediation and Conciliation Service.

And, we have a lot of anecdotal but real stories within various agencies where their relationships have improved dramatically even in the last 4 years which creates for a more effective and efficient day-to-day operation of their missions.

So, yes, that remains a very important part—

Senator PORTMAN. Let me just interject just for a second because I want to get to Ms. Pope and get to Mr. Pizzella. But do you have any hurdles right now to getting more ADR in place to doing the training, to try to avoid some of these frivolous lawsuits, to doing more administratively? What are the challenges you face?

And then getting to Ms. Pope, are you supportive of this way to get more efficiency through ADR and administrative avenues rather than full adjudication where appropriate?

Mr. DUBESTER. Sure. Very quickly, two parts. I would say, as I mentioned, I think if there is a hurdle for us, it is making sure that we have adequate resources and that includes budgetary resources that we can continue to do, if you will, the outreach and external communications that we have done, and we are hopeful that we can continue to do that.

The barriers we have are the barriers you have with any relationship. Again, we have participated with the National Council on Labor-Management Forums. Part of that Council has a problem resolution committee. Our General Counsel who has been introduced here, Julia Clark, has been kind of heading that along with a large group of management and union representatives.

And, the barriers that you have, well, we have a lot of improvements in relationships and a lot of stories to show that. But we still have difficulties with issues of trust or communication which are key to any relationship, not just labor-management relations.

But it takes time. It takes work making parties aware of the services that we have to provide training and working with them is a valued task but it takes work and we are prepared to continue that work.

Senator PORTMAN. Thank you. Ms. Pope.

Ms. POPE. I want to speak first to the backlog of cases and we have the experience of reducing and eliminating the backlog. Before, by way of contrast, there were 300 backlogged cases and we have a little over 100, 140 or so now.

Part of the tools and processes that we implemented to address that will help serve us well with regard to the current backlog. So, we are ahead of the game, so to speak, with regard to revisions in our regulations that we implemented over the last 4 years that encourage, in the arbitration area, expedited decisions, also opportunities throughout for ADR.

We have had the successful experience of using ADR in our negotiability cases and success in that area is not just resolving the entire case. In the negotiability area where the parties are bogged down in their contract negotiations, and sometimes it is a sad story to tell but in the Federal sector, negotiations for a collective bargaining agreement can go on for years.

And, they come to us with a case where there are 30, 40 proposals where there are issues as to whether the parties have to negotiate at all, not whether they should agree but whether it is negotiable. And, we have been successful in implementing ADR and aggressive in going to the parties.

I am wholeheartedly supportive of ADR. But one of the hurdles is it is voluntary, and we have been successful in employing a team of not just our ADR experts from our collaborative alternative dispute resolution office but teaming them with attorneys from each of the members' staff who, dividing the proposals, the pending proposals in a case and each member office does research on a third of the pending proposals to work with the ADR official to provide the legal background and context to help the parties understand and agree during the ADR process where there is case precedent that their proposal has already been deemed negotiable or non-negotiable.

That has really been a great team effort and that is the kind of work—

Senator PORTMAN. It helps expedite the process.

Ms. POPE. Exactly.

Senator PORTMAN. My time has expired. Mr. Pizzella, this means that Mr. Johnson is going to be really tough on you because you avoided both of us.

But just to put emphasis on one point you made which was you changed the administrative rules regarding arbitration to have them work more flexibly, as I understand it, and speaking as one member and I think I probably speak for the other members, this is something we would want to be able to encourage you to do but also to assist you if there are any legislative hurdles or anything else we can do from our point of view.

And, thank you Mr. Chairman.

Ms. POPE. Thank you.

Senator TESTER. Thank you, Senator Portman. Senator Johnson.

#### OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman.

Mr. Pizzella, you can breathe a sigh of relief here.

Mr. DuBester, I believe I heard Ms. Pope say that the backlog is a hundred, maybe 140. Is it as high as 114? What is the backlog right now?

Mr. DUBESTER. I am not exactly sure. It depends on how you count but 140 might be just cases that are in our inventory.

Senator JOHNSON. OK.

Mr. DUBESTER. I would not consider all of those cases to be part of the backlog because they have not processed through in terms of our time lines, if you will, that make them even approaching over-age yet.

So, I think the number is less than that but I think 140 is what is in our inventory but those cases still are not what I would call in the problem or danger zone.

Senator JOHNSON. You mentioned as you have been the only member you still have been basically working the process of reviewing these cases and voting on them. How many are really in a state that is going to be ready when the authority is completed or you have a full membership can very quickly be adjudicated or settled?

Mr. DUBESTER. Well, of course, part of that depends upon how quickly this body confirms my colleagues up here.

Senator JOHNSON. I understand.

Mr. DUBESTER. But right now I would say the number is approaching 50 and quite frankly I have a few cases on my desk to vote on so I am hoping it could be certainly in the 60-65 range.

Senator JOHNSON. So, almost half could be really settled quite quickly, dispose of, and then you have a pretty reasonable backlog then.

Mr. DUBESTER. I believe that is a fair characterization. Yes.

Senator JOHNSON. I would kind of like to understand the process. I am new to really understanding what the FLRA is. So, can you talk about the priority of reviewing these cases? Is it just a first-



come-first-served basis? Are there particular issues that potentially rank a little higher in terms of your review, Ms. Pope.

Ms. POPE. One of the things that we did when we had a backlog of 300 cases was to not just address it as first-in first-out, because as we attack the backlog, newer cases also became over-aged if we just work on over-aged cases.

So, the process is such that when an appeal is filed with the Authority, it is assigned in rotation to one of the three members. Each of the three members has a legal staff that reviews the case, develops the legal issues, the research, and makes recommendations for their members vote and circulates that written information to all of the members for their votes.

Sometimes cases are easily resolved; and when we were addressing a backlog, we tried to, in essence, look at the whole body of cases and not just wait until they came to a member but to assign a group of staff to look over all.

Can we group cases with regard to legal issues? Can some, notwithstanding the fact that they are younger, go out so we can clear the decks for older cases?

We really triaged cases and will continue to do so hopefully if I am confirmed, because it is important to look at the issues and not just the date it was filed.

Senator JOHNSON. Obviously, working together as colleagues on the Authority, do you know each other pretty well? I would think, Ms. Pope, Mr. DuBester, each other pretty well.

Ms. POPE. Over the course of the last 4 years we have gotten to know each other very well.

Senator JOHNSON. What about Mr. Pizzella?

Mr. PIZZELLA. I just met them in the last month.

Senator JOHNSON. Brand-new. Could you just tell me what areas all three of you will basically agree on? Are there any areas where you may be in greater disagreement on? Let me start with Mr. Pizzella.

Mr. PIZZELLA. Thank you, Senator.

I certainly think the obvious thing which is to address the backlog. As long as there is a backlog, sort of an overhang on the Authority's work, there will be continual questions from the customer community, from Members of Congress, as to why things are not being addressed.

So, that would certainly be my immediate focus; and unlike my two potential colleagues here, they have had some years of experience at reviewing cases; and Ernie himself has had, I guess, 8 or 9 months here where he has had the cases to himself.

So, I am probably going to have to take a little time to get up to speed but I intend to make that the focus of my job there.

Senator JOHNSON. Do you anticipate any philosophical differences? Are we going to see a lot of 2-1 decisions or is it going to be a lot of 3-0 decisions?

Mr. PIZZELLA. If I can convince them to come with me, there will be a lot of 3-0 decisions. [Laughter.]

But I do not really have a general answer to that. I will exercise my authorities and give my opinion, which is the charge I would have if being confirmed, and understanding that I can count and



sometimes it will be 2-1 one way and sometimes it will be 3-0 but I will have to live with whatever the decisions are.

Mr. DUBESTER. But for context if I could just say this, in the 4-years or little less than 4 years that I served to the end of the last calendar year when we had a quorum, I think I participated in something like 700 decisions. And while I do not have the precise math, and while recognizing that we are all individuals and certainly that would apply to Pat, Pat is an individual, but I would say with the prior full complement of members that we had, we probably agreed on somewhere between 80 and 85 percent of the decisions that we issued. They were unanimous 3-0.

I have talked to Pat enough to know that we root for the same sports teams. We have a lot of other things in common. I am confident that percentage is not going to change dramatically and I predict that is probably what it would be. So, the overwhelming majority would be unanimous decisions but there will be some 2-1 decisions.

Senator JOHNSON. Is that because there is a fair amount of clarity in the law or is it because there is really a meeting of the minds in terms of the philosophy of the decisionmaking, Ms. Pope?

Ms. POPE. I certainly have been guided by the 67 volumes of case law that have been developed by the Authority over the 34 years of implementing the statute; and if you start with the case law and applying the facts, then that is where there may or may not be a point of demarcation but there is a lot of clarity in the law after 34 years.

There are newer issues, legal issues that are unprecedented and that is where we look to private sector law and also develop newer case law for the Authority.

So, it is not so much my philosophical bias, if you will, it is the case law that guides the decisionmaking.

Senator JOHNSON. I am glad to hear that. Thank you.

Thank you, Mr. Chairman.

Senator TESTER. Thank you, Senator. I very much appreciate the questions.

Mr. Pizzella, you spent a number of years at the Department of Labor as Assistant Secretary. Can you relate how those experiences at Labor may help you as a member of this Committee of the FLRA?

Mr. PIZZELLA. In a couple of fashions. So to speak, I was a customer of the FLRA from time to time because some of the disputes at the department if we could not resolve them at the department, they might work their way to the FLRA.

The objective of an Assistant Secretary was always trying to solve any issues whether it is EEOC or labor-management ones in the department and address them early before they fester and then work their way up the food chain and then they need to leave the department to be decided by a body like the FLRA.

In my time at the department, one of the things that I was engaged in was the three collective bargaining agreements that the department entered into with its employees; and I learned a great deal from that. I was administering those as an Assistant Secretary. I was not in all the negotiations but I was in constant con-

tact with certainly the management team and I met with the labor team also.

So, I had a little bit of a first hand experience from that side of the equation as to what really goes on in some of these disputes and negotiations; and I think that may help me have a little understanding of when an appeal comes to the FLRA as to what might have went on before it got there.

Senator TESTER. I appreciate that. This is a question for all three of you. It deals with transparency. I want to know: Is it an essential part of leadership? If it is, how does transparency play within the FLRA?

Ms. POPE. I think transparency is an essential part of leadership and we cannot be effective as the leaders of the agency without transparency.

For us during the years that I was Chairman, we basically invited all of the career leadership in to collaborate on policy matters, pay and performance matters as well as representatives of the employees.

We instituted new ways to communicate and we published our budget in a newly implemented weekly electronic newsletter that went out nationwide. We improved technology so that employees could also communicate with us.

We set up an internal Web site for employees to ask questions anonymously. We also had a Web site where they could post questions. Transparency was also achieved through the first-ever town hall meeting where we met with employees and told them everything they wanted to know and we were responsive to questions that they posted on the message board anonymously.

So, we have employed a number of tools. One of the things I learned is to be transparent you cannot communicate enough and also you have to listen.

Senator TESTER. Mr. DuBester.

Mr. DUBESTER. Well, I agree completely. Again as people who know me in any hat I am wearing, the key to successful labor-management relations whether you are a leader or not is communication; and a big part of communication is sharing information and that applies to the business internally within the agency of trying to share with managers as well as employees through whatever mechanism, what is going on, what the problems are, what your tough decisions are, and where you are going.

But it is a two-way street. I mean, the other part of transparency is being open to receiving information from those groups as well. And, I think if they feel like you are transparent one-way, you are going to be receiving the input of your employees whether they are managers or employees. So that is important.

For our stakeholders externally, it is very important and it is a big part of what the business is all about as a leader, as a mediator, to respect the rights of labor and management reps to choose and decide what information they want to share with the other side. I always encourage them to share information. To me that is the key to a successful relationship.

That does not mean soliciting agreement, and people always get confused about the difference between what I would call an envi-

ronment that fosters transparency and the sharing of information as opposed to sometimes you just cannot agree but that is OK.

Senator TESTER. That is right, Mr. Pizzella.

Mr. PIZZELLA. I am a strong believer in transparency; but in addition to our stakeholders, sometimes I know this from my experience in the Department of Labor and elsewhere, when agencies tend to talk about their stakeholders, sometimes they omit the biggest stakeholder of all which is the taxpayer.

So, I would like to see us bring some transparency to there to make sure taxpayers are aware of what we are doing. It is very easy to be confined here inside the Beltway, especially with the Authority which jurisdiction is Federal employees and Federal agencies, but there is a taxpayer involvement.

Senator TESTER. Thank you.

Mr. Pizzella, you are an original member of the CHCO Council?

Mr. PIZZELLA. Yes, sir.

Senator TESTER. What did you learn about the similarities and differences facing Federal agencies in the realm of labor relations?

Mr. PIZZELLA. I learned that some have absolutely no interest or problem or concern. They are usually the smaller agencies.

Senator TESTER. Yes.

Mr. PIZZELLA. And then, I learned that most of the agencies that I thought were complaining about the labor relations were ones who sort of avoided making, what I thought would be considered tough decisions. They did not want to spend a lot of time on labor relations.

Their agencies had missions and directions from the Secretary or Administrator of an agency and sometimes labor relations would take a backseat, often it would take a backseat.

The only time they would really get raised up the flagpole is when it impacts a decision that is trying to be implemented. So, outreach to agencies to make them understand the importance of resolving issues perhaps before they get too far down the pipeline I think would help agencies rather than have them frustrated.

Senator TESTER. Thank you. Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman.

Mr. Pizzella, you got short shrift earlier but you got more air time recently. Just focusing on what you said a moment ago which is one of your stakeholders is the taxpayer and that leads me to question about your budget because, even though you are a small agency, in today's budget environment, we looked everywhere, under every rock, for ways to find efficiencies and find ways to save money.

I understand your direct obligations for fiscal year 2013 were almost \$25 million, \$24.9 million and your request for next fiscal year is for \$25.9 million. And, this is directed to all three of you because, Mr. DuBester, particularly you were very involved in that budget I am sure.

So, first of all, I would like to get your insights on the personnel side. I assume that accounts for 80, 85 percent of your budget. A lot of agencies are going through some tough times right now freezing employee numbers, some reducing employees. You have asked for a 4-percent increase in personnel from 2013 to 2014 and you have talked about that today, the need for adequate resources.

This would be about a 15 percent growth in your staffing levels since 2009, as I look at it. So, my question for you, starting with you, Mr. Pizzella, since you talked about the taxpayer. Again, I understand you have not been through the budget process probably, at least you have not been in a position to have to go through it in the way your colleagues have. But do you think that increase is necessary given the budget climate that we are in?

Mr. PIZZELLA. Senator, having served as Assistant Secretary while you were director of OMB I glad to see you have not changed a bit.

Senator PORTMAN. Exactly.

Mr. PIZZELLA. It really would be unfair of me to, I think, comment on the budget simply because having put together budgets before, I do not know what went into the formulation of the budget. Saying this, I am very proud of the time at the Department of Labor where, under Secretary Elaine Chao's leadership we had, for 8 years, we ended up with a smaller discretionary budget in our eighth year than the first year.

And so, I am a bit of a skinflint and I will certainly try to conserve the taxpayer's money as best I can. I would think that OMB probably has a mark as far as the rate of growth that they would allow agencies to pursue, if I remember the process well; and I would hope we live within that mark. I guess I would leave it at that.

Senator PORTMAN. Yes. I was happy to see your background at Labor both because you were on the management side in some of these disputes that you are now going to be working on and so you have had some experience in disputes at least from the management side. But second, Secretary Chao was my favorite Secretary when I was at OMB.

Mr. PIZZELLA. Mine too.

Senator PORTMAN. Not just because she is a great lady but because the meetings were much more conducive to a negotiated settlement. You guys did a really good job of going through your individual departments and trying to figure out how you could find savings, particularly on the administrative side.

So, you kept to your mission but you were able to find savings. Some other Secretaries who will remain unnamed because they are still very active in town and in politics, who were not quite as easy because they would come in at 10 or 20 percent above and we would have to spend a lot of time whittling it down.

And frankly, you are in a better position to know where you can find those savings than OMB. So, my question I guess is at a time when we are looking at another year of flat domestic spending and you guys, and again, Mr. DuBester and Ms. Pope, are asking for an increase, is it absolutely necessary—is this something that you have spent time figuring out how you could avoid and just what are your thoughts on the budget?

Mr. DUBESTER. Let me make three points, if I can.

The first thing I want to say is the interest of the taxpayer, if you will, and not only because of the realities of the current environment we are in but at any moment in time I think our statutory directive to help produce more efficient, effective government oper-

ations requires us to consider the interest of the taxpayer, if you would.

I would say to you respectfully, and my guess is you probably could check it out, but I think not only hopefully up here on Capitol Hill but within the Office of Management and Budget, I think we have developed a reputation over the last few years of recognizing what it means to do more with less and doing a lot of creative things to accomplish our mission objectives while conserving money and I will just say that as just kind of a foundation question.

The second point I would like to make, though, is just one of context because obviously the last couple of years have created a unique environment. But I think it is fair to say particularly because as you accurately suggested, Senator Portman, the human element, our staffing if you will, is not only the greatest expense but it is also the key to our mission performance.

Only 10 years ago we had a third larger-sized workforce than we have today. I guess the point I am making just for context is that even before we hit the more severe budgetary environment of, say, the last couple of years, we had already downsized by about a third which I think is a meaningful context from recent years. And, that is a position where we lost some key people.

And third, to make it more immediate, during this last year in particular where we have been facing, as everyone in the Federal Government has, the severe challenges of budgetary constraints, we left open a lot of critical positions. I want to say about 13 that we have just started to fill.

And, you asked about barriers and my answer to the question about barriers going forward in terms of achieving what I hope you would agree are a lot of these successes externally with the labor-management community in the Federal sector and my response was, having the adequate resources to continue to perform our mission related responsibilities.

So, we had 13 vacancies in key areas and we only had, I want to say four, maybe even three, additional positions created for the fiscal year 2014 budget. And, I will tell you one of them is within our Office on Collaboration Alternative Dispute Resolution just because of the increased demands on that service.

We are not sure, as I sit here with you today, that we are going to be able to fill that but that is part of the ask that we have that you are referring to which to me is very important and I think again has rippling, positive rippling effects throughout the Federal Government, not just for the FLRA internally.

So, those are some of the tough issues and the choices that we are balancing. That is what I wanted to share.

Senator PORTMAN. My time has expired but if the Chairman will indulge me just 1 second for Ms. Pope on the budget issue, any final comments.

Ms. POPE. Just to add—

Senator PORTMAN. You can just say I agree or disagree.

Ms. POPE. I agree with everything that has been said but I would like to add one or two additional points, and that is, during my tenure as Chairman, we started out in an effort to rebuild the agency and we had been decimated not only from a prior recission, but because we were not managed effectively to use our resources wisely.



But one of the things we did starting out was with the Presidential appointees in the room and representatives of the career employees to say we are not just going to go OMB to ask for the same amount of resources that we had before.

We are going to look at what we can do differently with respect to our work processes and we developed a very good relationship with OMB to negotiate and get their understanding that we needed funds to rebuild, that our requests were not unreasonable because we had been decimated in our staffing. Performance was poor, and we needed additional monies.

With the budget amount that we would receive every year, we would internally look to manage our resources in the most effective way. We have shared staff. We have detailed employees internally because we made a decision that our budget would not support filling all of the positions that were in our budget.

We also look to use technology to better improve our customer delivery without the cost of travel, and we have also shared services other agencies whereas an agency budgeted at the 22, 23, 24 million dollar level of the FLRA, we could not afford to keep up with technology in an environment where 80 percent of our budget is staff driven.

We have partnered with the Veterans Administration, the Department of Defense to use their technology resources to build web-based manuals, webinars hosted by OPM on their dime to also save our resources so we would not impact adversely the delivery of our services.

So, we continued to look for ways to use resources in an effective way and to not just come to the Senate and ask for more money.

Senator PORTMAN. Thank you. I appreciate that response and I look forward to the FLRA having a full complement to be able to do its work and I thank the Chairman for giving me a little extra time here. I wish you all the best of luck.

Mr. DUBESTER. Thank you, Senator.

Senator TESTER. Thank you, Senator Portman.

For the record, for Ms. Pope or Mr. DuBester, what was the peak number of employees that you guys employed? What was the highest member?

Mr. DUBESTER. In history?

Senator TESTER. FLRA, yes. And when was it?

Ms. POPE. I would say almost in 2003 maybe was a peak year. We had about 200 employees if not more.

Senator TESTER. And you have today how many?

Ms. POPE. On board, 114. Well, we are funded at the 123 level. I think there are around 113 or 114.

Senator TESTER. That 110, 113 level does not include the 10 or 13 people that you are looking to fill positions right now.

Mr. DUBESTER. Yes. I think our number is just a little bit higher than that but, no, I think at the end I think it is right. I think at our peak we actually were closer to, as Carol said, a little more than 200, probably about 220.

What we are seeking authorization for in our fiscal year 2014 budget is to get to 134. So, that would be still obviously almost a 45 percent lower full-time equivalent authorization than we had.



Senator TESTER. I understand that. And you have a ton of really good employees obviously and some of them are here in the room today. I guess the question is when you drop that number of employees and assuming you would have had a quorum to work with and your numbers are in good shape, I mean, I think it says a lot about you and it says a lot about the employees that work in the agency.

But the question is really how do you determine that sweet spot, because Senator Portman is right. We are looking under every rock for dollars. Anybody want to answer that? It is not an easy question to answer. How do you determine when enough is enough and you do not need anymore?

Ms. POPE. The staffing levels certainly are part of the equation with regard to how we define timeliness of a case.

Senator TESTER. OK.

Ms. POPE. And what we set our time targets for.

Senator TESTER. So, what are the parameters that you use to determine that.

Ms. POPE. One hundred eighty days for cases before the Authority, certain cases by statute less, 120 days before the Office of the General Counsel, and various time targets in the other components and offices.

Senator TESTER. In the days when you had a quorum, did you meet those standards?

Ms. POPE. We did in the last 2 years.

Senator TESTER. Good. That is good. That is a very good thing.

First of all, I want to thank you guys for your testimony. I very much appreciate you taking the time out of your busy schedule to be here. I want to thank you for your willingness to serve.

As I said in my opening statement, I hope that we can get you guys through the process as quickly as possible. I can tell you that I think all three of you will work together. I hope there are times when you disagree and I hope there are times you are going to agree and hopefully it is not a cantankerous environment and I do not think it will. I do not think your personalities indicate that at all.

So, thank you for being here today and thank you for your testimony.

Without objection, the hearing record will be kept open for 24 hours for any additional comments and for any questions that might be submitted for the record.

With that, this hearing is adjourned.

[Whereupon, at 3:41 p.m., the Committee was adjourned.]



## APPENDIX

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**Opening Statement of Senator Jon Tester  
Nominations of Honorable Carol W. Pope, Honorable Ernest W. Dubester, and Patrick  
Pizzella to be Members, Federal Labor Relations Authority  
September 25, 2013**

*As prepared for delivery:*

I call to order this hearing of the Senate Committee on Homeland Security and Governmental Affairs.

We convene this afternoon's hearing to consider the nominations of CAROL WALLER POPE, ERNEST DUBESTER, and PATRICK PIZZELLA, to serve as Members of the Federal Labor Relations Authority.

Carol Waller Pope, Ernest DuBester, and Patrick Pizzella have all filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and have had their financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the hearing record, with the exception of the financial data which are on file and available for public inspection in the committee offices.

**Carol Waller Pope** has over 30 years of experience at the FLRA and is the first and only FLRA career employee to serve as a Member. Most recently, Ms. Pope served as the FLRA Chairman from 2009 through January of this year. Under her leadership as Chairman, the FLRA eliminated its case backlog, reduced the average age of pending cases by 57%, and vastly improved employee satisfaction and morale.

**Ernie DuBester** has 35 years of experience in labor-management relations, with nearly 20 years of experience in the federal sector. Mr. DuBester has worked as a public servant, advocate, mediator, arbitrator, and academic. Mr. DuBester currently serves as the Chairman of the FLRA and has been a Member since 2009.

**Patrick Pizzella** has 21 years of experience working in the Executive Branch and has held positions in management and administration at 6 different agencies, including the Department of Labor, Office of Personnel Management, and the General Services Administration. Most recently, Mr. Pizzella served as the Assistant Secretary of Labor from 2001 through 2009. Additionally, Mr. Pizzella was an original member of the Chief Human Capital Officers, or CHICO, Council.

Thank you, Ms. Pope, Mr. DuBester, and Mr. Pizzella, for joining us today.

Our committee rules require all witnesses at nomination hearings to give their testimony under oath. Would the three nominees please stand and raise their right hands?

Do you swear that the testimony you are about to give to the committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

*[Nominees: "I do."]*

Let the record reflect that the witnesses answered in the affirmative.

**“Nominations Hearing: Federal Labor Relations Authority”  
Senate Committee on Homeland Security and Government Affairs  
September 18, 2013**

**OPENING STATEMENT -- SENATOR PORTMAN**

I want to thank Chairman Carper and Ranking Member Coburn for scheduling this hearing, and Senator Tester for taking on the responsibility for chairing today's proceedings. I'd also like to thank the nominees for being here to answer the Committee's questions and for their commitment to public service. As a former nominee myself, I have sat on that side of the table on various occasions and know something of the experience. I believe each of you has been through prior confirmations hearings. But if you're at all like me, it's the sort of experience that seems unique on each occasion.

This nominations hearing comes at a critical time for the Federal Labor Relations Authority. The FLRA currently lacks a quorum and is largely unable to perform its statutory duties to adjudicate disputes arising under the Civil Service Reform Act, to decide cases concerning the negotiability of collective bargaining agreement proposals, to hear appeals concerning unfair labor practices and representation petitions, and to consider exceptions to grievance arbitration awards.

I'm told that over the course of the nearly nine months that the Authority has lacked a quorum, it has developed a backlog of well over 100 cases that have yet to be considered and decided. If you are confirmed, one of your most pressing priorities must be to address this backlog of cases in a timely and efficient manner. It will also be essential to attend to the FLRA's statutory responsibility to establish policies and guidance regarding the labor-management relations of the 1.6 million non-postal federal employees. I'm glad the administration and the Congress are taking the necessary steps get the FLRA back to work.

Even with a full complement of Members, the recent history of the FLRA has not been without its challenges. As we are all well aware, the Authority came in dead-last on the Partnership for Public Service's "Best Places to Work in the Federal Government" survey in 2005, 2007, and 2009. I'm pleased to note that the FLRA has made significant strides in terms of its internal management and now ranks number 8 out of 29 small agencies for employee satisfaction.

But I'm sure we can all agree that more must be done to ensure that the agency operates efficiently and effectively in fulfilling its responsibilities and in helping to foster lawful and productive relations between federal employees and government managers. I look forward to discussing these and other policy issues this afternoon.

### Opening Statement of Carol Waller Pope

Good Afternoon. I want to thank the Committee and, in particular, Senators Tester and Portman for conducting this hearing. I also thank the Committee staff for their work and meaningful assistance. Finally, I want to thank Congresswoman Norton for being here today as she has been on the two-prior occasions that I appeared before this Committee. I admire her illustrious career in the law, civil rights, human rights, and public service as the first female Chairman of the Equal Employment Opportunity Commission, appointed by President Carter in 1977. Since 1991, she has served as the distinguished and effective Congresswoman representing the District of Columbia.

While she has found her place as an elected representative, I found mine as Member and Chairman of the Federal Labor Relations Authority. I am here today honored and delighted to have been nominated by President Obama to serve for a third term as Member and, if confirmed, to again serve as Chairman of the Federal Labor Relations Authority. The FLRA, where I have worked as a career attorney and political appointee for the last 33 of my 34 years in public service, has an important statutory mission -- a mission that has been the cornerstone of my professional career.

That mission is to exercise leadership in promoting stable, constructive labor-management relationships and resolving disputes in a manner that contributes to a more effective and efficient government. That mission extends to over 2.1 million non-Postal, federal employees, approximately 1.2 million of whom are represented in 2,200 bargaining units. The FLRA accomplishes its mission through the work of our seven regional offices, where investigations, training and education, alternative dispute resolution, and prosecution of violations of the law take place; and in the Office of Administrative Law Judges, where dispute resolution efforts continue and if unsuccessful, formal adjudication begins. Also, the FLRA component known as the Federal Service Impasses Panel works to resolve bargaining impasses. Finally, and most relevant to the hearing today, the three-Member body known as "the Authority" has responsibility to: 1) render quality, timely decisions to resolve unfair labor practice charges on appeal from the Office of Administrative Law Judges; 2) resolve exceptions to grievance arbitration awards; 3) make determinations regarding representation petitions; and, 4) resolve negotiability disputes.

When I last appeared before this Committee on September 11, 2008, the FLRA was plagued with poor mission performance, hundreds of unresolved cases, and a dispirited workforce noted primarily for its low morale. Today, the FLRA is functioning at a high level of productivity, with customer and FLRA-employee engagement, and with full consultation and collaboration among Presidential and career employees. Upon becoming Chairman in February 2009, I instituted an internal and external campaign known as the "Three R's - Revitalization, Reinvention and Re-engagement." This multi-pronged, multi-year initiative was geared toward revitalizing mission performance and customer service; re-inventing work processes and service delivery models; and re-engaging our customer to better meet their needs for training and timely and quality dispute resolution.

While the "three-R" initiative helped focus our actions and our resources, the FLRA's success over the last four years would not have been realized without the hard work of all of its employees, including those that are mostly unseen and often under-appreciated in our Case Intake and Publication, Human Resources, Administration, and Budget offices. All FLRA employees -- here in Washington and Atlanta and Boston and Chicago and Dallas and Denver and San Francisco -- are its greatest asset! Together we were successful in eliminating the backlog of cases, revising regulations, and renewing a commitment to training, education, and alternative dispute resolution.



to avoid costly litigation. Internally, a strategic plan was developed; long-vacated senior and entry-level positions were filled; technology was enhanced; and the agency-wide performance management system was revised.

With increased communication, collaboration, and transparency, employees' commitment to the mission and confidence in leadership was revitalized. Our mission success improved morale and job satisfaction. In 2010, the first Employee Viewpoint Survey conducted after I became Chairman, the FLRA was recognized as the "Most Improved Small Agency" in the federal government with a 250% increase in employee morale and satisfaction. In that Survey, the FLRA rose from 34<sup>th</sup> (last place) to 20<sup>th</sup>. The FLRA continued its rise in employee satisfaction in the 2011 Survey, ranking 7<sup>th</sup>. Most recently, in the 2012 Survey the FLRA ranked 8<sup>th</sup>. The FLRA currently ranks in the top five small agencies in Teamwork (3<sup>rd</sup>) and Effective Leadership (3<sup>rd</sup>).

I would like to share one other perspective with you. Given the fact that at the end of my holdover period in January 2013, the FLRA was a relatively young agency (34 years old) and the fact that I joined the agency as a relatively young attorney, I had then served the agency in increasing responsible positions during 97% of its history. Therefore, I own a unique perspective of both the "good" and the "not-so-good" of our history. Never has there been such a dramatic *improvement* of the FLRA's performance matrix as during my tenure as Chairman. The employees of the FLRA achieved these remarkable results. As Chairman, I worked together with all of the Presidential appointees to provide the leadership and the resources for them to unleash their collective energy, skills, and talents. Going forward, if confirmed, no matter what the challenges -- internal or external, financial, technological, or perhaps skill-based -- as Chairman, I will again work with my Presidential colleagues and all employees to implement a shared vision that prioritizes our resources in order to deliver even better customer service. Our ability to achieve this will be greatly enhanced by the contributions of the full panel of nominees sitting before you today.

I am honored to appear today with my fellow Member-nominees Ernest DuBester and Patrick Pizzella. Chairman DuBester deserves praise for his management of the agency and the Authority for the last eight months, without a quorum of Members. Issuing decisions in pending cases before the Authority, approximately a third of which now exceed internal time-targets for issuance of a decision, has been stalled. Upon confirmation, I am eager to join Member DuBester and to welcome nominee Pizzella to the FLRA family and get busy resolving this backlog of cases. The FLRA also must continue to recruit, train, and retain a diverse workforce. With the looming possibility of government-wide reorganizations and larger budget reductions, the FLRA must continually revise and enhance its work processes to ensure that workplace disputes are resolved in a manner that promotes the effective and efficient operation of government.

In closing, with respect to the FLRA's statutory mission and the role and responsibilities of the position to which I have been nominated, I would like to quote President Teddy Roosevelt, who once stated -- *"Far and away the best prize that life offers is the chance to work hard at work worth doing"*

I will be happy to answer any questions.

REDACTED

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<b><u>Name of Position</u></b>	<b><u>Date of Nomination</u></b>
Member, Federal Labor Relations Authority (Upon Appointment to be designated Chairman)	January 22, 2013

<i>Current Legal Name</i>			
<b><u>First Name</u></b>	<b><u>Middle Name</u></b>	<b><u>Last Name</u></b>	<b><u>Suffix</u></b>
Carol	Waller	Pope	

<i>Addresses</i>					
<b><u>Residential Address</u></b> (do not include street address)			<b><u>Office Address</u></b> (include street address)		
			<b><u>Street:</u></b> None		
City: Washington	DC	20015	City:	State:	Zip:

<i>Other Names Used</i>						
<b><u>First Name</u></b>	<b><u>Middle Name</u></b>	<b><u>Last Name</u></b>	<b><u>Suffix</u></b>	<b><u>Check if Student Name</u></b>	<b><u>Name Used From</u></b> (Month/Year) (Check box if estimate)	<b><u>Name Used To</u></b> (Month/Year) (Check box if estimate)
Carol	W.	Pope			05/1980	Present
Carol		Pope			05/1980	Present
Carol	A.	Waller		X	08/1952	05/1980

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1952	Pittsburgh, PA

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
N/A			

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (If over 18)</i>			
First Name	Middle Name	Last Name	Suffix
N/A			

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Northeastern University	School of Law	09/1975	05/1978	Juris Doctor	05/1978
Simmons College	Undergraduate College	09/1970	05/1974	Bachelor of Arts	05/1974
Cornell University	Undergraduate College - School of Industrial and Labor Relations. Professional training on 1) Mutual Gains Bargaining/Negotiation Skills and 2) Facilitator Training for Mutual Gains Negotiation	1) 5/1993 Est. X 2) 5/1994 Est. X	1) 5/1993 Est. X 2) 5/1994 Est. X	Certificate of completion	1993 and 1994
Federal Executive Institute	Office of Personnel Management Executive Leadership Training	Est. 6/1997 X	Est. 6/1997 X <input type="checkbox"/>	certificate	1997
Harvard Law School	Harvard Negotiation Institute, Program on Negotiation	Est. 2/1998 X	Est. 2/1998 X	certificate	1998

## 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment,	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if	<u>Date Employment Ended</u> (month/year) (check box if
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State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other				estimate)	estimate) (check "present" box if still employed)
Federal Government	Federal Labor Relations Authority	Chairman and Member	Wash., DC	Chairman - 03/2009; Acting Chairman 2/2009 - 3/2009; Member - 10/2008 (confirmed); 04/2007 - 09/2008 - (recess appt.); 10/2000 - 12/2006 (confirmed)	01/2013
Federal Government	Federal Labor Relations Authority	Assistant General Counsel for Appeals	Wash., DC	10/1998	10/2000
Federal Government	Federal Labor Relations Authority	Director of Appeals and Special Programs	Wash., DC	06/1996	10/1998
Federal Government	Federal Labor Relations Authority	Executive Assistant to the General Counsel	Wash., DC	07/1994	06/1996
Federal Government	Federal Labor Relations Authority	Attorney	Boston, MA	02/1980	07/1994
Federal Government	U.S. Department of Labor	Attorney	Wash., DC	01/1979	02/1980
Federally-funded Program	New Careers in Mental Health, Boston University School of Medicine	Job Developer	Boston, MA	06/1974	08/1975

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
None		Est C	Est C Present C

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

I have not engaged in any such activity.



## **5. Honors and Awards**

**List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.**

Letter of Congratulations from Senator Daniel Akaka, Chairman Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, September 2010, on "dramatic improvement in the 2010 Best Places to Work Rankings."

Most Improved Small Agency in 2010 Best Places to Work in the Federal Government Annual Survey

American Bar Association - Federal Service Leadership Award, 2005

Carol Waller Pope Leadership Scholarship Award (for students -- created by Simmons College in honor of my volunteer leadership), 2005

National Partnership for Reinventing Government Hammer Award, 1999

Office of Personnel Management, Federal Executive Institute, Commencement Speaker, 1997

Special Achievement Award, Federal Labor Relations Authority, 1981

Superior Accomplishment Award, Federal Labor Relations Authority, 1991, 1992, 1999

Sustained Superior Performance Award, Federal Labor Relations Authority, 1988, 1989, 1999

Sustained High Quality Performance, Federal Labor Relations Authority, 1997

Special Act Award, Federal Labor Relations Authority, 1997, 1998

Certificate of Appreciation, Federal Labor Relations Authority, 1999

Simmons College Alumnae Service Award, 1998

Commonwealth of Massachusetts State Senate Citation, 1993

Big Sister Association of Greater Boston, 1993

## **6. Memberships**

**List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years. Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your**

children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Simmons College Alumnae Association, Boston, MA	1975 - present	President and Vice-President (est. 1991-1993)
Simmons College African-American Alumnae Association, Boston, MA	1995- present	President (est. 2000-2004)
Simmons College Leadership Council	2004-present	Member
Simmons College Board of Trustees, Boston, MA	2004-present	Trustee
Simmons College Corporation, Boston, MA	2000 - present	Corporator
Employment Justice Center, Washington, DC,	2006 - present	Secretary
Madison Park Development Corporation, Board of Directors, Boston, MA	1980's - present	Director
United States Court of Appeals, First Circuit Bar	1979 - present	Member
Supreme Court of the United States Bar	1990 - present	Member
United States Court of Appeals, Fifth Circuit Bar	1979 - present	Member
American Bar Association	2004-2011	Member
Massachusetts Bar Association	1978 - present	Member
Society of Federal Labor Relations Professionals	1999 - present	Member
Central State University General Alumnae Association	2010	Member

### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (If applicable)</u>
No.			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Clinton-Gore Campaign	Poll Watcher, VA	Poll Watcher	November 1996
Democratic Party	Volunteer Attorney Voter Protection, PA	Legal Services Team Member to address voter protection issues.	November 2004
Democratic Party	Volunteer Attorney Voter Protection, VA	Legal Services Team Member to address voter protection issues.	November 2008

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Obama Victory Fund	500.00	2008
Obama Victory Fund	1,000.00	2008

### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Careers and the Minority Lawyer -- Career Bios See Attachment #1.	Crimson and Brown Associates	Spring 1999

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

See Attachment # 2.		
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(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
See Attachment #3.		

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) **No.**
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? **No.**
- Have you been charged, convicted, or sentenced of a crime in any court? **No.**
- Have you been or are you currently on probation or parole? **No.**

- Are you currently on trial or awaiting a trial on criminal charges? **No.**
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? **No.**

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

- A) Date of offense:
- a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
  - 2) Firearms or explosives: **Yes / No**
  - 3) Alcohol or drugs: **Yes / No**
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
  - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
  - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
  - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: **Yes / No**
- H) Provide a description of the sentence:

- I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No
- J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No
- N) Provide explanation:



### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
No				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
December 12, 2011		Nicholas Hawkins, Jr. v. Carol Waller Pope, EEOC Appeal Docket No. 01-2013-0659	Administrative proceeding in which complainant alleges discrimination based on age, race, and disability, and reprisal.	Pending.
July 7, 2010	U.S. District Court, Western Division of Tennessee	Sherry Taylor v. Carol Waller Pope, EEOC Appeal Docket No. 01-2010-3284	The plaintiff alleges that an FLRA Regional Director's denial of her unfair labor practice charges was discriminatory and retaliatory.	Dismissed on November 8, 2012.
August 17, 2010	U.S. District Court, District of Columbia	AGFE, AFL-CIO, Local 2798 and Hussain v. Pope and Clark, No. 1:10-01012	The plaintiff seeks review of the FLRA General Counsel Julie Akin Clark's refusal to issue a complaint in an unfair labor practice case and the General Counsel's decision to deny plaintiff's request for	Dismissed on September 1, 2011.

			reconsideration of the denial.	
July 28, 2008		Ayo Glanton v. Carol Waller Pope, EEOC Appeal Docket No. 440-2009-00104X	Administrative proceeding in which the complainant asserted an Equal Pay Act claim.	Resolved by settlement on May 12, 2009.
July 28, 2008		Kenneth Woodbury v. Carol Waller Pope, EEOC Appeal Docket No. 440-2009-00106X	Administrative proceeding in which the complainant asserted an Equal Pay Act claim.	Resolved by settlement on May 8, 2009.
December 1998	DC Superior Court, Family Division	Carol Waller Pope and Chauncey A. Pope	Divorce proceeding.	Granted.

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. None.

#### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed. No.

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? No.

#### 12. Tax Compliance

**REDACTED**

**REDACTED**

### 13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). No.

### 14. Outside Positions

x See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

**15. Agreements or Arrangements**

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

**16. Additional Financial Data**

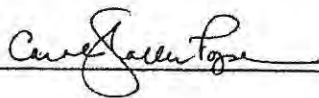
**REDACTED**

**REDACTED**

43

**SIGNATURE AND DATE**

**I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.**

  
\_\_\_\_\_

**This 29th day of May, 2013**

Carol Waller Pope  
HSGA Biographical Questions for Executive Nominees  
May 2013

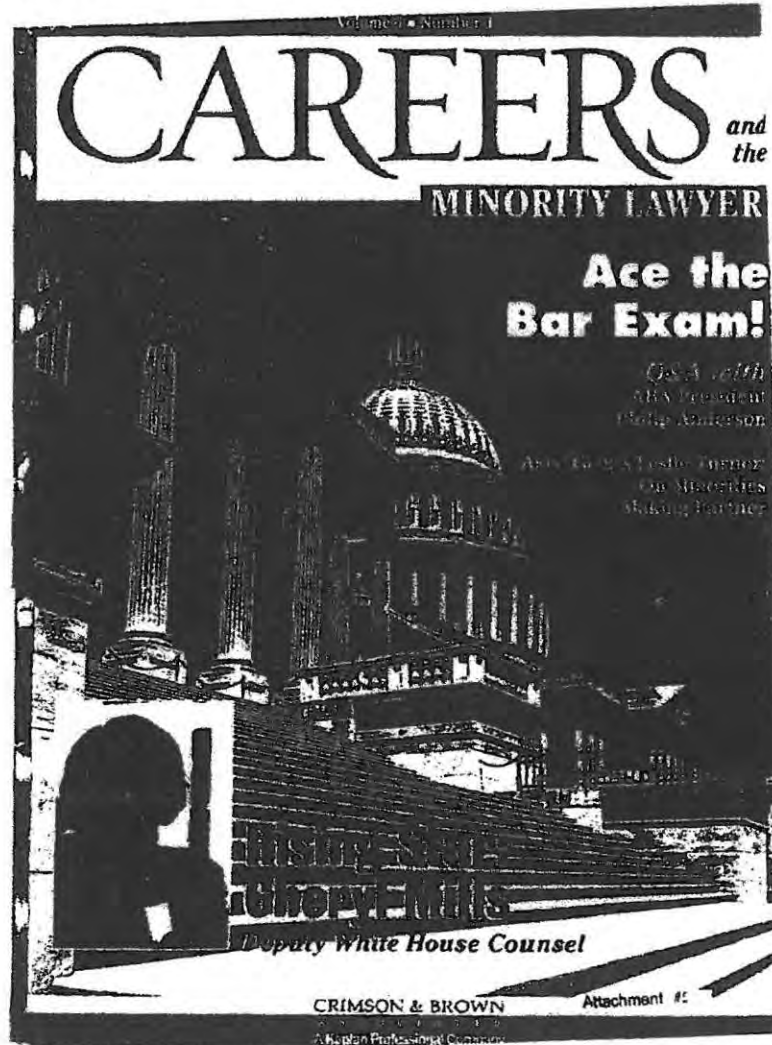
#### INDEX OF ATTACHMENTS

Attachment #1	Response to Question #8(A) – Publications and Speeches
Attachment #2	Response to Question #8(B) – List of Formal Speeches w/text provided
Attachment #3	Response to Question #8(C) – List of Speeches (w/o text)
Attachment #4	Response to Question #12(F) – Tax Compliance <b>REDACTED</b>



Carol Waller Pope  
HSGA Biographical Questions for Executive Nominees  
May 2013

ATTACHMENT #1 Question 8 (A) - Publications and Speeches



Carol Waller Pope  
HSGA Biographical Questions for Executive Nominees  
May 2013

## CAREER BIOS

**B**ECOMING AN ATTORNEY WAS NOT A LIFELONG DREAM. My early career plans were grounded in service to others in the fields of psychology and social work. However, during my senior year of college, I became intrigued by the interplay between psychology and the law in the study of jury selection and composition in criminal proceedings. That interest led me to a business law class. Soon after, I decided to pursue a legal career.

The first hurdle was my own anxiety. I feared that, without four years of pre-law study, I was ill-prepared to compete in law school entrance exams, admissions and the horrors of the Socratic teaching method. I came to realize that my education at a women's college, where I learned that women could and would succeed in any career, had prepared me well.

My legal career is concentrated in government service, specifically in labor law and labor relations. The Federal Labor Relations Authority (FLRA) is an independent federal agency that administers the labor relations program for 1.8 million employees, federal agencies and federal unions in the United States government. The Office of the General Counsel is the independent investigative and prosecutorial component of the FLRA. As assistant general counsel, I assist in the development and administration of legal policy, litigation strategy and alternative dispute resolution services. I also manage the legal and quality review of more than 500 appeals cases filed annually.

My transition from staff attorney to a management position began with an offer to accept a political appointment as executive assistant to the general counsel, a presidential appointee. The position presented opportunities for job growth; however, because job security for political appointees is limited by the electoral success of the presidential candidate, the offer carried some risk. I accepted the position because I knew it would serve as a stepping stone for career advancement and great achievements often come from opportunities that include significant risk.

Since then, I have held positions of increased responsibility. Continuous learning—including skills training in areas that extend beyond traditional legal education—are critical to my success. Skill development has resulted in a greater knowledge of facilitation and intervention skills, interest-based problem solving and the art of effective communication. Alternative dispute resolution skills are an integral part of my role in assisting parties to foster improved labor-management relations.

Leadership can be defined as a critical component of one's success. As manager of the office's strategic planning process, I have leadership responsibilities in the areas of strategic planning, implementation and evaluation. I also lead teams whose charge is to develop and implement strategic initiatives. In this capacity, I served as a team leader for one of three reinvention teams to streamline unfair labor practice post-complaint regulations. Recently, all three teams were notified that our new regulations were being rescinded by Vice President Al Gore. We received the prestigious Hammer Award—Vice President Gore's tribute to reinvention teams for creating a government that works better, costs less and delivers results the American people care about.

Outside the office, my career is enhanced by volunteer work including service as a member of the board of trustees of Simmons College and the board of directors of Simmons' Alumni Association. I am a member of the board of directors of a nonprofit community development corporation and serve as a mentor to college students. This work allows me to practice communication and leadership skills and, more importantly, provides an opportunity to give something back to my community.

My advice to minority lawyers is to engage in lifelong learning. Recognize the value of identifying and communicating your career goals and of seeking the training and experience necessary to achieve them. A successful career means working continuously to ensure a balance between work, family, friends and volunteer service. ■



**Carol Waller Pope,  
Federal Labor  
Relations Authority**

*Flora Assistant General Counsel  
Office of the General Counsel  
Location: Washington, DC  
Career: Assistant General Counsel, 1998;  
Director of Appeals, 1996; Executive Assistant  
to the General Counsel, 1994; Attorney, District  
Regional Office of the Federal Labor Relations  
Authority, 1980; Attorney, Solicitor's Office,  
U.S. Department of Labor, 1979  
Education: JD, Northeastern University School  
of Law, 1978; Leopold Schep Foundation  
Fellow, Simmons College, 1974*

Carol Waller Pope  
HISGA Biographical Questions for Executive Nominees  
May 2013

I did my best to identify all books, articles, reports, speeches, testimony and other materials including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I identified the following:

<b>Attachment #2</b>	<b>Question 8(B) – List of Formal Speeches w/text provided</b>
1. June 2008	FPMI Solutions, Inc., 19 <sup>th</sup> Annual Labor and Employee Relations Conference, New Orleans, LA Audience – Federal sector management and labor officials
2. June 2008	National Energy Technology Center – Federal sector Labor Law and Labor Relations Conference, Pittsburgh, PA Audience–National Energy Technology Center management employees and union representatives.
3. September 2008	Confirmation Hearing Testimony – corrected draft transcript- U.S. Senate Committee on Governmental Affairs and Homeland Security, Washington, DC. (corrected draft testimony provided– final version unavailable.)
4. April 2009	The Society of Federal Labor & Employee Relations Professionals 36 <sup>th</sup> Annual Symposium on Labor, Employee, Management Relations. Luncheon Keynote Speaker, Arlington, VA Audience – Federal sector labor, management and neutrals.
5. June 2009	FPMI Solutions, Inc., 20 <sup>th</sup> Annual Labor and Employee Relations Conference, Miami, FLA Audience – Federal sector management and labor officials
6. June 2009	Labor and Employment Relations Association, 8 <sup>th</sup> National Policy Forum, Panel Presentation, Washington, DC Audience -- academia, management, labor and "neutrals" (arbitrators and mediators) employee relations and neutral labor law professionals.
7. June 2009	National Energy Technology Laboratory, Annual Labor and Employee Relations Training Forum, Speech and presentation entitled, Labor Relations in the New Administration, Pittsburgh, PA Audience – National Energy Technology Center management employees.
8. September 2009	Federal Sector Labor Relations and Labor Law Conference, Chicago-Kent College of Law., Chicago, IL. Audience – law students, faculty and staff; union and management representatives.
9. September 2009	<i>Government Executive</i> magazine interview, Washington, DC

Carol Waller Pope  
HSGA Biographical Questions for Executive Nominees  
May 2013

10. August 2009      Federal Dispute Resolution Conference, Phoenix, AZ  
Audience— Federal sector Human Resource and EEO management officials.
11. November 2009    American Bar Association, 3<sup>rd</sup> Annual Continuing Legal Education Conference., Washington, DC.  
Audience -- ABA Labor & Employment Law Section Members.
12. February 2010    Federal Employer Lawyers Group, Washington, DC  
Audience – Federal sector labor lawyers.
13. May 2010          Defense Employees and Labor Relations Symposium  
Department of Defense Employee and Labor Relations Conference, Tampa, FLA  
Audience – Department of Defense employees.
14. June 2010          AFL-CIO LCC Union Lawyers Conference, Washington, DC  
Audience – AFL-CIO legal staff.
15. June 2010          FPMI Solutions, Inc., Labor & Employee Relations Conference  
Audience – Federal sector EEO, Human Resources and Labor Relations professionals.
16. July 2010          EEOC EXCEL- Passion for Equality Conference, Orlando, FL  
Audience -- Federal EEO, Human Resources and Labor Relations professionals.
17. July 2010          Social Security Administration Annual Labor Relations/Employee Relations Training Conference. Baltimore, MD.  
Audience — Social Security Administration management employees.
18. July 2010          Federal Executive Board, Washington, DC  
Audience — Federal executives
19. September 2010    Federal Administrative Law Judges 47<sup>th</sup> Annual Seminar, Ocean City, MD. Audience — Federal sector Administrative Law Judges
20. September 2010    Federal Sector Labor Relations and Labor Law Conference, Chicago-Kent School of Law, Chicago, IL  
Audience – law students, faculty and staff; union and management representatives.
21. September 2010    Telephone interview published in Washington Post – *The Federal Coach* column

Carol Waller Pope  
 HSGA Biographical Questions for Executive Nominees  
 May 2013

22. June 2011 FPMI Solutions, Inc., Labor & Employee Relations Conference, Tuscon, AZ. Audience – Federal sector EEO, Human Resources and Labor Relations professionals
23. Spring/Summer 2011 Radio Interview published in Business in Government Journal
24. November 2011 Metal Trades Department, AFL-CIO 69<sup>th</sup> Annual Convention Las Vegas, NV. Audience – MTC National and Local officers and conference attendees.
25. March 2012 Federal Managers Association Training Seminar Washington, DC. Audience FMA members/training attendees.
26. April 2012 FLRA All-Employee Town Hall Washington, DC. Audience – FLRA employees
27. June 2012 FPMI Solutions Inc., Washington, DC. Audience - Federal sector EEO, Human Resources and Labor Relations professionals
28. July 2012 United States Department of Agriculture Human Resources Management Conference Washington, DC. Audience – USDA Human Resources professionals
29. October 2012 National Federation of Federal Employees 49<sup>th</sup> National Convention, Portland, OR. Audience – NFFE National and Local officers and conference attendees.
30. December 2012 FLRA All-Employee Town Hall Washington, DC. Audience – FLRA employees
31. December 2012 Excellence in Government Fellows Training Seminar, Partnership for Public Service, Washington, DC. Audience – Government Employees selected as Excellence in Government Fellows.

Carol Waller Pope  
HSGA Biographical Questions for Executive Nominees  
May 2013

<b>Attachment #3</b>	<b>Question 8 (C) – List of all speeches (w/o text)</b>
June 2003	FPML, Solutions, Inc., Annual Conference, Speech entitled, Current Issues in Federal Sector Labor Law and Labor Relations Phoenix, AZ
February 2006	Speech to Simmons College students delivered at ceremonial dinner conferring Carol Waller Pope Leadership Award scholarship to student recipient. Boston, MA., Audience Simmons College alumnae. Speech topic: leadership.
October 2006	Luncheon speech to Administrative Law Judges Association. Washington, DC. Luncheon topic was current issues in Federal sector Labor Law and the operation of FLRA.
June 2009	Federal News -- Federal Drive Program Radio Interview 1500 AM, Washington, DC Topic: FLRA Agency update
October 2009	Federal News -- Federal Drive Program Radio Interview 1500 AM, Washington, DC Topic: FLRA Agency update
August 2010	Federal Dispute Resolution Conference Agency Head (with officials from Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Mediation and Conciliation Service and Office of Personnel Management) Update Panel
September 2010	FLRA Office of the General Counsel Chicago Town Hall Meeting (labor and management representatives), Topic: Update on FLRA initiatives.
April 2011	Federal Workers Alliance (association of Federal Unions) Topic: Update on FLRA initiatives
May 2011	BNA, Washington, DC Interview on FLRA's new Arbitration Regulations Interview posted on BNA's Labor and Employment Resource website.
August 2011	Federal Dispute Resolution Conference Agency Update Panel (with officials from Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Mediation and Conciliation Service, Office of Special Counsel and Office of Personnel Management) and Best Places to Work Panel



Carol Waller Pope  
HSGA Biographical Questions for Executive Nominees  
May 2013

September 2011	FLRA Office of the General Counsel New York Town Hall Meeting (labor and management representatives), New York, NY Audience — Federal labor and management representatives.
August 2012	Federal Dispute Resolution Conference, San Antonio, TX Agency Head Update with Chairman, Merit Systems Protection Board,)

REDACTED



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

FEB 21 2013

The Honorable Thomas R. Carper  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol W. Pope, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.  
Director

Enclosures

November 13, 2012

Rosa M. Koppel  
Solicitor  
Federal Labor Relations Authority  
1400 K Street, NW, Suite 300  
Washington, DC 20424

Dear Ms. Koppel:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my uncompensated positions with the following entities: the D.C. Employment Justice Center, the Madison Park Development Corporation, and Simmons College. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Sincerely

  
Carol Waller Pope

OPENING STATEMENT OF HON. ERNIE DUBESTER OF VIRGINIA TO BE A MEMBER  
OF THE FEDERAL LABOR RELATIONS AUTHORITY  
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
SEPTEMBER 25, 2013

Mr. Chairman and Members of the committee:

I greatly appreciate the opportunity to come before this Committee again for its consideration of my nomination to be a Member of the Federal Labor Relations Authority (FLRA). I also would like to thank the Committee's staff for their work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would like to introduce my wife, Karen Kremer. This year we celebrated our 25<sup>th</sup> Anniversary. When I first met Karen, she was working for Senator Howell Heflin on the Senate Judiciary Committee. So this Body will always hold a special, personal meaning in my life.

It is also a great pleasure to appear alongside my friend and colleague, Carol Waller Pope, and my new friend and, hopefully, soon to be colleague, Pat Pizzella.

I also want to recognize the presence here this afternoon of quite a few people from the FLRA. These dedicated public servants, as well as many FLRA staff who are not present, are the key to the FLRA's many successes of the last four years.

Mr. Chairman, it is an honor to appear before you after being nominated again by President Obama to be a Member of the FLRA. I have served as a Member for the last four years. And, I am privileged to have served as Chairman since January of this year.

When I last appeared before this Committee, Senator Akaka noted that "big changes" were needed because for "far too long" the FLRA had "failed to carry out its mission", with a serious backlog of cases and low employee morale. I respectfully submit that, indeed, big changes have occurred.

The last four years reflect many accomplishments at the FLRA based on an energetic period of revitalization, reinvention, and re-engagement. At the end of the last calendar year, not only had we eliminated our case backlog, but we had eliminated all overage cases. Exercising our statutory responsibility to provide leadership in labor-management relations, we have delivered a variety of

training sessions to tens of thousands of labor and management representatives in the federal Sector community. And with an agency focus on human capital initiatives, such as training and development, performance management, and work-life balance, employee morale has improved dramatically. For the last two years, we have ranked in the top 10 in the Partnership for Public Service rankings for "Best Places to Work in the Federal Government", receiving #3 rankings in the specific categories of teamwork and effective leadership.

Mr. Chairman, in my nearly 40 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, over 20 of those years are in the federal sector. I remain strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the Federal sector. And, if reconfirmed, I will continue to work tirelessly so that the FLRA is recognized as one of the stellar agencies in the federal government.

Again, I appreciate the opportunity to appear before you and I would be pleased to answer any questions that you have.

REDACTED

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Member, Federal Labor Relations Authority (FLRA)	3/7/13

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Ernest	William	DuBester	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 1400 K St., NW, Suite 311		
City: Arlington	State: VA	Zip: 22207	City: Washington	State: DC	Zip: 20005

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Multiple Names	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Ernie					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>



<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1950	Passaic, NJ

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Karen	Marie	Kremer	

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Boston College	College	August/1968 <input type="checkbox"/> Est <input type="checkbox"/>	May/1972 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	A.B.	May, 1972
Columbus School of Law, Catholic Univ. of America	University	August/1972 <input type="checkbox"/> Est <input type="checkbox"/>	May/1975 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	May 1975
Georgetown Univ. Law Center	University	Sept./1978 <input type="checkbox"/> Est <input type="checkbox"/>	May 1980 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	LL.M. (Labor Law)	May 1980
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	<u>Name of Your Employer/ Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Other federal employment	Federal Labor Relations Authority (FLRA)	Chairman	DC	Jan. 2013 <input type="checkbox"/> Est <input type="checkbox"/>	Present <input type="checkbox"/> Est <input type="checkbox"/>
Other federal employment	FLRA	Member	DC	August 2009 <input type="checkbox"/> Est <input type="checkbox"/>	Jan. 2013 <input type="checkbox"/> Est <input type="checkbox"/>
Other federal employment	National Mediation Board (NMB)	Mediator	DC	July 2005 <input type="checkbox"/> Est <input type="checkbox"/>	August 2009 <input type="checkbox"/> Est <input type="checkbox"/>
Non-Government Employment	George Mason University School of Law (GMUSL)	Distinguished Professor of Law (and Chair of Dispute Resolution Program)	Arlington, VA	August 2001 <input type="checkbox"/> Est <input type="checkbox"/>	July 2005 <input type="checkbox"/> Est <input type="checkbox"/>
Self-employment	While at GMUSL	Arbitrator & Mediator	Arl. VA	Aug. 2001 <input type="checkbox"/> Est <input type="checkbox"/>	July 2005 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal employment	National Mediation Board	Chairman (and Member)	Wash. DC	Nov. 1993 <input type="checkbox"/> Est <input type="checkbox"/>	Aug. 2001 <input type="checkbox"/> Est <input type="checkbox"/>
Non-Federal employment	Catholic Univ. School of Law	Adjunct faculty	Wash. DC	1997 <input type="checkbox"/> Est <input type="checkbox"/>	2001 <input type="checkbox"/> Est <input type="checkbox"/>
Non-Federal employment	AFL-CIO	Legislative counsel	Wash. DC	1994 <input type="checkbox"/> Est <input type="checkbox"/>	1993 <input type="checkbox"/> Est <input type="checkbox"/>

Non-Federal employment	Law firm of Highsaw & Mahoney	Associate	Wash. DC	1981	1984
Other Federal employment	National Labor Relations Board	Counsel to Chairman (and Member)	Wash. DC	1975	1981
		Field attorney	Los Angeles Regional Office	1978	1978
		Legal Assistant to Board Member	Wash. DC	Summer of 1974 & part-time Fall of 1974	Spring of 1975

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
International Labor Org.	Chairman, Tripartite Conference on "Consequences for Mgmt. & Personnel of Restructuring of Railways"	April 1994 <input checked="" type="checkbox"/> Est <input type="checkbox"/>	April 1994 <input checked="" type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics officer to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with the FLRA's designated agency ethics officer and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

I have engaged in no such activity.

#### **5. Honors and Awards**

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

While at the NLRB, received Distinguished Service and Sustained Superior Performance Awards in 1978, 1979, & 1980.

#### **6. Memberships**

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
New Jersey State Bar Ass'n	Since 1976	Member
Florida State Bar Ass'n	Since 1976	Member

District of Columbia Bar Ass'n	Since 1980	Member
American Bar Ass'n	Off & On since 1976 (currently a member)	Member
Ass'n of Conflict Resolution	2002-2009	Member
Society of Federal Labor & Employee Relations Professionals	2003-Present	Member
Labor & Employment Relations Ass'n	Off & On since 1994 (currently a Member)	Member & on Board of Directors since January 2013
Boston College Alumni Club of Metropolitan Washington, DC	Since 1976	Member (and President 1984-92)
Virginia Supreme Court, Richmond, VA	2002-Oct. 2008	Certified Mediator

#### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?  
NO

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>



(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Presidential Campaign of Barack Obama	Worked as a volunteer in Virginia. Services rendered included phone banks, canvassing, & literature distribution.		2008

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Presidential Campaign of Barack Obama	\$500	2008
Presidential Campaign of Barack Obama	\$600 (\$300 twice)	2012


#### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
In the magazine "Perspectives on Work", published article entitled: "Collective Bargaining: A Critical Value of a Democracy."	Labor & Employment Relations Ass'n	Summer 2011/Winter 2012 issue


(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Keynote address-Article cited in my response to 8 (A) was adapted from this speech	Dallas, TX, to the National Academy of Arbitrators, SW region	March 4, 2011
Keynote address-Reprised theme from above speech & cited article	Arlington, VA, to 40 <sup>th</sup> Annual Symposium of the Society of Federal Labor & Employment Relations Professionals	April 18, 2013


(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
People-Relationships-Effective Communication. Consistent with Conference's Theme "Back to the Basics", Fundamental Considerations Can Help Make You a Better Practitioner in all Aspects of Labor-Management relations	Office of Personnel Management, Washington, DC. Employee Relations Policy Series.	5/21/13
FLRA Update	American Bar Ass'n, Washington DC. Federal Sector Committee of Labor & Employment Law Section	4/10/13
Why Use of Alternative Dispute Resolution Is So Effective at the FLRA	DC Chapter of Labor & Employment Relations Ass'n	1/22/13
Use of ITEV (Internet, Telephonic & Electronic Voting) in Representation Matters	NYU School of Law. Technology in Practice & Workplace Committee of Labor & Employment Law Sec. of ABA	4/25/12
FLRA Update	Federal Sector Committee, ABA Labor & Employment Law Sec., Chicago, Ill.	11/4/10

FLRA Update	Federal Sector Committee, ABA Labor & Employment Law Sec., Washington, DC	4/15/10

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?  
(Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)  
No
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?  
No
- Have you been charged, convicted, or sentenced of a crime in any court?  
No
- Have you been or are you currently on probation or parole?  
No
- Are you currently on trial or awaiting a trial on criminal charges?  
No
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?  
No

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense:

- a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
  - 2) Firearms or explosives: Yes / No
  - 3) Alcohol or drugs: Yes / No
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
  - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
  - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
  - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: Yes / No
- H) Provide a description of the sentence:
- I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No
- J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No

N) Provide explanation:



### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings. N/A

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
Sept. 2004	Arlington County Circuit Court (VA)	Myself (Plaintiff) and Nicole Arshan (Defendant). My attorney was Patrick Regan, with the firm Regan Zambri & Long, 1919 M St.,	In January 2002, I was involved in a serious automobile accident. I sued the person responsible for causing the accident to compensate for injuries sustained and related consequences.	Matter was settled pre-trial in Feb. of 2005.

		NW, Ste. 350, Wash., DC 20036; 202-463-3030, Ext. 222.		
5/3/13	EEOC, Wash. DC	Robin Davis and Ernie DuBester, Chairman, Federal Labor Relations Agency (FLRA) and FLRA	Appeal to EEOC of Final Agency Action.  I am named only in my capacity as Chairman of the FLRA.	Matter Pending.

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

#### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No

<u>Name of Agency/Association/ Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>
National Mediation Board (NMB)	November 2001	In May of 2001, when I left the NMB and was hired by George Mason University (GMU) Law School, there was an Interdisciplinary Academic Center for Dispute Resolution between the Law School & GMU's Institute for Conflict Analysis & Resolution (ICAR). Apparently, questions were raised about the solicitation of funding for the Center which led to an ethics inquiry.	I was found not to have been involved and, as to me, the matter was dropped (not referred). I continued to teach at GMU for the next four years. And, in 2005, I was rehired by the NMB, the investigative entity, where I worked until August 2009.


(D) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?  
No

12. Tax Compliance

**REDACTED**

**REDACTED**

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). NO

#### 14. Outside Positions

x See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)
Virginia Mediation Network	Richmond, VA	Non-profit	Board of Directors	2005	2008
Northern Virginia Mediation Services	Fairfax, VA	Non-profit	Board of Directors	2003	2008

#### 15. Agreements or Arrangements

x See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Not applicable

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits. Not applicable

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date (month/year)</u>

**16. Additional Financial Data**

**REDACTED**

REDACTED

76

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Ernest W. DuBose

This 10<sup>th</sup> day of June, 2013





United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

MAR 26 2013

The Honorable Thomas R. Carper  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

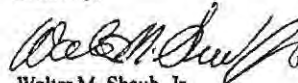
Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ernest W. DuBester, who has been nominated by President Obama for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

  
Walter M. Shaub, Jr.  
Director

Enclosures **REDACTED**

March 11, 2013

Rosa M. Koppel  
Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K Street, NW.  
Suite 300  
Washington, DC 20424

Dear Ms. Koppel:

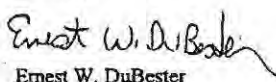
The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor children of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13490) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Sincerely,

  
Ernest W. DuBester

**Prepared Statement of Patrick Pizzella  
September 25, 2013  
Senate Homeland Security & Government Affairs Committee**

Thank you Mr. Chairman.

Before I begin I would like to recognize my wife—Mary Joy—who previously served at the Department of Energy, the State Department and the General Services Administration.

Chairman Carper, Senator Portman, Senator Tester and Members of the Committee, I want to thank you and your staff for all the courtesies they have shown to me as I have prepared for this hearing. Given the seriousness of the issues that surround you on the eve of a new fiscal year I am especially appreciative of the time you have taken to ensure the Federal Labor Relations Authority operates at full strength.

This is the third time I have had the privilege of being nominated by a President for a position of public trust. I am honored the President nominated me to be a Member of the Federal Labor Relations Authority and, if confirmed, I will dedicate myself to discharging the responsibilities of the FLRA in accordance with laws, rules and regulations.

I began my tenure in federal service in the early 1980's and I believe my 21 years of experience in the Executive Branch will be an asset to the FLRA.

I would be happy to answer any questions you may have.

Thank you.

REDACTED

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Member, Federal Labor Relations Authority	August 2, 2013

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Patrick		Pizzella	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: Work from Home		
City: Alexandria	State: VA	Zip: 22302-3304	City:	State:	Zip:

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Multiple Names	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Pat		Pizzella	Jr.		5/04 Est <input type="checkbox"/>	5/71 Est <input checked="" type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1954	New Rochelle, NY

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Mary	Joy	Pizzella	

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
		Jameson			October 1955 <input type="checkbox"/>	February 2005 <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
University of South Carolina	University	8/72 <input type="checkbox"/> Est <input type="checkbox"/>	Present 12/75 <input type="checkbox"/> Est <input type="checkbox"/>	B.S. Business Administration	12/75
		Est <input type="checkbox"/>	Present <input type="checkbox"/> Est <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	<u>Name of Your Employer/ Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
<u>Self-Employed</u>	<u>Patrick Pizzella, LLC</u>	<u>Principal</u>	<u>Alexand ria, VA</u>	<u>Feb. 2002</u>	<u>"present"</u>
<u>Federal Employment</u>	<u>U.S. Department of Labor</u>	<u>Assistant Secretary for Administratio n &amp; Management</u>	<u>Washing ton, DC</u>	<u>May 2, 2001</u>	<u>Jan. 20, 2002</u>
<u>Federal Employment</u>	<u>U.S. Department of Labor</u>	<u>Senior Advisor to the Secretary</u>	<u>Washing ton, DC</u>	<u>March 26, 2001</u>	<u>May 8, 2001</u>
<u>Federal Employment</u>	<u>U.S. Office of Personnel Management</u>	<u>Chief of Staff</u>	<u>Washing ton, DC</u>	<u>Jan. 22, 2001</u>	<u>March 25, 2001</u>
<u>Volunteer</u>	<u>Bush-Cheney Presidential Transition</u>	<u>Policy Coordinator, GSA Team</u>	<u>Washing ton, DC</u>	<u>Dec. 2000</u>	<u>Jan. 2001</u>
<u>Non-Government Employment</u>	<u>Preston Gates Ellis &amp; Rouvelas Meeds</u>	<u>Government Affairs Counselor</u>	<u>Washing ton, DC</u>	<u>Jan. 1998</u>	<u>Jan. 2001</u>
<u>Non-Government Employment</u>	<u>Preston Gates Ellis &amp; Rouvelas Meeds</u>	<u>Director of Coalitions</u>	<u>Washing ton, DC</u>	<u>March 1998</u>	<u>Dec. 1997</u>
<u>Unemployment</u>				<u>July 1995</u>	<u>Feb. 1996</u>
<u>Federal Employment</u>	<u>Federal Housing Finance Board</u>	<u>Director, Office of Administratio n</u>	<u>Washing ton, DC</u>	<u>May 1990</u>	<u>June 1995</u>
<u>Unemployment</u>				<u>Oct. 1989</u>	<u>April 1990</u>



<u>Federal Employment</u>	<u>U.S. Environmental Protection Agency</u>	<u>Full-time expert/consultant</u>	<u>Washington, DC</u>	<u>March 24, 1982</u>	<u>Sept. 23, 1982</u>
<u>Federal Employment</u>	<u>U.S. Department of Education</u>	<u>Deputy Under Secretary for Management</u>	<u>Washington, DC</u>	<u>Sept. 1982</u>	<u>March 23, 1982</u>
<u>Federal Employment</u>	<u>U.S. Department of Education</u>	<u>Administrator for Management Services</u>	<u>Washington, DC</u>	<u>Sept. 1986</u>	<u>August 1988</u>
<u>Federal Employment</u>	<u>U.S. Small Business Administration</u>	<u>Director of Intergovernmental &amp; Regional Affairs</u>	<u>Washington, DC</u>	<u>May 1986</u>	<u>Sept. 1986</u>
<u>Federal Employment</u>	<u>U.S. Small Business Administration</u>	<u>Special Assistant to the Associate Deputy Administrator</u>	<u>Washington, DC</u>	<u>July 1988</u>	<u>May 1986</u>
<u>Federal Employment</u>	<u>U.S. General Services Administration</u>	<u>Special Assistant to the Administrator</u>	<u>Washington, DC</u>	<u>Nov. 1982</u>	<u>July 1982</u>
<u>Non-Government Employment</u>	<u>Irish for Governor</u>	<u>Campaign Director</u>	<u>Albuquerque, NM</u>	<u>July 1982</u>	<u>Nov. 1982</u>
<u>Federal Employment</u>	<u>U.S. General Services Administration</u>	<u>Special Assistant to the Administrator</u>	<u>Washington, DC</u>	<u>Nov. 1981</u>	<u>June 1982</u>
<u>Federal Employment</u>	<u>U.S. General Services Administration</u>	<u>Confidential Assistant to the Administrator</u>	<u>Washington, DC</u>	<u>April 1981</u>	<u>Nov. 1981</u>
<u>Volunteer</u>	<u>Reagan Transition</u>	<u>GSA Team</u>	<u>Washington, DC</u>	<u>Jan. 1981</u>	<u>March 1981</u>
<u>Non-Government Employment</u>	<u>Delaware Citizens for Right to Work</u>	<u>Executive Director</u>	<u>Dover, DE</u>	<u>April 1972</u>	<u>Sept. 1980</u>
<u>Non-Government Employment</u>	<u>New Mexico Citizens for Right to Work</u>	<u>Executive Director</u>	<u>Santa Fe, NM</u>	<u>Dec. 1976</u>	<u>Dec. 1980</u>
<u>Non-Government Employment</u>	<u>Burger for U.S. Senate Committee</u>	<u>Youth Coordinator/Special Groups Coordinator</u>	<u>Billings, MT</u>	<u>May 1976</u>	<u>Nov. 1976</u>

<u>Non-Government Employment</u>	<u>Citizens for Reagan</u>	<u>Youth Fieldman</u>	<u>Washing ton, DC</u>	<u>Jan. 1976</u>	<u>Mar 1976</u>
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(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
<u>U.S. Overseas Private Investment Corporation</u>	<u>Board Director (appointed by President George W. Bush)</u>	<u>Jan. 2004</u>	<u>April 2005</u>
		Est □	Est Present □ □
		Est □	Est Present □ □

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

Over the years, I have attended a variety of seminars and meetings hosted by public policy and educational organizations on issues such as healthcare reform, employee free-choice act, financial regulatory reform, and religious liberty where the possible impact of pending legislation or enacted law was debated and/or analyzed and information by subject matter experts

was shared. My purpose was to provide my clients with timely and authoritative information and to be able to discuss current issues with potential clients.

### **5. Honors and Awards**

**List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.**

Top Doers, Dreamers and Drivers award by *Government Technology* (GT) magazine and Center for Digital Government (March 2005)

Outstanding Leadership Award in Support of Federal Government Management Excellence from President's Council on Management Improvement (September 1988)

OPM Director Constance Homer appointed to OPM Senior Executive Service Advisory Board (March 1987)

America's Top Forty Performers in Public Service -- 40 years of age and younger--by Management Magazine a publication of the U.S. Office of Personnel Management (March 1987)

GSA Administrator's Public Service Award (February 1984)

### **6. Memberships**

**List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.**

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
President's Council on Management Improvement (PCMI) (former)	1987-1989	Member

Federal Administrative Managers Association (former)	1986-1988	Member
Reagan Deputy Assistant Secretaries organization (former)	1987-1989	President
Reagan Alumni Association Board of Directors	1990--present	Executive Committee Member
Army-Navy Country Club. Arlington, VA	2005-2007	Member
Pinehurst Country Club, Pinehurst, NC	2012--present	Member

#### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>


(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

None.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Americans for Murray	\$250	2012
George Allen for U.S. Senate	\$500	2012

Romney for President	\$2500	2012
Tim Scott for Congress	\$250	2012
Romney for President	\$2500	2012
Wilson for Senate	\$1000	2012
Club for Growth Action	\$250	2012
The Freedom Project	\$1000	2012
Friends of Scott Walker	\$250	2012
Madison PAC for Constitutional Limited Government	\$1000	2012
Gary Glenn for U.S. Senate	\$500	2011
Republican National Committee	\$250	2011
The President's Club (RNC)	\$250	2011
Madison PAC for Constitutional Limited Government	\$1000	2011
Friends of John Boehner	\$250	2011
Ted Cruz for Senate	\$500	2011
Friends of Scott Walker	\$250	2011
Republican National Committee	\$250	2011
The President's Club (RNC)	\$250	2011

Republican National Committee	\$250	2011
Club for Growth	\$250	2011
The President's Club (RNC)	\$250	2011
Senate Conservatives Fund	\$250	2011
Marco Rubio for Senate	\$200	2010
Americans for Murray	\$250	2010
Republican Party of Virginia	\$250	2010
Club for Growth Action	\$250	2010
Lollar for Congress	\$250	2010
Findley for Iowa (AG)	\$250	2010
Senate Conservatives Fund	\$250	2010
Findley for Iowa (AG)	\$250	2010
Republican National Committee	\$250	2008
John McCain 2008	\$500	2008
John McCain 2008	\$500	2008
John McCain 2008	\$500	2008
John McCain 2008	\$1000	2008



McCain Victory 2008	\$1000	2008
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### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

I have done my best to identify titles, publishers and dates of books, articles, reports or other published materials, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
How To Cut The Budget, For Real	Washington Examiner.com	September 1, 2011
'Card Check'--A Time to Reflect, But Not Rest	The American Spectator	April 7, 2011
It's Still Ronald Reagan's World	WashingtonExaminer.com	February 5, 2011
GovBenefits.gov: E-government vision realized	GCN.com	February 11, 2009
Commentary: Staying Power: Continuity led to successes at Labor	Federal Times	February 1, 2009
Good Management, Good Policy	American Society for Public Administration, PA Times	December 2008

DOL CIO Talks Federal E-Government	www.Govtech.com	December 29, 2008
ADVICE & DISSENT: A Beneficial Union – Better Technology Combined with Open Labor Relations Can Cut the Cost of Official Time	Government Executive Magazine	October 2008
THE HR EXECUTIVE'S VIEWPOINT: Employees Aid One Another – Leave Bank Programs Benefit Labor Employees in Need	Federal Times	August 18, 2008
PROVIDING THE LATEST WORKERS' COMPENSATION NEWS AND TRENDS MONTHLY: Controlling Federal Workers' Comp Costs: A Case Study	Workers' Compensation Educational Conference eNewsletter	May 5, 2008
THE HR EXECUTIVE'S VIEWPOINT: Bringing New Skills to Labor – MBA Fellows Program Bolsters Work Force	Federal Times	July 30, 2007
THE HR EXECUTIVE'S VIEWPOINT: Managing Leave – Monitoring, Counseling Reduce AWOL at Labor	Federal Times	April 23, 2007

TENDING TO E-GOV: How Labor Got to Green on the PMA	FedTech magazine	November 2005, Vol. 2, Number 4
Labor's Successes Prove Value of Political Appointees	Federal Times	November 28, 2005
VIEWPOINT: Shedding Light – Annual Reports Must Include the Bad with the Good to be Effective	Government Executive Magazine	October 1, 2005
Pizzella: Labor Models Getting 'Green'	Federal Computer Week	December 13, 2004
THE HR EXECUTIVE'S VIEWPOINT: Cutting Costs on Workers' Comp – Labor Reduces Injuries, Illnesses, Returns Employees to Work	Federal Times	October 11, 2004
THE HR EXECUTIVE'S VIEWPOINT: Top Score for Human Capital – Planning, Coordination Brought Labor to Green	Federal Times	June 7, 2004
COMMENTARY: Senior Executive Pay: Raise, However Small, is Critical Now	Federal Times	January 19, 2004

SPOTLIGHT: Making the Best Use of Government's Best Resource	Federal Times	November 24, 2003
The CIO VIEWPOINT: The Digital Department: Labor Creates a Focused E-Government Plan	Federal Times	April 21, 2003

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
REDUCING THE PAPERWORK BURDEN ON THE PUBLIC: ARE AGENCIES DOING ALL THEY CAN?	HEARING before the SUBCOMMITTEE ON REGULATORY AFFAIRS of the COMMITTEE ON GOVERNMENT REFORM HOUSE OF REPRESENTATIVES	JUNE 14, 2005
	Serial No. 109-42  Available via the World Wide Web:	

	<a href="http://www.gpoaccess.gov/congress/index.html">http://www.gpoaccess.gov/congress/index.html</a>  <a href="http://www.house.gov/reform">http://www.house.gov/reform</a>	
--	--	--

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

None.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)  
No.
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?  
No.
- Have you been charged, convicted, or sentenced of a crime in any court?  
No.
- Have you been or are you currently on probation or parole?  
No.
- Are you currently on trial or awaiting a trial on criminal charges?  
No.
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

No.

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes /  
No
- N) Provide explanation:



### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

Yes.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
August 1998	Fairfax County General District Court	Patrick Pizzella & Fox Seko Construction	Payment/billing dispute	Judgement for Fox-Seko on Feb. 5, 1999 for \$1,762.93

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>
Office of Special Counsel (OSC)	1993 OSC file No. MA-92-1647	Allegation of a prohibited personnel practice brought by an employee of the Federal Housing Finance Board (FHFB) who worked for me	OSC Associate Special Counsel for Prosecution stated in July 8, 1993 letter to FHFB Chairman that file was closed due to insufficient evidence
FHFB Inspector General	April, 1992 Grievance Procedures/Reprisal allegation	Allegation that a performance rating review lacked impartiality	IG advised compliant to avail himself of administrative remedies

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

### 12. Tax Compliance

**REDACTED**

**REDACTED**

**13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

**14. Outside Positions**

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

#### 15. Agreements or Arrangements

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

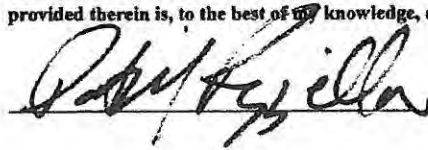
**16. Additional Financial Data****REDACTED**

REDACTED

103

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



This 22 day of Aug., 2013



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

**AUG 09 2013**

The Honorable Thomas R. Carper  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Patrick Pizzella, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don W. Fox".

Don W. Fox,  
Principal Deputy Director

Enclosures **REDACTED**



June 25, 2013

Rosa M. Koppel  
Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K Street, NW  
Suite 300  
Washington, DC 20424

Dear Ms. Koppel:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor children of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

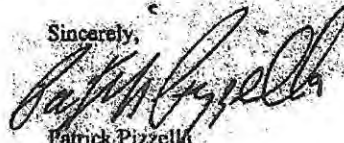
I am the sole proprietor of my management consulting firm, which does business as Patrick Pizzella, LLC. Upon confirmation, my consulting firm will cease engaging in any business. During my appointment to the position of Member of the Federal Labor Relations Authority, the management consulting firm will remain dormant and will not advertise. I will not perform any services for the firm, except that I will comply with any requirements involving legal filings, taxes and fees that are necessary to maintain the firm while it is in an inactive status. As Member, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Patrick Pizzella, LLC. All amounts owed to me by any of my clients will be fixed before I assume the duties of the position of Member, and I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of any of these clients to pay these amounts. In addition, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party, for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

- 2 -

I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

Sincerely,



Patrick Pizzella

AMERICA'S  
**CONGRESSIONAL BLACK CAUCUS**  
OFFICE OF THE CHAIRMAN  
 ESTABLISHED 1971

September 24, 2013

The Honorable Tom Carper, Chairman  
 U.S. Senate Committee on Homeland Security and Government Affairs  
 340 Dirksen Senate Office Building  
 Washington, DC 20510

The Honorable Tom Coburn, Ranking Member  
 U.S. Senate Committee on Homeland Security and Government Affairs  
 340 Dirksen Senate Office Building  
 Washington, DC 20510

Dear Senators Carper and Coburn:

On behalf of the Congressional Black Caucus (CBC), I am writing in support of the nomination of the Honorable Carol Waller Pope, to be a Member of the Federal Labor Relations Authority.

Ms. Pope is uniquely qualified to serve as a Member. She successfully held this position from 2000 - 2013, as a nominee of both Presidents William J. Clinton and George W. Bush. In 2009, upon designation by President Barack Obama, Ms. Pope became Chairman of the Federal Labor Relations Authority (FLRA). She is the first and only FLRA career employee to serve as a Member and the first and only FLRA career employee to serve as Chairman. In addition to her public service as a Presidential appointee, Ms. Pope worked in positions of increasing responsibility at the FLRA, beginning as a staff attorney in the Boston Regional Office in 1980 and ending as an Assistant General Counsel at FLRA headquarters in Washington, DC in 2000, upon her confirmation as a Member. She has a keen knowledge of the Federal Service Labor-Management Relations Statute that is administered by the FLRA.

Ms. Pope is a proven leader. In 2009, when she became Chairman, the agency suffered with a backlog of hundreds of unresolved disputes and the lowest employee satisfaction and morale of all small agencies in the Federal Government. During her nearly four year tenure as Chairman, Ms. Pope, worked with political and career leadership and employees, to turn the agency around. Mission performance and employee morale have dramatically and historically improved. Implementing a multi-year, multi-pronged plan of "*Revitalization, Reinvention and Re-engagement*," the FLRA revised agency regulations, focused on employee training and development and timely and quality decision-making, and re-engaged its customers with increased alternative dispute resolution services, electronic training manuals, and web-based training modules. Gaining recognition as the "*Most Improved Small Agency*" in the 2010 Best Places to Work in the Federal Government rankings and the "*Most Innovative Small Agency*" in 2011. The FLRA now ranks 8th among small agencies in the 2012 rankings, from a low of last place, 34th in 2010.



1433 Longworth House Office Building - Washington, DC 20515  
 WWW.THECONGRESSIONALBLACKCAUCUS.COM

As a highly-qualified and well-respected long-term official at the FLRA, Ms. Pope's confirmation is extremely important to the agency's continued success. Currently the Members of the FLRA are unable to issue decisions due to the lack of a quorum that will be resolved upon Ms. Pope's confirmation. The CBC greatly appreciates your thoughtful consideration of her nomination.

Sincerely,



Marcia L. Fudge  
Chair, Congressional Black Caucus  
Member of Congress

cc: The Honorable Jon Tester  
The Honorable Rob Portman  
Congresswoman Eleanor Holmes Norton



1433 Longworth House Office Building - Washington, DC 20518  
[WWW.THECONGRESSIONALBLACKCAUCUS.COM](http://WWW.THECONGRESSIONALBLACKCAUCUS.COM)

S. Hrg. 114-411

# NOMINATIONS OF HON. CAROL WALLER POPE, ROBERT A. SALERNO AND DARLENE M. SOLTYS

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## HEARING

BEFORE THE

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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NOMINATIONS OF HON. CAROL WALLER POPE TO BE A MEMBER,  
FEDERAL LABOR RELATIONS AUTHORITY, ROBERT A. SALERNO AND  
DARLENE M. SOLTYS TO BE ASSOCIATE JUDGES, D.C. SUPERIOR COURT

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DECEMBER 3, 2015

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Printed for the use of the  
Committee on Homeland Security and Governmental Affairs



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## CONTENTS

---

Opening statements:	Page
Senator Lankford .....	1
Senator Carper .....	2
Senator Portman .....	13
Senator Ernst .....	20
Prepared statement:	
Senator Lankford .....	23
Senator Carper .....	24

### WITNESSES

THURSDAY, DECEMBER 3, 2015

Hon. Eleanor Holmes Norton, a Representative in Congress from the District of Columbia .....	4
Hon. Carol Waller Pope to be a Member, Federal Labor Relations Authority	
Testimony .....	5
Prepared statement .....	26
Biographical and financial information .....	28
Letter from the Office of Government Ethics .....	47
Responses to pre-hearing questions .....	49
Robert A. Salerno to be Associate Judge, D.C. Superior Court	
Testimony .....	7
Prepared statement .....	70
Biographical and financial information .....	71
Responses to post-hearing questions .....	91
Darlene M. Soltys to be Associate Judge, D.C. Superior Court	
Testimony .....	8
Prepared statement .....	92
Biographical and financial information .....	93
Responses to post-hearing questions .....	115
Statement submitted for the Record from the Hon. Paul Strauss, Shadow Senator from the District of Columbia .....	116





**NOMINATIONS OF  
HON. CAROL WALLER POPE, ROBERT A.  
SALERNO AND DARLENE M. SOLTYS  
THURSDAY, DECEMBER 3, 2015**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in room 342, Dirksen Senate Office Building, Hon. James Lankford, presiding.  
Present: Senators Lankford, Portman, Ernst, Sasse, and Carper.

**OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. I am going to go ahead and begin our hearing today. Good morning to you. And then we will have others that will join us in due time.

Today, we are going to consider the nominations of Mr. Robert Salerno and Ms. Darlene Soltys for the position of Associate Judge in the Superior Court for the District of Columbia, as well as the nomination of Ms. Carol Waller Pope for the position of Chair of the Federal Labor Relations Authority (FLRA).

The Committee takes these nominations very seriously. We are pleased to have strong nominees before us.

Mr. Salerno is a native of New Jersey, received a Bachelor of Arts degree from Brown University and a law degree from the University of Virginia School of Law. After graduation, Mr. Salerno practiced law with several D.C. area law firms, honing skills in civil litigation and white collar criminal defense. This year, he became Special Counsel of Schulte Roth and Zabel.

Ms. Soltys is a native of Washington State, the other Washington. She received a Bachelor of Arts degree from the University of Maryland (UMD) and a law degree from Georgetown University. After graduation, Ms. Soltys clerked for the Honorable Gregory Mize on the Superior Court for the District of Columbia. Following her clerkship, she embarked on a 23-year career in prosecution, working for the D.C. Attorney General (AG), the Maryland State Attorney, and the U.S. Attorney's Office.

In addition to these impressive resumes, Mr. Salerno and Ms. Soltys possess the necessary skills and judgment to serve the District of Columbia. The Committee staff reached out to a variety of these nominees' colleagues and affiliates, who actually spoke very highly of them.

Ms. Pope is a native of Pittsburgh. She received her Bachelor of Arts degree from Simmons College and a law degree from Northeastern University School of Law. After law school, she worked at

Boston University and the Department of Labor (DOL) before joining the Federal Labor Relations Authority in 1980.

The Committee staff also had the opportunity to be able to interview Mr. Salerno, Ms. Soltys, and Ms. Pope on an array of issues ranging from notable cases to their community service and pro bono work. They have thoughtfully and competently answered each question to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated. I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

And with that, I recognize the Ranking Member of the full Committee, Senator Carper, for any opening statement he would like to make.

#### OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Mr. Chairman, good morning.

Senator LANKFORD. Good morning.

Senator CARPER. This man has been with us for about a year and he is already chairing the full Committee. That is pretty good.

Eleanor, nice to see you. Welcome. Congresswoman, nice to see you.

Ms. Pope, Mr. Salerno, Ms. Soltys, we are honored to have you here and welcome you, your family, and your friends.

I think before I make any opening remarks, a lot of us are thinking about—when I was in the Navy, I was stationed in California and did not live in San Bernadino, but traveled through there from time to time, and I continue to follow the developments there as the law enforcement folks conduct their investigations. We feel and pray for the folks whose lives have been taken, whose lives are in jeopardy, and the families that are mourning their loss. It is a tough time for them, a tough time for our country. We are keeping them in our prayers.

I again want to thank you for coming. I want to thank you for your willingness to serve. For 8 years of my life, I was privileged to be Governor of Delaware, and one of the jobs of Governors is to actually nominate people to serve on the bench. And, frankly, when I ran for office for Governor in 1992, I had 35 joint appearances with my Republican opponent, a good guy, and in those 35 joint appearances and debates, nobody ever asked what criteria I would use to nominate people to serve as State judges, Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, Magistrate Courts, all of those, and no one ever asked. It turned out it was one of the most important parts of my job.

So, I learned quickly to figure out what to look for in men and women that I might nominate, and I decided that one of the things I wanted to make sure that we did, that we had a judiciary—just like I wanted to build an administration that was diverse, a cabinet that was diverse, a leadership team that was diverse, I wanted to have a judiciary that was diverse and looked like my State in terms of gender, race, and so forth, and it would also have in just two or three people. We had a Judicial Nominating Committee just

kind of like the commission that you all have that brings at least two of the three of you here to us today.

I just want to say—and I interviewed them all. I interviewed everyone that came to me nominated by our commission. And, I want to say the qualities in the education, job experience of our two judicial nominees stacks up well with, I think, any group of nominees submitted to me as Governor by our Judicial Nominating Commission—people who are bright, people who know the law, people that have unquestionable integrity. What did Alan Simpson used to say? Former Senator Alan Simpson used to say about integrity, if you have it, nothing else matters. If you do not have it, nothing else matters.

And, the folks that we have talked to who know you, who know of your work, know of your background, know, really, of your character, have said just wonderful things. I would be delighted—I know they say stuff like this about our Chairman, but I would be delighted to know if people said those kinds of things about me. Maybe some day, they will.

But, I think the folks in Washington, DC, are lucky that you are willing to serve on the bench and pleased that we finally moved through the Senate with help from our Chairman and others. We had people who had been nominated 2 years ago, waited 2 years to get people confirmed. That is awful and we have to do a whole lot better than that. My hope is that we will do a lot better than that with these two nominations before us today.

I want to say to Ms. Pope, thank you for your willingness to continue to serve, and my hope is, I think we have another person with whom you serve on the Authority, a Republican whose term is coming up, I think maybe later this year, maybe early next—and there might be an opportunity for us to hopefully reconfirm you to serve and maybe the other person, your other colleague, as well. That would be, I think, a good outcome. So, hopefully, we can do that expeditiously.

I want to thank the Chairman of the Committee for the way he approaches his work, and he is a golden rule guy. He treats people the way he wants to be treated and we are lucky to have him here and we are lucky to have you all here. Thank you for joining us today.

And, I have a statement for the record,<sup>1</sup> Mr. Chairman.

Senator LANKFORD. Thank you, Senator Carper, very much.

I would like to recognize the Delegate from Washington, DC, Eleanor Holmes Norton, who I had the privilege to be able to serve with in the House of Representatives. We even served on Committees together. So, pleased that you are here. This is obviously a very important issue to you and your responsibilities, as well, and we would like to be able to receive any opening statement you would like to make.

<sup>1</sup> The prepared statement of Senator Carper appears in the Appendix on page 24.

**TESTIMONY OF THE HONORABLE ELEANOR HOLMES NORTON,  
A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF  
COLUMBIA**

Ms. NORTON. Thank you very much, Senator Lankford. It is a pleasure to appear before you as Chairman of this Committee, and my good friend and Ranking Member, Senator Carper.

I realize that brevity is the coin of the realm. I will have very little to say. I will let these nominees speak for themselves.

As for Carol Waller Pope, this is the fourth time I have been before you for her. That says everything about, I think, her distinguished record. She is being renominated to Chair the Federal Labor Relations Authority. She is the first civil servant to serve both as a Member and as the Chair of the Authority and we are very proud of her.

We have two nominees to serve on our trial court, the Superior Court. You have summarized well, Mr. Chairman, their distinguished qualifications. Both have extensive litigation experience, which is very important for our Superior, our trial court.

If I may, in closing, say to you, or bring to your urgent attention, what the Superior Court has asked me to indicate to you. First, we in the District of Columbia very much appreciate that last month, the Senate confirmed William Nooter and Steven Wellner to the Superior Court. These were the first local D.C. judges confirmed since May 2013. And I bring to the attention of the Committee that they are beginning to write articles in the District of Columbia about the slowness of trials in the District of Columbia because of pending nominations, perhaps other reasons, as well.

I urge this Committee to move Todd Kim, who was nominated in February 2014 for the D.C. Court of Appeals and is awaiting a hearing, and Julie Becker, who was first nominated in April 2015 for the Superior Court and is also awaiting a hearing.

We hate to burden you with these local courts, but they are Article I courts, which is why we have to be here at all. There may be other candidates coming up in turn. I understand the busy schedule of the Senate and very much appreciate the time and effort you have taken with these nominees.

Thank you very much.

Senator LANKFORD. No, thank you very much.

It is the custom of the Committee to swear in all witnesses that appear before us, so if you do not mind, I would like to ask you to stand and raise your right hand.

Do you swear the testimony that you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. POPE. I do.

Mr. SALERNO. I do.

Ms. SOLTYS. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect the witnesses have all answered in the affirmative.

I would like to take a moment of personal privilege before we actually move to opening statements here. Do you all have family members or friends that are here that you would like to introduce? And if you would like to do that, when you make an opening statement, would you please introduce them and then step into your

statement, because there are a few folks that are behind you that probably are well deserving of some recognition in this process, as well.

So, I would like to recognize Ms. Pope. You have been through this before. You will be the one with all the experience here at the table, so you can go first. If you have any individuals to recognize, and then receive your opening statement, we would be glad to do that.

**TESTIMONY OF THE HONORABLE CAROL WALLER POPE,<sup>1</sup>  
NOMINATED TO BE A MEMBER OF THE FEDERAL LABOR RE-  
LATIONS AUTHORITY**

Ms. POPE. Good morning. I want to thank you, Senator Lankford and Senator Carper, for conducting this hearing. I also thank the Committee staff for their work and meaningful assistance.

I also want to thank Congresswoman Norton for being here today. As she said, she has been here on all three prior occasions that I have been before this Committee. I admire her illustrious career, and as a D.C. resident, appreciate her 25 years of service as our Representative in Congress.

It is my honor and privilege to be here today as President Obama's nominee to serve for a fourth term as Member, and if confirmed, to again serve as Chairman of the FLRA. I thank President Obama for the confidence and trust he has placed in me to serve in this leadership capacity at the FLRA.

I also want to thank and introduce my family for their unwavering support and trusted guidance. With me here today are Lynda White and Fred Grigsby, Jr., who are here representing those of my family members who could not be here, along with many members of my extended family who are in attendance.

I would be remiss if I did not acknowledge the collegiality and support of my fellow Presidential leadership at the FLRA, Member Patrick Pizzella, who Senator Carper referenced will also be appearing before you, his nomination is pending renomination; Member Ernest DuBester; General Counsel Julie Clark; and Federal Service Impasses Panel Chairman Mary Jacksteit; and Panel Member and former FLRA Chairman Donald Wasserman. I want to acknowledge and give thanks to Member DuBester and Member Wasserman who are here today in attendance representing our colleagues.

I am here today standing on the shoulders of my parents, my father, a Pittsburgh steelworker, my mother, a domestic worker, both of whom embodied the principle of hard work. They worked hard to ensure that their four daughters had a foundation of love and education as well as their shared commitment to public service and to helping others.

I have devoted my entire professional career to public service, first at the U.S. Department of Labor, and for 21 years as a career employee at the FLRA. If confirmed, I will be the longest serving Member, a Presidential appointee, at the FLRA, and I have the distinct honor of having been nominated by three Presidents, President Clinton, President Bush, and President Obama, and it is my

<sup>1</sup> The prepared statement of Ms. Waller Pope appears in the Appendix on page 26.



honor to have been confirmed on three prior occasions by this august body, the U.S. Senate.

The FLRA encompasses in one small agency the investigator, prosecutor, adjudicator, and interest arbitrator for labor-management disputes involving 1.2 million Federal employees. Since its creation as part of the Civil Service Reform Act, the FLRA has been committed to providing leadership and establishing policies and guidance related to Federal sector labor-management relations. For over 36 years, the FLRA has promoted labor-management relations for an effective and efficient government. Simply stated, the FLRA must meet the needs of the Federal workforce with high-quality legal decisions and alternative dispute resolution services to ensure that workplace disputes do not unduly impede the performance of Federal agencies in their missions to serve the American people.

With respect to mission performance, the FLRA had a great year in 2015. I am proud to say that mission performance is No. 1 for us, as was eliminating our case backlog. We know that protracted legal disputes are in no one's interest. They create problems in the workplace and certainly morale problems for the FLRA. So, we have worked hard and accomplished eliminating the backlog on the Member side of the house, which was due to a lack of a quorum of Members for over 10 months in 2013.

Alternative dispute resolution (ADR), activities throughout the agency are very important. Over 80 percent of the FLRA's cases are resolved voluntarily by the parties with our servicers and facilitation through alternative dispute resolution. ADR is deeply embedded in the mission of the FLRA. We make it work. Offering it and making it work are two different things. During my tenure as Chairman, we formally integrated mediation and ADR into all aspects of case processing, in every component.

In real terms, as just one example of our ADR efforts, the parties amicably resolved a dispute in 2 days of mediation, a dispute involving 44 contract provisions that would have taken a lot of resources of the FLRA if we had to render a legal decision on the negotiability of those 44 provisions.

I proudly note on behalf of the FLRA that when I began my tenure as Chairman in 2009, employee morale at the FLRA was at an all-time low. In fact, the FLRA was ranked last among small agencies in the Partnership for Public Service's Best Places to Work in the Federal Government rankings. Our mission performance, which in my view goes hand-in-hand with employee morale and engagement, was also well below our annual performance targets.

I am happy to note today that in fiscal year (FY) 2015, the FLRA captured the rank of No. 2 on three important indexes in the Office of Personnel Management's (OPM) Federal Employee Viewpoint Survey (FEVS): employee engagement, global satisfaction, and inclusivity of the work environment. We also achieved an all-time high employee response rate of 84 percent.

Equally important to our mission success is that 99 percent of the FLRA's respondents, our employees, reported that they are willing to put in the extra effort to get the job done. Ninety-four percent believed that the agency is successful at accomplishing its



mission. And 94 percent know how their work relates to the agency's goals and priorities.

This year, the FLRA expects to improve upon its No. 5 ranking in 2014. Obviously, No. 5 reflects an impressive and unprecedented improvement of over 300 percent since I became Chairman. This sustained progress from nearly 7 years ago reflects the commitment of all of the agency leadership, and of all levels of management, to operate with transparency and accountability, and to truly engage our employees. It reflects the hard work and dedication and commitment of all of our employees.

If I am confirmed, I will continue to work hard every day with my FLRA colleagues throughout the country, some of whom—many of whom—are at this hearing today, and I appreciate their being here and countless others who are following the live stream of this proceeding. I pledge to them to build on a culture of excellence, this record of success in our mission performance, and employee engagement for effective and efficient government.

Mr. Chairman, I thank you for this opportunity to be here today and I would be pleased to respond to any questions.

Senator LANKFORD. Thank you.

Mr. Salerno, could you introduce any family or guests that you may have here, and we will be proud to receive your opening statement, as well.

**TESTIMONY OF ROBERT A. SALERNO,<sup>1</sup> NOMINATED TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. SALERNO. Thank you, Mr. Chairman and Members of the Committee. I am honored to appear before you today as a nominee for Associate Judge of the Superior Court of the District of Columbia.

I would like to thank the District of Columbia Judicial Nomination Commission, including its Chair, District Judge Emmet Sullivan, who is here today, for recommending me to the White House, President Obama for nominating me, and Congresswoman Eleanor Holmes Norton for introducing me to the Committee.

I would not be here today without the support and encouragement of family, friends, and colleagues. Family members who are with me today are my wife, Juanita, my son, Evan, and Michael and Robert Guberman.

Senator CARPER. I think we see your wife over your right shoulder. Where is your son? Would you raise your hand?

Senator LANKFORD. Right there.

Senator CARPER. OK, thanks. Thanks so much. The young guy.

Mr. SALERNO. Yes. My daughter, Alex, is finishing up her fall semester at Skidmore College in New York, but she and other family members, including my sisters and nieces, are watching on the Committee's streaming video.

My parents are no longer with us, but they would have been proud today if they were, especially my father, who always encouraged me to go to law school.

<sup>1</sup> The prepared statement of Mr. Salerno appears in the Appendix on page 70.

And I also want to acknowledge the colleagues and friends who have come here today to show their support.

I am excited by the opportunity to serve on the Superior Court. I would bring to the position more than two decades of experience as a litigator in the District of Columbia, recent quasi-judicial experience, and a deep commitment to the city.

I have been a resident of the District of Columbia for 25 years and raised two children here. During that time, I have had a very varied and rewarding career in private practice. I have litigated civil and criminal matters in Federal and State courts across the country, handling everything from high-stakes commercial litigation, to alleged criminal conduct by individual clients, to pro bono matters on behalf of our most vulnerable residents. I have been fortunate to work on sophisticated matters with extremely talented colleagues.

At the same time, I have always had a strong interest in public service. Prior to becoming a lawyer, I was a Peace Corps volunteer in Ecuador, which is where I met my wife, Juanita. I also volunteered to serve as a Hearing Committee Chair for the Board of Professional Responsibility, and in that capacity, I conducted evidentiary hearings on formal charges of professional misconduct by members of the District of Columbia Bar.

But, I am now at a point in my life where I am ready and able to focus one hundred percent of my energy on public service. It would be a privilege for me to do so as an Associate Judge on the Superior Court. Judges have a unique ability to make a difference in the community on a daily basis, and for many of our citizens, judges are the personification of the judicial system. I can think of no greater honor for a lawyer than to be entrusted with the responsibility that comes along with being a judge. My broad and diverse experience in private practice, together with my experience as a Hearing Committee Chair, make me confident that I would be a good judge and that I would enjoy serving in that role.

If confirmed, I would work hard every day to achieve fair outcomes in accordance with the law for all persons who come to the District of Columbia Superior Court seeking justice and due process and to do so as efficiently as possible.

Thank you for considering my nomination, and I look forward to answering your questions.

Senator LANKFORD. Thank you.

Ms. Soltys, glad you are here. We would be glad to be able to receive the introduction of any family members or friends that are here and then your opening statement.

#### **TESTIMONY OF DARLENE M. SOLTYS,<sup>1</sup> NOMINATED TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. SOLTYS. Thank you, Mr. Chairman. Mr. Chairman and Members of the Committee, thank you for an opportunity to appear before you as a nominee for the position as an Associate Judge in the District of Columbia's Superior Court.

<sup>1</sup>The prepared statement of Ms. Soltys appears in the Appendix on page 92.

I thank the Judicial Nomination Commission and its Chairman, the Honorable Emmet G. Sullivan, for recommending me to the White House, and, of course, to the President for nominating me. Also, thank you to Congresswoman Norton for her kind words in introducing me today.

I am honored by the presence of those who are here today to support me, including my law enforcement partners from the Federal Bureau of Investigations (FBI) and the Metropolitan Police Department and my colleagues from the United States Attorney's Office, including U.S. Attorney for the District of Columbia Channing Phillips and the Principal Assistant United States Attorney, Jim Dinan, who for many years was my chief supervisor.

I would also like to acknowledge and thank my parents, who I expect to be here today, Al and Emily Soltys. I am who I am because of them.

I am also grateful for the love and the support of my spouse, Pilar Suescum, and our two daughters, Gabriela and Lilian, who are seven and nine, who are home in bed sick.

I was raised in Anne Arundel County, Maryland. My father's 32 years at the National Security Agency (NSA) taught me the value of hard work and the importance of public service.

I came to Washington, DC, in 1987 to attend law school at Georgetown University. Since then, I have lived on Capitol Hill. Serving the community and the public interest is one of the most satisfying aspects of my profession.

My legal career began as a judicial law clerk to the Honorable Gregory E. Mize of the Superior Court, who I am honored to report is here today at this hearing. Thereafter, I have served as a prosecutor, handling diverse criminal offenses in Washington, DC, in both the Superior Court and the Federal District Court for the District of Columbia, where I have had the privilege of serving in front of Judge Emmet G. Sullivan.

I have also served as a prosecutor in the Circuit Court for Prince George's County, Maryland, and this career path has exposed me to the myriad of issues plaguing our community and has impressed upon me the importance of the government's responsibility to ensure justice in our society. I have had the privilege to appear before many fine jurists who care deeply about the fair administration of justice and due process for all, and these inspiring role models are essential to the effective functioning of our legal system.

I would be honored to put my experience to work to ensure that the people of this city receive impartial and thoughtful consideration of their matters and that justice is served with fairness and respect for all.

Thank you for considering my nomination, and I look forward to answering any questions that you may have.

Senator LANKFORD. Thank you all.

I have three questions that are not fun, but they are mandatory questions that I am going to ask of each of you. I will say it out loud and then I will ask each of you to answer verbally for these, and then we will have questions from the dais after that.

The first question for all three of you, is there anything that you are aware of in your background that might present a conflict of

interest with the duties of the office to which you have been nominated? Ms. Pope.

Ms. POPE. No.

Senator LANKFORD. Mr. Salerno.

Mr. SALERNO. No.

Senator LANKFORD. Ms. Soltys.

Ms. SOLTYS. No.

Senator LANKFORD. OK. Second question. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Ms. Pope.

Ms. POPE. No, Senator Lankford.

Senator LANKFORD. Mr. Salerno.

Mr. SALERNO. No, Mr. Chairman.

Senator LANKFORD. Ms. Soltys.

Ms. SOLTYS. No.

Senator LANKFORD. Thank you. Third, do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. POPE. Yes.

Mr. SALERNO. Yes.

Ms. SOLTYS. Yes.

Senator LANKFORD. Thank you.

I defer to Senator Carper for his questions.

Senator CARPER. Thanks, Mr. Chairman.

Several of you have mentioned the name, I think it was Judge Emmet Sullivan, who is not only a judge, but also the Chairman, apparently, of the Nominating Commission who sent your names forward to the President and then on to us. I understand he is here today, and I would just ask him to raise his hand. Good. Judge Sullivan, nice to see you.

Senator LANKFORD. Maybe we should swear him in and bring him to the table, as well. [Laughter.]

Senator CARPER. That is not an easy job and thank you for taking it on.

I would like to start off, if I could, with a question of Ms. Pope. Every year, we receive, like the world gets it to take a look at it, but a report on morale, employee morale within the Federal Government. We are the authorizing Committee for the Department of Homeland Security (DHS) and have a special interest in the importance of the work that they do. We were reminded of it just again yesterday with the tragedy in San Bernadino. But, we are also concerned that the people who work there not just enjoy their work, but they feel fulfilled by their work.

One of the things that I found of interest was that the folks who work at the FLRA did not always have very good morale and it seems to have continued to improve over time, a time that sort of coincides with the time that you have been a Member of the Authority and most recently chairing it. What is going on? I have a friend of mine, Alan Blinder, who used to say, when asked about getting good results in something, he said, find out what works, do more of that. And, so, we would like to find out what is working

and maybe we can throughout the rest of our Federal Government do more of that. Go ahead.

Ms. POPE. Thank you for that question, Senator. I have said that employee engagement begins on the first day of an employee's work life, and in some instances, it goes downhill from there. We were certainly disappointed to be last in the survey results in 2009–2010. When I became Chairman in 2009, it was important for me to hear from employees and to respect their views and concerns, and I started on a listening tour within the offices of the FLRA.

I also went to the agencies. To the point of your question, the Nuclear Regulatory Commission (NRC) at the time was No. 1, and I went out there and talked to the Chairman and said, how do you do it? What do you do?

Senator CARPER. You know, ever since you had that conversation, they have been going down——

Ms. POPE. I have noticed that. [Laughter.]

Senator CARPER. And you guys are going up.

Ms. POPE. I also have to say for the record, he is no longer there.

Senator CARPER. They will be coming to you pretty soon. [Laughter.]

Ms. POPE. Leadership is important. I think one of the important factors is to establish some core values—transparency, accountability of leadership, communication, and I think those are values that should be embedded in an agency, regardless of the leadership. I have been fortunate to be a part of a leadership team that shares those values.

So, one of the other things that we did, when we looked at the first survey and we zeroed in on the areas where we scored the lowest, we went behind the survey results and the questions and conducted our own internal surveys and asked to find out more. And then we asked employees to sit with us and develop initiatives to address some of the problems, and we do that every day, and that is the part of sustaining and improving employee engagement and satisfaction. It never ends.

I started with saying the first year I was going to revitalize, re-engage, and reinvent the agency, and I also said it was the year of the employee. Well, after 6 years as Chairman, I realize every year is the year of the employee.

Senator CARPER. That is good. I like that.

I have another question of you, but before I do, I want to ask a quick question of Ms. Soltys. There is a young couple that just came into the hearing room and they took two seats right behind you, kind of over your left shoulder, and you sort of look like them. [Laughter.]

Do you know these people?

Ms. SOLTYS. I would be honored to introduce my parents, Al and Emily Soltys. I would like to just repeat the remarks that I made earlier, which is that I am who I am because of them and I am proud that they are here.

Senator CARPER. I think it is great that you came. People sometimes say to me, I am sure they say this to Senator Portman and Senator Lankford, what are we proudest of in our lives, and I always say my sons. We know you are proud. Thank you very much for raising this kid and presenting her to us today to serve.



Mrs. EMILY SOLTYS. I am sorry. We could not find a parking spot. [Laughter.]

Senator CARPER. Sometimes I cannot find parking spots, either, Ms. Soltys. It happens to all of us, but we are glad you found one and you made it in. Welcome.

Another question, if I could, for Ms. Pope. Chairman Pope—do people call you Chairman? What do they call you?

Ms. POPE. Yes. Chairman.

Senator CARPER. OK. When you look at backlog—you talked a little bit about this in your statement, but could you just come back and tell us again what did you and the Authority and the folks who work with you, for you, with you, do to achieve these results and what plans do you have going forward to continue to improve efficiencies and keep things on track? We face big backlogs in a lot of other areas. Veterans Affairs (VA) is certainly one of them. But, just talk about what some other agencies might learn from what you all have done.

Ms. POPE. We started with setting ambitious goals. We communicated to employees what our goals would be. We recognized that it would be a multi-year effort. When I became a Member in 2000 and Chairman in 2009, we had a backlog of over 300 cases, and it was a multi-year effort and we celebrated every step of achievement, and I think that was part of what kept us on target to move forward.

I was proud to say that we eliminated—a backlog for us is a case that is pending before the Authority members for over 180 days, and we again developed a backlog when we were without a quorum. There are three of us, and if there are fewer than two, we cannot issue decisions.

The other factor that we paid attention to is the recruitment, retention, and training of our staff. One of the factors that contributed to the backlog was that we had some 22 vacancies when I became Chairman and we aggressively looked to build a human resources staff. Part of what is important is the infrastructure of the agency, to give support to the attorneys, the case writers that do the work. I am remiss every time I speak when I do not acknowledge the importance of human resources (HR) and administrative services and our information technology (IT) department.

But we all came together as a team and we continue to do that. We continue to publish our goals in our weekly newsletter. On a monthly basis, we say what we have achieved, and then we celebrate success.

The other aspect of it is the reallocation of resources. For the first time ever, we have looked at—we have reemployed annuitants. We had an HR department to advise us to use every hiring flexibility possible to bring people on board quickly, to find qualified, diverse staff. And all of that contributed to our eliminating our backlog. Now that we have done that, we want to pay attention to technology developments, use resources for IT as well as to empower employees to reinvent our case process, where we can have time savings and cost savings in how we do the work. Those have all contributed to that.

Senator CARPER. Thank you for all of that.

I would say, I have one other question. I am not going to ask it. I will ask it for the record. I will mention what it is. I always want to treat, and my colleagues are the same way, we want to treat other people the way we would want to be treated, and we feel like there is an obligation with respect to judicial nominations. If we are going to be involved in the confirmation process—and we are, clearly—then we need to be responsible and to act, really, in a more timely way. And I am pleased that the Chairman feels that way. I feel it very strongly.

I am going to ask you for the record. Here is the question. To what extent does the fact that we have delayed, in some cases, the two people who were just confirmed last month for these judgeships, to what extent does it reduce the likelihood that somebody is going to be interested in putting their career on hold, being sort of, like, held out there for a year or two waiting for the opportunity to serve? To what extent does that reduce the interest in good people wanting to serve? That is the question I will ask you to answer for the record, but my gut tells me that cannot be very helpful. That cannot be very helpful, certainly not very fair.

Mr. Chairman, thank you for letting me go first. We have an unscheduled caucus meeting today. It starts in about 20 minutes, and I will be in and out after this. And I, just again, want to thank you all. Thank you for your courtesy, Mr. Chairman.

Ms. POPE. Thank you, Senator.

Senator LANKFORD. Thank you, and I hope that caucus meeting goes extremely well. Senator Portman.

#### OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman, and thank you all for stepping up to serve. Trust in Government is not at a high water mark right now, and so able people willing to step forward with good character is really important to try to regain some of that trust.

Mrs. Soltys, you will be disappointed to know that your daughter will not have any jurisdiction over parking. [Laughter.]

I looked at what the Superior Court has responsibility for. I do not think it fits under her new responsibilities, but otherwise, it is a really important job.

Interestingly, we were talking about what the successes have been on workplace improvements under your leadership, Chairman Pope, and here is a letter of congratulations from Senator Danny Akaka, Chairman of the Subcommittee of Oversight of Government Management and the Federal Workforce, a Subcommittee I have served on, in September 2010, congratulating you for the dramatic improvement in the 2010 Best Places to Work rankings, so—

Ms. POPE. I framed a copy of that letter.

Senator PORTMAN. There you go.

Ms. POPE. I was very honored to receive it. [Laughter.]

Senator PORTMAN. This Committee has already weighed in, it sounds like.

I have a few questions, if I could, for the judges. To Judge Salerno, you have an extensive litigation career—both of you. As you said, Ms. Soltys, you have appeared before a lot of different judges and worked for judges. My question to you would be, what



do you think constitutes judicial temperament? I mean, what are the elements of judicial temperament that are most important for a trial judge, which is what you are hoping to be?

Mr. SALERNO. Shall I go first?

Senator PORTMAN. Go ahead, Judge Salerno.

Mr. SALERNO. The best characteristics of a judge include someone who treats all litigants with respect, is patient, thoughtful, deliberate, and a good listener, is always well prepared and hard working, and issues reasoned decisions.

I think disputes come to court and not everyone is going to be happy with the way disputes are resolved, but hopefully, all litigants in my courtroom would feel happy with the process, that they have been treated properly, that their issues have been dealt with in a respectful way, in a deliberate way, and even if they do not agree with the result, feel that they have had their day in court and had a fair shake. And, if I could achieve those things as a judge, I think I would be very satisfied.

Senator PORTMAN. Ms. Soltys.

Ms. SOLTYS. Thank you, Senator. Senator, I echo my colleague's answer to you. I have appeared before many judges and I have seen different types of judicial temperament. What I think is most important is that the person who is serving as a judge is impartial, is fair, is respectful toward all litigants in the courtroom, and who treats people the way that they want to be treated. A judge has to be prepared. And a judge also has to have a healthy dose of humility, because a judge should recognize that he or she may not know the facts of the case better than the parties that are in the courtroom.

And as has been my honor as an Assistant United States Attorney to represent the United States in court, what I love about my job and what excites me about that job, my current job, is the role that I play in ensuring that there is a fair and just criminal justice system, and that is the same thing that would excite me to serve as a Superior Court judge, that is, the role that I would play in ensuring that there is a fair and just legal system.

As Mr. Salerno said, what matters at the end of the day is not whether the litigants are pleased with the ruling, because half of them will not be, but rather that they left the courtroom recognizing that they had a fair hearing, that I was thoughtful, that I was deliberative, and that I made my ruling with impartiality.

Senator PORTMAN. Thank you. Very good answers, Mr. Chairman.

By the way, the Chief Judge, as I understand it, determines which division, criminal or civil. Has that decision been made? It cannot be made until you are confirmed, I take it.

Ms. SOLTYS. That is correct. There is also a family division, so there are three different divisions.

Senator PORTMAN. Let me ask you a more specific question, and this is, again, sort of getting at this issue of your approach to determining tough calls. Let us say there is a summary judgment motion before you and it is a tough decision. It is a very close call. In deciding whether to grant that motion for summary judgment, would you consider as a tie-breaker that granting the motion would prevent the case from reaching a fact finder? Mr. Salerno.

Mr. SALERNO. I do not think that consideration should play a part in which way to rule on a summary judgment motion. A summary judgment motion, as in any other motion, should be decided based on determination of the record, the determination of what is the applicable law, finding the facts, and applying the law to those facts in an unbiased way. And if it comes out in favor of summary judgment, so be it, and if it does not, that is what trials are for.

Senator PORTMAN. Ms. Soltys.

Ms. SOLTYS. Senator, about 15 years ago, I had an opportunity to serve on a jury, and I learned from that experience that jurors are inclined to base their verdicts on their feelings and their emotions. Ever since that time, in my opening statements to juries and in my closing arguments, I remind them of the oath that they have taken to decide this case based on the facts and the evidence and not based upon their feelings or their emotions or sympathy or prejudice to one side or another.

I understand that if I were confirmed, my role would be to make a factual record for possible appellate review, and I would do that by making findings of fact that are based upon logical determinations of the evidence, and then I would make conclusions of law that are based upon the governing precedent. I do not believe that it is appropriate for a judge's personal views to influence in any way the outcome of a decision.

Senator PORTMAN. So, in this case, the reasonable juror standard that you use when you are deciding whether to grant a summary judgment would be what you would use, but you would use it based on the facts of the case. I like your answers. I do not know if there is a right answer or a wrong answer. I think those are the correct answers for a judge, and I appreciate, again, your willingness to serve and thank all three of you for being here today. I wish you good luck.

Mr. SALERNO. Thank you, Senator.

Ms. SOLTYS. Thank you.

Senator LANKFORD. Let me just say, I will have questions for all three of you, as well, but for the judges, I have a longtime friend of mine who is an attorney. Folks used to say to him all the time, you should consider being a judge, and his answer was always the same every time. "I am not arrogant enough to be a judge." [Laughter.]

And he would just say it over and over again. But guess what he is doing now. [Laughter.]

He is a judge, and a very good one. So, there is a certain sense of humility walking into it, but a certain sense of very thick skin, because you have very difficult issues that the United States has said to you, make this decision. You represent all of us. And we have an expectation that you are going to make the hard call.

And, so, I understand the depth of that decision for you and the difficulty of that at times, but you have gone through a difficult process to get to here, and then we are finishing out this conversation today with that. But, that responsibility is large on you.

Ms. Soltys, let me ask you a little bit, you have a pretty remarkable background in dealing with drugs and narcotics. Given your past record of dealing with high-profile drug cases, how will that

fight continue and how will that affect you as a judge in the issues that we face here in the District dealing with drug issues?

Ms. SOLTYS. Senator, I would say this. My experience as a prosecutor over the years has involved participating in prosecuting homicide cases, rape cases, and narcotics conspiracy, racketeering conspiracy cases. I recognize the problems that are plaguing our community, and when I was a law clerk to Judge Mize, one of the very first assignments that we had was sitting on the child abuse and neglect calendar, in which many of the children that were brought into that courtroom were the children of parents who had addictions. Throughout my entire career, I have seen the harm that drug addiction causes to families and to communities.

I have said, as a judge, I have an obligation to set aside my personal views and to make findings of facts and conclusions of law based upon the evidence that is presented to me and that is a job that I assume willingly. I cannot emphasize any more than my record has demonstrated, that the harm that is caused by the sale of drugs, the violence that is attendant to that, is deeply troubling to our society and has a direct negative impact on the quality of life that our citizens hope to enjoy.

Senator LANKFORD. It is a national issue for us. It is not a D.C. issue. It is a border-to-border issue, that we are dealing with a rapid rise in addiction and the consequences that come with that and the destruction on families and communities that are around it.

You have been able to use your prosecutorial discretion on bringing some cases up and some cases not. Now, you do not have that same ability. You have a full calendar at that point. How will you balance that out between, I am taking every case that is sitting in front of me, knowing full well there will be some cases that will land on your desk that you would think, if I was on the other side of this desk, I would not have brought this. But, how will you balance that out?

Ms. SOLTYS. As you know, the law, there is always a balancing that takes place. As a prosecutor, I have a heavy caseload and I recognize the need to move my caseload, and I recognize that justice delayed is often justice denied. On the other hand, I also recognize that behind every docket number, there is a human face. There is at least one person, one human life that will be affected by the decisions that I make.

One of the things that Judge Mize told me very early on was—and that has stuck with me all these years—is that whatever case you are working on at the time is the most important case that you have. So, I recognize that it is important to move cases along efficiently, but also correctly, and that determining the balance is obviously a challenge that judges face, but it is a challenge for which I am up to the task.

Senator LANKFORD. Mr. Salerno, let me ask you, you have had a long career in private practice. How does that affect you walking onto the bench as far as shaping how you think about all of these issues? What should be an expectation, I guess, of the other attorneys that are then coming to the bench, based on your prior record?

Mr. SALERNO. Sure. I have had a very varied career in private practice, and as a result, I have developed, I think, an ability to

get up to speed quickly on new areas of the law, and I think that is a skill that would serve a judge on the Superior Court well. Also, I believe over years of private practice, I have developed an ability to get to the heart of a dispute and to figure out what is material and what is important and what we should spend our time and energy on. I also think that that is something that I would bring to the bench.

I have been representing clients as an advocate, and when you represent clients as an advocate, you are 100 percent in their corner as an advocate. However, you would be doing a client a disservice by not stepping back, taking an objective and unbiased look at your client's case and explaining to your client how you think the case is going to come out if it were litigated. So, that, in a sense, even though I have been in private practice all the years, I have been, hopefully, honing an ability to do that.

And I have had some recent, as I mentioned in my opening statement, some recent quasi-judicial experience as a hearing committee chair, where I have had a taste of what it would be like to be a judge, and to, again, to put aside any preconceptions and biases and make rulings, findings of fact, conclusions of law based on the evidence. I hope I have done so in a way that the board would be pleased with, and those are qualities that I think I would bring to the bench.

I hope that was responsive to your question.

Senator LANKFORD. Sure. Yes, it is.

Ms. Pope, let me ask you a question. Government funds the FLRA, the Equal Employment Opportunity Commission (EEOC), and the Merit System Protection Board (MSPB), all to adjudicate disputes between Federal agencies and unions and employees. Is there overlap? Is there a need to be able to combine some of these for efficiencies? You have seen this from a long view now and you have experienced some things and you bring some things to the table here that others do not. How do those three work together, and where can the taxpayer be best served, and where is it that the Federal employees and agencies can be best served with the interaction of those three?

Ms. POPE. Thank you for that question. I have learned over the years that there is a very small part of Title 5, the Civil Service Reform Act, where there is overlap with respect to the agencies that you mentioned. We have some 5,800 cases filed a year among the components of the FLRA. We may have an unfair labor practice charge or an arbitration case that comes up through the appeals process to the Authority that may address some aspect of an equal employment opportunity violation or some aspect of some other jurisdiction, some other legal statute.

We have very little overlap that would impact in any way the resources of the FLRA, the EEOC, and any consideration of overlap that would result in any combination of those agencies. It has not happened with any degree of regularity. I do not know that there has been any case where we have worked together on—

Senator LANKFORD. Is there any confusion for individuals, that as they are going through the process of filing and choosing where they are going to go, or through the agencies to say, no, we got this phone call that should really go to here, or where does that land?



Ms. POPE. Well, every Federal agency has carved out through the law created by Congress, the legislative body, their area of jurisdiction. So, it is not unusual for the FLRA to get a call that is a matter of an employee that is under the jurisdiction of the National Labor Relations Board (NLRB). It is not unusual that we would deny a case, dismiss a case, because of a lack of jurisdiction over the issue. There are contractual issues that are not within the purview of the statute under which we review arbitration decisions that interpret the party's contract. So, the overlap is one that, in some regard, the bureaucracy of government contributes to, but it has not been a barrier to the FLRA's performance.

Senator LANKFORD. OK. Let me ask you about some perspective things, as well. There is a case that I know you are familiar with, U.S. Department of Homeland Security, U.S. Customs and Border Protection (CBP), National Treasury Employees Union (NTEU), 2012, that dealt with the role of the Inspector General's (IG) Office. How do we integrate the Inspector General and their work and their unique responsibilities, as well as collective bargaining and negotiation and all of those things? What is the view now of your agency on how the Inspector General fits into collective bargaining and what happens now?

Ms. POPE. Well, one thing that we do not do is set policy, and with respect to the role of Inspectors General or the role of collective bargaining with respect to investigatory interviews conducted by an Inspector General in an agency. What we do review when the issue is presented before us in an individual case, and in that case you mentioned with respect to the negotiability of a provision regarding the union's opportunity under the statute to be a part of an investigatory interview conducted by an Inspector General.

With respect to the FLRA, we look to apply in that case the precedent of the Supreme Court, a National Aeronautics and Space Administration (NASA) decision that touched on a similar issue with respect to the role of the Inspector General that affirmed an FLRA position with respect to that. We were overturned by the courts in our application of the NASA decision, but in every case we make a decision on the facts of that case. We do not set policy with respect to how the Inspector General may interact in investigatory interviews in the workplace.

Senator LANKFORD. OK. Let me ask a little bit on the backlog issue, as well. If I am reading the numbers correctly, about a third of the cases in the past, let us say, 4 or 5 years have been dismissed based on procedural grounds, and I think it is part of just this trying to move things. How does that fit, and help me understand, if I am coming through and it gets dismissed on procedural grounds how it actually still gets heard, the meat of the argument. Is that a matter of refiling? What happens at that point? If it is dismissed for procedural grounds, how does the core of their argument still get heard? Is it a start over process? What happens there?

Ms. POPE. There are different types of cases that come before the FLRA, so a response to your question in some part, in large measure, depends on the type of case that is before us. A procedural matter that would result in the dismissal or the FLRA not addressing the merits of an argument in the review of an arbitration case,

for example, is based on the fact that the parties did not make the argument below and they cannot make it for the first time before the Authority. So, we have very limited grounds for review, and the Authority decision with respect to arbitration cases, which the parties have that process in their contract, they choose an arbitrator, they litigate before the arbitrator, and when the Authority reviews arbitration decisions, it is finality. There is no other opportunity.

So, if they fail to make an argument before the arbitrator—we do a lot of training and education, because we feel as though the parties, in our view, are managers, employees, and union representatives—if they understand their rights and responsibilities, then they know to file a grievance versus an unfair labor practice charge so it does not result in a procedural dismissal.

Senator LANKFORD. What is the speed, typically, that they can get an answer to that? Do they typically go through several months waiting and then find out, no, this is a procedural issue, or is it fairly rapid once they start the process, they will understand there is a procedural process here?

Ms. POPE. The 180 days before the Members does not start counting until we go through the procedural review, our Case Intake and Publication (CIP) office. And, so, we move those cases pretty quickly. It is not in anybody's interest to maintain an inventory in our docket office. So, some of the procedural delay is the time it takes for responses to filings, and so the time period that cases sit in the CIP office are not just because we have not processed them quickly. You have to allow the process to evolve for the responsive filings. But, if there is a procedural deficiency, those cases move forward, move through to decision in 30 to 60 days.

Senator LANKFORD. Good. So, you have a tremendous amount of experience you walk into this with. If confirmed for this next round, and I am impressed you want to take another round in the ring here, if confirmed, what changes do you see immediately that you would say, you have moved the agency in many ways. You have improved the relationships among the body of the staff and the individuals that work there, trying to deal with backlog issues. What is the next mountain you are going to climb?

Ms. POPE. We have a shifting workforce—I think it is true throughout the Federal Government—with the retirement bubble, and, so, one of the challenges, I think, that I would face moving forward, if I am confirmed, is to continue the high quality work, to ensure that we devote enough resources to train and retain a quality workforce. It is also an issue of succession planning, as the senior leadership, the managerial leadership, retires.

We have been very successful in making a commitment to leadership training, to supervisory training. I have learned in this business that a first-line supervisor has the hardest job in the workplace. They often do not get enough information from upper management and they have to deal and resolve with workplace disputes, workplace conflict in an instant without, oftentimes, the ability to consult with labor relations professionals.

So, for me, the challenges moving forward are to retain a highly engaged and qualified staff. Diversity is an important priority moving forward, if I am to be confirmed, as well as continuing to evolve

alternative dispute resolution in areas that we have not done as much work in in the arbitration field.

And, of course, continuing innovation in the workplace is very important. It takes a lot of resources and commitment. The day we publish a new webpage, it is almost obsolete and it is hard to keep up with technology. You have to give technology to every employee in the workplace to retain newer employees as well as to give the services to our customers. So, we devote a lot to that and that is a priority of mine moving forward.

Senator LANKFORD. Great.

Senator Ernst, did you have additional questions?

#### OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman. I appreciate it. Yes.

For Mr. Salerno and Ms. Soltys, please describe your current thoughts on what it means to be an independent judge as well as the importance of judicial independence, just in your own words.

Ms. SOLTYS. Should I go first?

Mr. SALERNO. Sure.

Ms. SOLTYS. Thank you, Senator. Senator, I gave an answer earlier which I would like to repeat for your benefit—

Senator ERNST. OK. Thank you.

Ms. SOLTYS [continuing]. Which is that I served on a jury and I saw that jurors are inclined to decide cases based on their feelings and their emotions, and not on the facts and not on the evidence. And since that time, in every opening statement and in every closing argument that I have made to a jury, I have reminded them of the oath that they took to decide this case based on the facts that they have heard and not based on sympathy or prejudice to one side or the other. And that same oath that I ask the jurors to uphold is the same oath that I would uphold every day as a judge.

Senator ERNST. Very good. Thank you very much.

Certainly, Mr. Salerno.

Mr. SALERNO. Yes. The most important thing for a judge is the unbiased application of the law to the facts, and as a judge, it is our job, and I would believe I can do so, to put aside any personal beliefs, prejudices, and decide in an unbiased, fair manner.

Senator ERNST. Very good. I appreciate it very much. Thank you both for stepping up and accepting this challenge.

And, Chairman Pope, what is your assessment of the current state of Federal labor-management relations, and you have touched a little on this, but if you could just expound a little bit further, please.

Ms. POPE. Thank you for that question. It is an evolution, as any relationship is an evolution. We are in a period where we have worked very hard to encourage collaboration and cooperation in the resolution of workplace disputes. We know that to the extent that we can give the parties the tools that they need, our innovation has contributed to that with respect to web-based, for the first time, web-based training, where supervisors can sit at their desks. We have encouraged in every managerial leadership discussion we have been invited into that labor-management relations should also be taught to a supervisor and it should not be trial by fire.



And, so, in that regard, labor-management relations throughout the government is a factor that we take seriously because it contributes to an effective and efficient government. If there are workplace disputes, it impacts mission performance.

Senator ERNST. Yes, it does.

Well, thank you all. I do not have any further questions, but I want to thank all three of you for, again, stepping up to the challenge and your exceptional service for all of our constituents. Thank you.

Ms. SOLTYS. Thank you.

Mr. SALERNO. Thank you, Senator.

Ms. POPE. Thank you.

Senator LANKFORD. Thank you.

Senator ERNST. Thank you, Mr. Chairman.

Senator LANKFORD. Thank you all for being here. Let me read a final statement, and then we will close all this fun out and let you all get a chance to connect with family and friends for the conversation, and then we will move this on to the full Senate in the days ahead.

Mr. Salerno, Ms. Soltys, and Ms. Pope have filed responses to biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and had financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

The hearing record will remain open until noon tomorrow, December 4, 2015, for the submission of statements and questions for the record.

With that, this hearing is adjourned. Thank you all for being here.

Ms. POPE. Thank you.

Mr. SALERNO. Thank you.

Ms. SOLTYS. Thank you.

[Whereupon, at 11:10 a.m., the Committee was adjourned.]



## APPENDIX



December 3, 2015

### Opening Statement of Senator James Lankford

#### Homeland Security and Governmental Affairs Committee Hearing

#### Nominations of Hon. Carol Waller Pope to be a Member, Federal Labor Relations Authority, and Robert A. Salerno and Darlene M. Soltys to be Associate Judges, D.C. Superior Court

Good morning. Today we will consider the nominations of Mr. Robert Salerno and Ms. Darlene Soltys for the position of Associate Judge on the Superior Court for the District of Columbia, as well as the nomination of Ms. Carol Waller Pope for the position of Chair of the Federal Labor Relations Authority. The Committee takes these nominations very seriously, and so we are pleased to have strong nominees before us.

Mr. Salerno is a native of New Jersey. He received a Bachelor of Arts degree from Brown University, and a law degree from the University of Virginia School of Law. After graduation, Mr. Salerno practiced law with several D.C. area firms, honing skills in civil litigation and white collar criminal defense. This year, he became special counsel of Schulte Roth & Zabel.

Ms. Soltys is a native of Washington state. She received a Bachelor of Arts degree from the University of Maryland, and a law degree from Georgetown University. After graduation, Ms. Soltys clerked for the Honorable Gregory E. Mize on the Superior Court for the District of Columbia. Following her clerkship, she embarked on a 23 year career in prosecution, working for the D.C. Attorney General, the Maryland State Attorney, and the U.S. Attorney's Office.

In addition to these impressive resumes, Mr. Salerno and Ms. Soltys possess the necessary legal skills and judgement to serve the District of Columbia. Committee staff reached out to a variety of these nominees' colleagues and affiliates, who spoke highly of them.

Ms. Pope is a native of Pittsburgh. She received her Bachelor of Arts degree from Simmons College, and a law degree from Northeastern University School of Law. After law school, she worked at Boston University, the Department of Labor, before joining the Federal Labor Relations Authority in 1980.

Committee staff also had the opportunity to interview Mr. Salerno, Ms. Soltys, and Ms. Pope on an array of issues, ranging from notable cases to their community service and pro bono work. They have thoughtfully and competently answered each question to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated. I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

**Statement of Ranking Member Tom Carper:  
"Nomination of Carol Waller Pope to be a Member, Federal Labor Relations Authority,  
and Robert A. Salerno and Darlene M. Soltys to be Associate Judges, D.C. Superior Court"**

**Thursday, December 03, 2015**

*As prepared for delivery:*

Thank you Mr. Chairman.

Before I read my opening remarks, I'd like to offer my condolences to the loved ones of the victims of yesterday's tragic shooting in San Bernardino, California. I continue to closely monitor the developments as law enforcement conducts its investigation.

I want to thank all of our nominees and their families for being here today. My thanks as well to Senator Lankford for chairing this hearing and for his work in helping us move forward in considering these nominees.

First, I want to welcome Carol Waller Pope, who is no stranger to this committee nor to the position to which she is nominated. Chairman Pope has over 30 years of experience at the Federal Labor Relations Authority, or FLRA. She began as a career employee in 1980, was confirmed as a Member in 2000, and has served as its Chairman since 2009. Under Chairman Pope's leadership, the FLRA has eliminated its case backlog, significantly reduced the average amount of time cases are pending, and vastly improved employee satisfaction and morale.

In addition, the agency has increased the success of alternative dispute resolution to encourage parties to resolve differences without the need for costly and time-consuming litigation. I look forward to hearing more about the work Chairman Pope has done and also her vision for the FLRA going forward. Thank you again for being with us today.

I am very pleased that we are also considering two nominees for the Superior Court of the District of Columbia. Robert A. Salerno has had a long career in private law practice, where he has worked on issues ranging from criminal investigations to commercial litigation to whistleblower protections. Darlene M. Soltys, currently an Assistant U.S. Attorney for the District of Columbia, has many years of experience as a prosecutor. I believe that the background and experience both of these nominees bring makes them extremely well-qualified to serve as judges on the Superior Court. Thank you both for joining us.

Before I close so we can hear from our nominees, I want to note that I am also pleased that, on November 19, the Senate confirmed nominees to fill two other vacancies on the D.C. Superior Court, William Nooter and Steven Wellner.

That said, the length of time that it took to get Judges Nooter and Wellner confirmed is simply shameful. These qualified individuals waited two years for confirmation. We must do better. And I hope we can do better with these two nominees as well as four others that are currently pending in our committee.

Most people – including some of our colleagues who are not on this committee – likely don't know that local judges in the District of Columbia must be confirmed by the Senate. The D.C. Superior Court and Court of Appeals are operated by the federal government. Their judges are appointed by the President from a slate of candidates thoroughly vetted and recommended by a non-partisan nomination commission. They must then be confirmed by the Senate for 15 year terms. But these courts don't handle federal matters. They are the local courts for the District of Columbia and deal with matters such as local crimes and domestic and civil disputes between the people who live here.

Just this past September, Pope Francis addressed a joint session of the Congress. His remarks that day drew great accolades and standing ovations especially when he invoked the Golden Rule, which calls on us to treat others the way we'd want to be treated.

The way that this body has been treating the nominees for court positions in the District of Columbia, as well as the residents of the District who rely on the court system, is a clear violation of the Golden Rule. It's got to stop, and it needs to stop now. No other jurisdiction in our country must have its local judges approved by Congress. And no other state or locality is denied representation in the Senate that might help it pursue its priorities here, including nominations.

Some have suggested that local D.C. judges should not have to go through Senate confirmation. I think we should seriously consider that idea. But at a minimum, we should develop an expedited process for the confirmation of these local judges.

In the meantime, I hope that the Senate will move forward quickly on the nominations of Mr. Salerno and Ms. Soltys and I thank you both for being here and for your responses to our questions.

### Opening Statement of Carol Waller Pope

Good Morning. I want to thank the Committee for conducting this hearing. I also thank the Committee staff for their work and meaningful assistance.

It is my honor and privilege to be here today as President Obama's nominee to serve for a fourth term as Member and, if confirmed, to again serve as Chairman of the Federal Labor Relations Authority. I thank President Obama for the trust that he has placed in me to serve in this leadership capacity at the FLRA. I also want to thank my family for their unwavering support and trusted guidance – Lynda White and Fred Grigsby, Jr., who are here today representing those of my family members who could not be here, along with many members of my extended family who are in attendance. I also want to acknowledge the collegiality and support of my fellow Presidential leadership at the FLRA: Members Patrick Pizzella and Ernest DuBester, General Counsel Julie Clark, and Federal Service Impasses Panel Chairman Mary Jacksteit and Panel Member and former FLRA Chairman and Member Donald Wasserman.

I am here today standing on the shoulders of my parents – my father a Pittsburgh steelworker and my mother, a domestic worker, both of whom embodied the principle of hard work. They worked hard to ensure that their four daughters had a foundation of love and education as well as their shared commitment to service and to helping others. I have devoted my entire professional career to public service – first at the U.S. Department of Labor and for twenty-one years as a career employee at the FLRA. I have the distinct honor of being the first career employee to serve as a Member and Chairman of the FLRA; and as the first Member to be nominated by three Presidents: Presidents Clinton, Bush, and Obama, and to be confirmed on three prior occasions by this august body, the United States Senate.

The FLRA encompasses in one small agency the investigator, prosecutor, adjudicator, and interest arbitrator for labor-management disputes involving 1.2 million federal employees. Since its creation as part of the Civil Service Reform Act of 1978, the FLRA has been committed to providing leadership in establishing policies and guidance related to federal-sector labor-management relations, and ensuring compliance with the Federal Service Labor-Management Relations Statute. For over thirty-six years the FLRA has been promoting and protecting labor-management relations for an effective and efficient government. Simply stated, the FLRA must meet the needs of the federal workforce with high-quality legal decisions and alternative-dispute-resolution services to ensure that workplace disputes do not unduly impede the performance of the missions of agencies in service to the American people. I have the honor and privilege to speak to you about the hard work and dedication of the FLRA's nationwide workforce of employees who perform our important mission.

With respect to mission performance, fiscal year 2015 was a strong year for the FLRA. I am proud to report that the Authority completely eliminated its backlog of overage cases, despite a 22 percent increase in case filings, and it also issued 24 percent more merits decisions than it did in the prior fiscal year. The Office of the General Counsel again exceeded all of its strategic and performance goals for the timely resolution of both unfair-labor-practice and representation cases, and it continued to close more cases than it did in previous years. The Federal Service Impasses Panel also exceeded all of its strategic and performance goals. And the FLRA delivered over 300 training, outreach, and facilitation sessions to over 8,000 customers in furtherance of its commitment to train our customers regarding their rights and responsibilities under the Statute. Innovation and technology, including modernization of our IT equipment and infrastructure; a revitalized website, eFiling, and enhanced legal-research capabilities for

<b>Birth Year and Place</b>	
<b>Year of Birth</b> (Do not include month and day.)	<b>Place of Birth</b>
1952	Pittsburgh, PA

<b>Marital Status</b>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>Spouse's Name</b> (current spouse only)			
<b>Spouse's First Name</b>	<b>Spouse's Middle Name</b>	<b>Spouse's Last Name</b>	<b>Spouse's Suffix</b>
N/A			

<b>Spouse's Other Names Used</b> (current spouse only)						
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>	<b>Check if Maiden Name</b>	<b>Name Used From</b> (Month/Year) (Check box if estimate)	<b>Name Used To</b> (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>



<i>Children's Names (If over 18)</i>			
First Name	Middle Name	Last Name	Suffix
N/A			

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Northeastern University	School of Law	09/1975	05/1978	Juris Doctor	05/1978
Simmons College	Undergraduate College	09/1970	05/1974	Bachelor of Arts	05/1974
Cornell University	Undergraduate College – School of Industrial and Labor Relations. Professional training on 1) Mutual Gains Bargaining/Negotiation Skills and 2) Facilitator Training for Mutual Gains Negotiation	1) 5/1993 Est. X 2) 5/1994 Est. X	1) 5/1993 Est. X 2) 5/1994 Est. X	Certificate of completion	1993 and 1994
Federal Executive Institute	Office of Personnel Management Executive Leadership Training	Est. 5/1997 X	Est. 6/1997 X <input type="checkbox"/>	certificate	1997
Harvard Law School	Harvard Negotiation Institute, Program on Negotiation	2/1998 Est. X	2/1998 Est. X	certificate	1998

## 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPS Commissioned Corps, Other Federal employment)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if	<u>Date Employment Ended</u> (month/year) (check box if
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our customers; and video conferencing to expedite case processing and reduce travel costs are just some of the improvements during my tenure that have been key to our increased mission performance.

Alternative-dispute resolution, or "ADR," activities throughout the agency also continued to be extremely successful in fiscal year 2015. ADR is deeply embedded in the way that all cases are processed throughout the agency. Of course, making voluntary ADR available and making it work are two different things. Over 80 percent of the FLRA's cases agency-wide are resolved through mediation and ADR. During my tenure as Chairman, we have formally integrated mediation and ADR into all case processing in every component of the FLRA. Successful ADR means voluntary settlements that are more effective in building productive labor-management relationships, the development of parties' experience and expertise to resolve future disputes, and the reduction – and in most cases avoidance – of costly, protracted litigation. In real terms, as just one example, our ADR efforts resulted in parties amicably resolving in only two days of mediation a dispute over 44 contract provisions. As a direct result of our ADR work, the parties' dispute ended without the need for formal adjudication by the Authority, which would have required an enormous amount of staff resources, and the parties were able to quickly return to the business of government.

It is proven in both the private and public sector that mission performance and high levels of employee engagement and morale go hand-in-hand. And the FLRA is no exception. When I began my tenure as Chairman in 2009, employee morale at the FLRA was at an all-time low. In fact, the FLRA was ranked last among all small agencies in the Partnership for Public Service's Best Places to Work in the Federal Government rankings. Our mission performance was also well below our annual performance targets.

I proudly note – on behalf of all us at the FLRA – that in FY 2015 the FLRA captured the rank of #2 on three important indexes in the Office of Personnel Management's Federal Employee Viewpoint Survey (FEVS) – Employee Engagement, Global Satisfaction, and New IQ, which measures the inclusivity of the work environment. We also achieved an all-time-high employee-response rate of 84 percent, demonstrating that employees value the survey process and use the FEVS as a tool to communicate their interests and concerns to agency leadership and managers. Equally important to our mission success, 99% of the FLRA's respondents reported that they are willing to put in extra effort to get a job done; 94% believe that the agency is successful at accomplishing its mission; and 94% know how their work relates to the agency's goals and priorities. Of course our mission-performance outcomes are a direct corollary to these impressive survey results.

This year, the FLRA expects to improve upon its #5 ranking in the 2014 Best Places to Work in the Federal Government rankings, which reflects an impressive and unprecedented improvement of over 300 percent in the FLRA's overall engagement score since 2009. This sustained progress since I first became Chairman nearly seven years ago reflects the commitment of agency leadership at all levels to manage the agency with transparency and accountability, and to truly and meaningfully engage our employees. It also reflects the hard work, dedication, and commitment of our employees at all levels.

If I am confirmed, I will continue to work hard every day with my FLRA colleagues throughout the country – some of whom are here at this hearing, and countless others of whom are following the live stream of this proceeding – to build upon this record of success in our mission performance and employee engagement for an effective and efficient government in service to the American people.

Mr. Chairman, I thank you for the opportunity to be here today and I would be pleased to respond to any questions.

**HSGAC BIOGRAPHICAL QUESTIONS FOR  
EXECUTIVE NOMINEES**

**REDACTED****1. Basic Biographical Information**

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Member, Federal Labor Relations Authority (Upon Appointment to be designated Chairman)	April 13, 2015

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Carol	Waller	Pope	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 1400 K Street		
City: Washington	DC	20015	City: Washington	State: DC	Zip: 20424

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
Carol	W.	Pope			05/1980	Present
Carol		Pope			05/1980	Present
Carol	A.	Waller		X	08/1952	05/1980

State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other				estimate)	estimate) (check "present" box if still employed)
Federal Government	Federal Labor Relations Authority	Chairman and Member	Wash., DC	Chairman and Member - 11/2013-  Chairman - 03/2009 - 01/2013 Acting Chairman 2/2009 - 3/2009; Member - 10/2008 (confirmed); 04/2007 - 09/2008 - (recess appt.); 10/2000 - 12/2006 (confirmed)	present
Retired				January 2007  January 2013	April 2007  November 2013
Federal Government	Federal Labor Relations Authority	Assistant General Counsel for Appeals	Wash., DC	10/1998	10/2000
Federal Government	Federal Labor Relations Authority	Director of Appeals and Special Programs	Wash., DC	06/1996	10/1998
Federal Government	Federal Labor Relations Authority	Executive Assistant to the General Counsel	Wash., DC	07/1994	06/1996
Federal Government	Federal Labor Relations Authority	Attorney	Boston, MA	02/1980	07/1994
Federal Government	U.S. Department of Labor	Attorney	Wash., DC	01/1979	02/1980
Unemployed			5/1978	12/1978	
Federally-funded Program	New Careers in Mental Health, Boston University School of Medicine	Job Developer	Boston, MA	06/1974	08/1975

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
None		Ext D	Ext D Present D

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

I have not engaged in any such activity.

### 5. Honors and Awards

**List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.**

Top Five Best Places To Work in the Federal Government. Recognized as #5 among Small Agencies in the 2014 Partnership for Public Service Best Places to Work rankings.

Letter of Congratulations from Senator Daniel Akaka, Chairman Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, September 2010, on "dramatic improvement in the 2010 Best Places to Work Rankings."

Recognized as the Most Improved Small Agency in the 2010 Partnership for Public Service Best Places to Work rankings.

American Bar Association - Federal Service Leadership Award, 2005

Carol Waller Pope Leadership Scholarship Award (for students -- created by Simmons College in honor of my volunteer leadership), 2005

National Partnership for Reinventing Government Hammer Award, 1999

Office of Personnel Management, Federal Executive Institute, Commencement Speaker, 1997

Special Achievement Award, Federal Labor Relations Authority, 1981

Superior Accomplishment Award, Federal Labor Relations Authority, 1991, 1992, 1999

Sustained Superior Performance Award, Federal Labor Relations Authority, 1988, 1989, 1999

Sustained High Quality Performance, Federal Labor Relations Authority, 1997

Special Act Award, Federal Labor Relations Authority, 1997, 1998

Certificate of Appreciation, Federal Labor Relations Authority, 1999

Simmons College Alumnae Service Award, 1998

Commonwealth of Massachusetts State Senate Citation, 1993

Big Sister Association of Greater Boston, 1993

### 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years. Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Simmons College Alumnae Association, Boston, MA	1975 – present	President and Vice-President (est. 1991-1993)
Simmons College African-American Alumnae Association, Boston, MA	1995- present	President (est. 2000-2004)
Simmons College Leadership Council	2004-present	Member
Simmons College Board of Trustees, Boston, MA	2004-2013	Trustee
Simmons College Corporation, Boston, MA	2000 – 2013	Corporator
Employment Justice Center, Washington, DC,	2005 – 2013	Secretary and Board Member
Madison Park Development Corporation, Board of Directors, Boston, MA; Lower Roxbury Development Corporation; Madison Park Housing Corporation; and, Madison Park Economin Development Corp.	1980's - 2013	Director
United States Court of Appeals, First Circuit Bar	1979 - present	Member
Supreme Court of the United States Bar	1990 - present	Member
United States Court of Appeals, Fifth Circuit Bar	1979 - present	Member
American Bar Association	2004-2011	Member



Massachusetts Bar Association	1978 - present	Member
Society of Federal Labor Relations Professionals	1993 - present	Member
Central State University General Alumnae Association	2010 - present	Member

### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
No.			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Clinton-Gore Campaign	Poll Watcher, VA	Poll Watcher	November 1996
Democratic Party	Volunteer Attorney Voter Protection, PA	Legal Services Team Member to address voter protection issues.	November 2004
Democratic Party	Volunteer Attorney Voter Protection, VA	Legal Services Team Member to address voter protection issues.	November 2008

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
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Obama Victory Fund	500.00	2008
Obama Victory Fund	1,000.00	2008

### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Careers and the Minority Lawyer -- Career Bios See Attachment #1.	Crimson and Brown Associates	Spring 1999

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

See Attachment # 2.		
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(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
See Attachment #3.		

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) **No.**

- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? **No.**
- Have you been charged, convicted, or sentenced of a crime in any court? **No.**
- Have you been or are you currently on probation or parole? **No.**
- Are you currently on trial or awaiting a trial on criminal charges? **No.**
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? **No.**

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

- A) Date of offense:
- a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
  - 2) Firearms or explosives: **Yes / No**
  - 3) Alcohol or drugs: **Yes / No**
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
  - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
  - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No

N) Provide explanation:

**10. Civil Litigation and Administrative or Legislative Proceedings**

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
No				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
12/1/2014	Supreme Court	Sheryl Taylor v. Colleen M. Kelley, President of the National Treasury Employees Union; Timothy F. ether, former Secretary of the Department of the Treasury; and Carol Waller Pope, Chairman of the Federal Labor Relations Authority	Petitioner seeks review of Sixth Circuit ruling affirming District Court's dismissal of all claims and denial of counsel.	Petition for certiorari denied - 2/23/2105.

11/4/2014	MSPB	Adalis Morales v. FLRA, DC-3151-15-0129-I-1	Probationary supervisor appealed Agency decision to remove from supervisory position due to unsatisfactory performance during probationary period. Allegation that employee's removal was because of employee's marital status.	Settled.
4/22/2014. Appeal of FLRA dismissal by Agency EEO Director on timeliness and legal sufficiency grounds filed with EEOC on 9/15/2014.	EEOC	James T. Abbott v. Carol Waller Pope, Chairman, FLRA, 120143173	Allegation that the FLRA discriminatorily refused to reimburse for health care premiums back to date of same-sex marriage in 2008, and alleged retaliation for filing initial complaint.	Pending.
8/30/2013	6 <sup>th</sup> Circuit	Sheryl Taylor v. Colleen M. Kelley, President of the National Treasury Employees Union; Timothy F. either, former Secretary of the Department of the Treasury; and Carol Waller Pope, Chairman of the Federal Labor Relations Authority	Appellant seeks review of a district court decision that dismissed her civil actions which included a challenge to the FLRA General Counsel's decision to not issue a complaint and to enter into a unilateral settlement agreement. On appeal, Appellant challenged only the district court's failure to appoint pro bono counsel.	Affirmed.
1/29/2013	EEOC	Carmen F. Hall v. Carol Waller Pope, Chairman, FLRA	Allegation of discrimination arising out of performance appraisal.	Settled.
1/4/2013	EEOC	Renee H. Thomas v. Carol Waller Pope, Chairman, FLRA	Allegation of race, age, gender discrimination against agency complaining that complainant performed same duties as similarly-situated male employees, but at a lower grade level.	Docketed with Administrative Judge at EEOC on 6.27/2014.  Withdrawn at Complainant's request.
12/14/2012	EEOC	Pamela P. Johnson v. Carol Waller Pope, Chairman, FLRA. 570-2013-00959X	Allegation of discrimination arising out of performance appraisal and removal of duties from critical elements of performance plan.	Docketed with Administrative Judge at EEOC, 6/11/14. Motion for Summary Judgment pending.

December 12, 2011	EEOC	Nicholas Hawkins, Jr. v. Carol Waller Pope, EEOC Appeal Docket No. 01-2013-0659	Allegation of discrimination arising out of leave restriction and AWOL citation. Appeal docketed in EEOC, 12/21/2012.	Final Agency Decision found no discrimination or reprisal. EEOC appeal settled.
June 28, 2011	U.S. District Court, Western District of Tennessee	Sheryl Taylor v. Colleen M. Kelley, President of the National Treasury Employees Union; Timothy F. either, former Secretary of the Department of the Treasury; and Carol Waller Pope, Chairman of the Federal Labor Relations Authority, No. 2:11-cv-02546-JTF-dkv	Among numerous issues raised by the complainant, she challenged the FLRA's General Counsels decision to not issue a complaint and to enter into a unilateral settlement agreement with the union that she filed an unfair labor practice charge against.	FLRA's Motion to Dismiss granted – November 8, 2012
June 22, 2010	EEOC	Sheryl Taylor v. Carol Waller Pope, EEOC Appeal Docket No. 01-2010-3284	The plaintiff alleges that an FLRA Regional Director's dismissal of her unfair labor practice charges was discriminatory and retaliatory.	Dismissed on October 28, 2011.
August 17, 2010	U.S. District Court, District of Columbia	AGFE, AFL-CIO, Local 2798 and Hussain v. Pope and Clark, No. 1:10-01012	The plaintiff seeks review of the FLRA General Counsel Julie Akin Clark's refusal to issue a complaint in an unfair labor practice case.	Dismissed on September 1, 2011.
July 28, 2008		Ayo Ganton v. Carol Waller Pope, EEOC Appeal Docket No. 440-2009-00104X	Administrative proceeding in which the complainant asserted an Equal Pay Act claim.	Resolved by settlement on May 12, 2009.
July 28, 2008		Kenneth Woodbury v. Carol Waller Pope, EEOC Appeal Docket No. 440-2009-00106X	Administrative proceeding in which the complainant asserted an Equal Pay Act claim.	Resolved by settlement on May 8, 2009.
December 1998	DC Superior Court, Family Division	Carol Waller Pope and Chauncey A. Pope	Divorce proceeding.	Granted.



(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. None.

#### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed. No.

<u>Name of Agency/Association/ Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? No.

#### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). No.

#### 14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

#### 15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

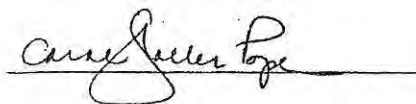
**16. Additional Financial Data**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

## SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

A handwritten signature in cursive script, appearing to read "Carrie J. Miller", is written over a horizontal line.

This 28th day of May, 2015

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

APR 28 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol Waller Pope, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures **REDACTED**

December 29, 2014

Fred B. Jacob  
Solicitor  
Federal Labor Relations Authority  
1400 K Street, NW Suite 300  
Washington, DC 20424

Dear Mr. Jacob:

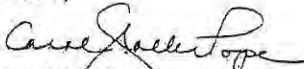
The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13490) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Sincerely

  
Carol Walker Pope



**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Carol Waller Pope to be a Member of the  
Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I believe that I was selected for nomination as a Member because of my experience, expertise, and record of achievements as a Member (2000 – January 2013; November 2013 – present), a Chairman and CEO (2009 – January 2013; November 2013 – present), and a career employee (1979 – 2000) of the FLRA. I possess the requisite knowledge of the law and its application; litigation experience; dispute-resolution and facilitation experience; managerial experience; and decision-writing expertise to lead the FLRA in fulfilling its statutory mission and successfully achieving its performance goals. In sum, my 35 years of experience working in various capacities at the FLRA make me uniquely qualified to continue my public service as a Member of the FLRA.

During my tenure as a Member and Chairman, I have worked collaboratively with the Presidential leadership and career employees to achieve the following outcomes:

- (a) Developed and successfully implemented a multi-year strategy of "Revitalization, Reinvention, and Re-engagement" of internal and external stakeholders to improve mission performance, customer service, and employee engagement;
- (b) Established and *met* a multi-year Authority Corrective Action Plan and Case Issuance Strategy with performance goals and progress indicators to eliminate the Authority's case backlog. Eliminated the case backlog and issued decisions in 24% more Authority cases (165) in fiscal year (FY) 2015 than in FY 2014 (133);
- (c) Reallocated resources to hire temporary attorneys, paralegals, and re-employed annuitants to improve performance in the Office of Administrative Law Judges, resulting in 160% more decisions issued (78) in FY 2015 than in FY 2014 (30);
- (d) Revised the Authority's arbitration regulations to clarify legal standards, specify parties' burdens, and provide for optional forms, expedited decisions, and voluntary alternative-dispute-resolution (ADR) services, along with developing an online *Guide to Arbitration* and related training materials;

- (e) Provided over 300 training, outreach, and facilitation sessions to over 8,000 FLRA customers in FY 2015;
- (f) Developed and implemented a legal-writing, quality-review, and training initiative, including the development of a Drafting Guide, to enhance employee skills and improve the quality of decisions;
- (g) Developed and implemented succession-planning initiatives to develop future leaders and supervisors;
- (h) Developed and implemented a multi-year, agency-wide information-technology modernization plan to implement e-filing; improve website and online legal-research capabilities; provide video conferencing to improve efficiencies and reduce travel costs; automate outdated and inefficient manual case-handling processes and integrate with a new electronic case-management system; and ensure compliance with government-wide Federal Information Security Management Act (FISMA) and Continuity of Operations (COOP) requirements.

Throughout my tenure at the FLRA, as both a career employee and political appointee, I have built relationships of trust with my colleagues at the FLRA, as well as with the agency's external stakeholders – federal agencies, unions, employees, and Congress. With that trust and my knowledge of the FLRA's mission, its administrative operations, and the law, I am uniquely poised to continue to adjudicate federal-sector labor-management disputes as a Member of the FLRA.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.  
No.
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Member of the FLRA? If so, what are they and to whom have commitments been made?  
No.
4. If confirmed, are there any issues that would cause you to recuse or disqualify yourself due to a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out a recusal or disqualification.  
No.

**II. Background of the Nominee**

5. In general, do you think it is appropriate for an FLRA member to have preconceived notions either for or against unions?  
  
No. The FLRA is a neutral, adjudicative body.
6. In matters before the FLRA do you believe that it is important for Members to be perceived by the interested parties as impartial?  
  
Yes.
7. If confirmed, is there anything in your background which would preclude you from being a fair and objective Member of the FLRA?  
  
No.

**III. Role of Member, FLRA**

8. In your opinion, what is the role of a Member of the FLRA?  
  
The role of a Member is to work collaboratively and decisively to administer the provisions of the Federal Service Labor-Management Relations Statute (Statute) to: (1) resolve complaints of unfair labor practices (ULPs); (2) determine the appropriateness of units for labor-organization representation; (3) adjudicate exceptions to arbitrators' awards; and (4) adjudicate legal issues relating to the duty to bargain. The FLRA's three Members must fulfill these adjudicative responsibilities through the issuance of timely, well-reasoned decisions that give full effect to the rights afforded to employees, labor organizations, and agencies under the Statute.
9. What do you believe are the top challenges facing Members of the FLRA today? What steps do you plan to take, if reconfirmed, to address these challenges?  
  
The top challenges facing the Members are: (1) recruitment and retention of a diverse workforce; (2) skills development for new employees; (3) budget-conscious innovation in case-adjudication processes to ensure timely and quality case processing; (4) expansion of the delivery of effective ADR services; and (5) sustaining and increasing high levels of employee engagement and job satisfaction.  
  
I have collaborated, and will continue to collaborate, with career employees and Presidential leadership to manage resources to address these challenges. Many initiatives are currently underway and will continue. The FLRA achieved greater diversity in its workforce in FY 2015 by increasing strategic and targeted recruitment and posting job

opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. Consistent with the Office of Personnel Management's Recruitment, Engagement, Diversity, and Inclusion (REDI) Roadmap, the FLRA is using data to help identify and eliminate barriers to recruiting and hiring the diverse talent that it needs. The FLRA also continued to utilize both Student Pathways and summer-internship programs to accomplish mission-related initiatives throughout the agency. Serving as one of three Small-Agency Representatives on the Diversity and Inclusion in Government Council, the FLRA is participating in government-wide discussions concerning the implementation of President Obama's Executive Order 13,583, *Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*, to develop a path forward for federal agencies to create and foster a workforce that includes and engages federal employees and reflects all segments of society.

Further, I have collaborated with career employees and Presidential leadership to develop and provide high-level, mission-based training for its attorneys – nearly 20 percent of whom were new to the FLRA in FY 2014 and FY 2015 – that built upon their existing legal, technical, and ADR skills to improve and maximize performance. For example, we have provided employees with external and internal legal-writing and conflict-resolution classes. Additionally, we have provided employees with case-law-update “Lunch and Learn” sessions and cross-office and cross-component details to develop and enhance employee legal-research-and-writing and ADR skills. Additionally, we have conducted employee-led workgroups and regular meetings of employees in the Member offices (the Decisional Component) to develop case-process innovations and to address workload balance, technology needs, and other issues that relate to job satisfaction and increased employee empowerment.

Moreover, to strengthen and support the FLRA's new cadre of first-time managers and supervisors, the agency identified a series of trainings geared towards developing strategic thinking and other critical skills in preparation for leadership at the FLRA. These training initiatives crossed components, bringing together future agency leaders from all offices to enhance their skills and encourage collaboration among peers.

10. When you served as Chairman of the FLRA during your previous term, to what extent and in what respects did you fulfill your responsibilities in collaboration with the other Members of the FLRA? If reconfirmed, are there any ways in which you intend to fulfill the responsibilities as Chairman differently than you did in the past?

I have learned from my successful and rewarding experience as Chairman that communication, collaboration, accountability, and transparency are the core values of successful leadership and effective mission performance. In all policy and operational matters – human resources; budget development and execution; information technology; strategic planning; case management; and outreach, facilitation, and training – I have collaborated, and will continue to collaborate, fully with the other Members, the FLRA's

General Counsel, and the Chairman and Members of the Federal Service Impasses Panel. I lead Member and Presidential meetings, at least monthly, to consult with senior management and Presidential leadership on all of these operational and policy matters. If confirmed, I will continue to employ these principles and values.

All Decisional Component annual performance goals, as well as performance-management and budget policies and initiatives, are developed collaboratively by the Members with input from career employees. Throughout each performance year, the Members and their staffs work together to review case-tracking data to assess mission performance vis à vis the performance goals. Most recently, I worked collaboratively with Members Patrick Pizzella and Ernest DuBester and their staffs in the development and successful implementation of a Case Issuance Strategy, which allowed us to adjudicate, by the end of FY 2015, all of the cases that had been pending in our inventory for over 180 days. This initiative required ongoing collaboration to manage the assignment – and, in some instances, the reassignment – of cases and staff to ensure a successful outcome.

11. What do you consider to be your main accomplishments during your service at the FLRA so far? What lessons have you learned from that experience and how would your experience inform and guide your actions and decisions if confirmed for another term?

I am most proud of my leadership, in collaboration with my Presidential and career-employee colleagues, to successfully rebuild the FLRA to improve mission performance, employee engagement, and job satisfaction. This multi-year effort began in 2009 with the agency-wide launch of the “Revitalization, Reinvention, and Re-engagement” initiative. These efforts have produced results. The FLRA has restored its credibility with external and internal stakeholders. Agency-wide case backlogs have been eliminated or substantially reduced. Key vacancies have been filled, and robust training and development initiatives are underway. Annual agency-wide and component-level performance goals are substantially met and, in some cases, exceeded.

Significant improvements in the FLRA’s use of technology have also been accomplished. Internal network, software, hardware, and wireless capabilities were enhanced. We have made technological improvements to assist FLRA customers, including electronic voting in representation cases, electronic case filing, and, for the first time ever, web-based training modules. These improvements – and our involvement of employees at all levels in development and implementation – contributed to the FLRA’s recognition as “Most Improved Small Agency on Innovation” in 2011.

Employee engagement, confidence in leadership, and commitment to the FLRA’s mission is at an all-time high. Tremendous improvements have been reflected in our movement from last place in the 2009 Best Places to Work in the Federal Government rankings to our most recent ranking of 5 in the 2014 Best Places rankings. In the first Federal Employees Viewpoint Survey (FEVS) that was conducted after I became

Chairman, the FLRA was recognized as the "Most Improved Small Agency" in the Best Places rankings in the Federal Government with a 250 percent increase in employee morale and satisfaction. Most importantly, the increases in employee engagement and satisfaction have resulted in significant increases in mission performance. Further, in the 2015 FEVS, the FLRA is ranked #2 in employee engagement, global satisfaction, and "new IQ," which measures the agency's inclusiveness and diversity.

As stated previously, I have learned from my prior successful experience as Chairman and Member that communication, collaboration, accountability, and transparency are essential to successful leadership and effective mission performance. If confirmed, I will continue to employ these principles.

#### IV. Policy Questions

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

Federal labor-management relations are always evolving and can always be improved. Effective labor-management relations operate to improve the efficiency of government services.

The FLRA continually works to resolve disputes without costly litigation through education, training, and facilitation, with the goal of improving federal labor-management relations. Over the past several years, the FLRA has redoubled its efforts to improve federal labor-management relations without costly litigation. Working with agency and union leadership and the National Council on Federal Labor-Management Relations, which was created by President Obama's Executive Order 13522 (as extended by Executive Order 13591), "*Creating Labor-Management Forums to Improve Delivery of Government Services*," the FLRA has successfully implemented a number of initiatives and delivered services that have improved collaborative federal-sector labor-management relations. These efforts should continue.

13. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

It is the purview of Congress and the Administration to determine what, if any, changes should be made to the Statute.

14. How has national security affected the nature of FLRA and the decision-making process? How should this area be dealt with when it comes to labor-management relations?

The Statute addresses national security in 5 U.S.C. § 7112(b)(6), which states that “any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security” may not be included in a unit of employees deemed appropriate for representation by a labor organization. The FLRA Members have the statutory responsibility to resolve representation cases that present the issue of whether an employee is excluded from a bargaining unit because the employee’s work falls within the exclusions set forth in § 7112(b)(6).

15. In many situations, federal employees work closely with contract workers. Do you believe a blended workforce of federal employee and federal contract personnel has an impact on federal labor-management relations, and, if so, what sort of impact? Do you believe that changes are needed in labor-management policy, and, if so, what changes do you believe would be appropriate?

I am not aware of the effects of a blended workforce on labor-management relations in the federal sector. I note that, under the Statute, 5 U.S.C. § 7106(a)(2)(B), management has the right to “make determinations with respect to contracting out,” and that, occasionally, cases arise requiring the Authority to interpret and apply this section of the Statute. See, e.g., *NAGE Local RJ-203*, 55 FLRA 1081, 1086-88 (1999) (Authority held that agency was not required to bargain over a proposal prohibiting the agency, in certain circumstances, from contracting out work within 1 year of the date of a reduction in force).

16. When Regional Directors determine, on behalf of the General Counsel, to issue an unfair labor practice complaint, they must decide what remedy will be sought in litigation. What types of remedies do you believe should be available to an aggrieved party and what kind of evidence would be necessary to establish the appropriateness of each remedy?

The Authority has developed certain “traditional” remedies in ULP cases, the most common of which is an order that the violating party post a notice to employees stating that the party violated the Statute. Some other remedies include retroactive bargaining orders, awards of back pay, and orders to provide information that has been improperly withheld. When the General Counsel requests a remedy that would be considered “nontraditional,” the Authority assesses whether there are legal or public-policy objections to the requested remedy, and, if not, whether the requested remedy is reasonably necessary and would be effective to recreate the conditions and relationships with which the ULP interfered, as well as to effectuate the policies of the Statute, including the deterrence of future violations. The Authority cannot issue punitive remedies or remedies that require the expenditure of government money unless there is a law that waives the Federal Government’s sovereign immunity for the type of remedy at issue. I believe that these remedial principles have served the Authority well for decades and continue to provide a useful framework for assessing the appropriateness of requested remedies.



17. What issues and factors do you believe most frequently give rise to unfair labor practice complaints? What should be done to reduce the number of unfair labor practice complaints?

The Statute sets forth the rights and responsibilities of federal employees, managers, exclusive representatives, and agencies. The interpretation and application of the Statute's provisions in the workplace give rise to ULP charges that are filed with the FLRA. Training on the law, communication techniques, ADR skills, and how to develop collaborative labor-management relationships are factors that can influence and often reduce the filing of ULP charges. The FLRA provides the parties with in-person and web-based training and conflict-resolution tools. In FY 2015, the FLRA, as a whole, provided over 300 training, outreach, and facilitation sessions to over 8,000 participants. Over the last 5 years, the FLRA has provided nearly 1,400 such sessions to over 40,000 participants worldwide.

18. There has been an increase in the use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law.
- a. What do you believe are the advantages and disadvantages of ADR, from the perspective of the employee, of the employing agency, and of the public interest?

There are many advantages to ADR, which the FLRA has integrated into all phases of its case processing. ADR often is faster and less expensive than litigation, which enables parties and the FLRA to focus their resources in other areas. ADR also enables parties to collaboratively develop solutions to their disputes, which can often result in outcomes that are more satisfying than those that would result from litigation, and can also enable parties to develop more constructive workplace relationships – which, in turn, can promote better mission performance, as well as quality of work life for employees and managers.

In every component and program office of the FLRA, ADR has proven successful. In FY 2015, the Office of the General Counsel (OGC) resolved over 96 percent of the ULP cases in which merit was found and 95 percent of the representation cases in which the parties agreed to use the OGC's ADR services. These successful, voluntary ADR efforts resulted in significant savings of governmental staff and budgetary resources. In the Office of Administrative Law Judges, ADR services are offered as part of the Settlement Judge program by the FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO). In FY 2015, in over 87 percent of cases in which the parties participated in the Settlement Judge Program, they reached agreement and fully resolved their disputes. This is real evidence that the delivery of ADR services at all stages of case processing results in more effective and cost-efficient program performance for the FLRA, as well as the timely resolution of

disputes for its customers. Further, 100 percent of CADRO negotiability cases resulted in full resolution of the underlying dispute and closure of the pending case. And 100 percent of CADRO arbitration cases resulted in at least partial resolution of the underlying dispute. In the Federal Service Impasses Panel (FSIP) of the FLRA, voluntary resolution is sought using mediation-arbitration proceedings and informal conferences. For FY 2015, in cases where the FSIP used mediation-arbitration or informal conferences to resolve federal-sector impasses, it obtained complete, voluntary settlements over 78 percent of the time, surpassing the 60-percent settlement rate that it achieved in FY 2014. As a result of this high percentage of voluntary settlements, in FY 2015, FSIP Members issued only 6 arbitration opinions and decisions imposing contract terms on the parties. I see few if any disadvantages to the use of ADR.

- b. What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

I continue to believe that ADR is an important tool to resolve federal workplace disputes. Evidence shows that it gets results, and its use should be maximized whenever possible and appropriate. I do not recommend any changes regarding how it should be used in the future.

19. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last out of all the small federal agencies that submitted data. In 2013, the FLRA showed improvement, ranking 8 out of 30 agencies. In 2014, the FLRA showed even more improvement and is ranked 5 out of 30 as a top place to work in the federal government (small agencies).

- a. What were the steps taken to effectively improve employee morale and the agency's overall ranking? What measures are in place to ensure the FLRA's ranking remains high?

When I became FLRA Chairman in 2009, one of my top priorities was to increase employee morale because I knew that once we did that, it would also lead to increased mission performance. My agenda included communicating with and providing information to employees – at all levels; restoring confidence in the agency – both internally and externally; providing leadership for employees to work together to successfully accomplish the FLRA's mission; building infrastructure and increasing staffing, which was at an all-time low; and building capacity to deliver services – both internally and externally. The initial steps towards tackling those challenges and increasing employee morale included: sitting together with managers and employee representatives to collaboratively identify and develop a plan to perform the mission; establishing agency values (transparency, open dialogue, and collaboration) and priorities (staffing, mission performance); increasing

communication among and between leadership and employees throughout the agency by introducing a weekly employee newsletter, and holding monthly manager, Member, and Presidential meetings; benchmarking with other agencies that had high employee engagement; filling vacancies and increasing staffing – and bringing the human-resources department back in house in order to fill those vacancies; restoring case-law and case-processing guidance to our website; and updating the entire [www.FLRA.gov](http://www.FLRA.gov) website. We also implemented a multi-year strategy of “Revitalization, Reinvention, and Re-engagement” of internal and external stakeholders to improve mission performance, customer service, and employee engagement. Central to this strategy was communication and collaboration – with employees, with the employee representative, with agency customers, and with our Congressional and Office of Management and Budget (OMB) stakeholders. We also empowered employees to do their jobs again, and gave them the resources, infrastructure, and technology to do so. This included investing in training and development for front-line managers and employees.

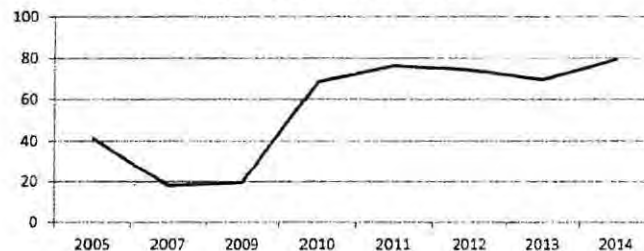
This commitment, which began in 2009, resulted first in the FLRA being named the Most Improved Small Agency in the Partnership for Public Service’s 2010 Best Places to Work in the Federal Government rankings. Building on that success in 2011, the agency once again placed among the top of the most improved small agencies, and in 2012 and 2013, it captured the #7 and #8 small-agency Best Places to Work rankings, respectively. In 2014, the FLRA captured the rank of #5 in the Best Places to Work rankings with a remarkable 10-point increase in its index score. With an overall employee-satisfaction score of 79.2 percent, the FLRA exceeded a key objective of the Cross-Agency Priority (CAP) Goal on People and Culture in the President’s Management Agenda (PMA) to improve employee engagement government-wide to 67 percent by 2016. This extraordinary accomplishment reflects a dramatic and unprecedented improvement of over 300 percent since 2009 – the year in which the FLRA placed last in the survey. And it reflects the ongoing and sustained commitment of agency leadership at all levels to improving employee satisfaction and morale – as measured by OPM’s FEVS – on an ongoing basis by comprehensively analyzing FEVS data and using additional internal surveys to target selected challenges, develop and implement solutions, and review progress. Most notable for 2014 were the FLRA’s rankings for certain *Best in Class* categories: #1 in “Effective Leadership - Leaders, Pay,” and “Strategic Management”; #2 in “Overall Effective Leadership and Training & Development”; and #3 in “Effective Leadership - Supervisors”; “Teamwork”; and “Performance-Based Rewards & Advancement.”

In FY 2015, the FLRA continued its overall success and improvement as measured by the Federal Employee Viewpoint Survey (FEVS). It not only captured the rank of #2 on three important indexes – Employee Engagement, Global Satisfaction, and New IQ (which relates to the inclusivity of the work environment) – but it also achieved an all-time high employee response rate of 84 percent (which is significantly higher than the government-wide average of 50 percent), realized positive-ratings increases from

2014 in 66 items, and had no identified challenges. In addition, the FLRA's Human Capital Assessment and Accountability Framework index scores again increased in every category for the third straight year – by as much as 8 percent over 2014. Specifically, the agency scored 86 percent in "Leadership and Knowledge Management," 78 percent in "Results-Oriented Performance Culture," 85 percent in "Talent Management," and 82 percent in "Job Satisfaction" – exceeding the government-wide average in each.

These responses reflect the FLRA's progress toward meeting government-wide human-capital objectives and demonstrating the relationship to improved organizational performance. And, consistent with an agency-wide focus on targeting challenges identified in the survey, the FLRA addresses areas of weakness or concern in full collaboration with employees at all levels through its own Labor-Management Forum. As an example, the FLRA placed special emphasis in FY 2015 on strengthening supervisory skills and improving the supervisor-employee relationship, especially as it relates to giving and receiving feedback on performance. The agency also sought to improve scores relating to the reasonableness of workloads. In this connection, the agency gathered information to identify the source of the issue – through use of pulse surveys, analysis of caseload data, and constant communication. And then it used that information to make data-driven decisions about where to allocate additional, permanent, temporary, or detail staffing. As a result of these efforts, in FY 2015, the agency increased its positive responses to that question by over 23% increase from FY 2014.

#### ***Best Places to Work Score***



The FLRA's dramatic and sustained improvement with respect to employee engagement and satisfaction over the last six and a half years reflects the commitment of leadership – at all levels and throughout the agency – to manage the agency with transparency and accountability and to engage employees. It also demonstrates the commitment and dedication of FLRA employees – employees at all levels understand the mission of the FLRA, understand their role in achieving the mission, and see

themselves as an integral part of achieving agency-wide success. Concurrent with the agency's significant increase in employee morale and satisfaction since 2009, there has been a marked improvement in the FLRA's mission performance and the delivery of services to its customers. Moreover, the agency's values of transparency, open dialogue, and pre-decisional involvement allow for effective collaboration, communication, and continuous feedback around mission performance and agency operations.

Although the FLRA already has a highly engaged workforce, the agency continued to look for ways to improve upon its successes in this area in FY 2015. In this connection, a small, diverse, cross-component group of managers participated in an *Employee Engagement Sprint Initiative*. The team is in the process of developing an agency-wide action plan – in conjunction with the 2015-2018 Strategic Plan – that will serve as the framework for sustaining, embedding, and continuing to improve upon the FLRA's impressive employee-engagement scores and the associated mission results.

**b. "Innovation" and "empowerment" were the FLRA's lowest subcategory rankings in 2014. How can these areas be improved?**

In 2014, the FLRA ranked #8 for Innovation and #6 for Effective Leadership: Empowerment out of 28 small agencies in the Best Places to Work rankings. Although these were our lowest scores, we were in the upper quartile for Empowerment and above the median government-wide score for Innovation. In addition, we increased our Empowerment score by nearly 6% and our Innovation score by 4.5% over 2013. Although empowerment and innovation are the areas where we rank lowest, our scores are still impressive, and we are making significant progress on improving them. Through increased communication around work processes, such as through component-specific bi-monthly meetings of all staff ("all case writer meetings"), we hope to further empower employees around their work processes and collaboratively look for opportunities to be more innovative. In addition, we are constantly looking for ways to leverage new, innovative technology to further streamline work processes. For example, in the last year, we have introduced video-teleconferencing (VTC) technology agency-wide that allows us to communicate with our Regional Offices and our customers throughout the country. We've also made broadband improvements that not only accelerated processing times but also resulted in cost savings. Further, through a quarterly Tech Council, employees from all levels across the agency come together to discuss technological developments, needs, and suggestions. Moreover, by involving employees at all levels throughout the agency in information-technology initiatives regarding eFiling, a website refresh, and the electronic case-tracking system, we are empowering employees to provide input around decisions that affect their working conditions as we explore, implement, and embrace technological innovations.

20. In 2009 President Obama issued Executive Order 13522 to establish labor-management forums. What are your views on labor-management partnerships? Generally, do you believe it is desirable to promote collaborative labor-management relationships in the federal government?

Effective labor-management relations operate to improve the efficiency of the government's delivery of its services. Collaborative and cooperative labor-management *relationships* lead to more effective labor-management *relations*. The FLRA continually works to resolve disputes without costly litigation through education, training, and facilitation, with the goal of improving federal labor-management relations and relationships. Over the past six years, the FLRA has redoubled its efforts to improve federal labor-management relations without costly litigation by promoting the use of collaborative techniques, including pre-decisional involvement (PDI) and labor-management partnerships, as well as ADR. Working with agency and union leadership, and the National Council on Federal Labor-Management Relations, the FLRA has successfully implemented a number of initiatives and delivered services that have improved collaborative federal-sector labor-management relations. These efforts have reduced the number of cases that require formal adjudication and costly litigation, and they should continue.

21. What has been your role in establishing and conducting the training under E.O. 13522? How have you encouraged participation in the training program, and how effective do you believe it has been?

The FLRA has established and conducted a number of training programs under E.O. 13522. In partnership with the Department of Veterans Affairs, the FLRA developed a web-based, interactive training that is posted on OPM's HR University website for use by all federal employees. The FLRA also partnered with the Federal Mediation and Conciliation Service (FMCS) to develop and present joint training on E.O. 13522.

Most recently, through its work with the National Council on Federal Labor-Management Relations, and in support of OMB's Reduce the Footprint (RTF) Memorandum, the FLRA led a cross-component and inter-agency (with the FMCS and the General Services Administration (GSA)) effort to develop and deliver a specialized, two-day workshop on office moves, space allocations, the labor-relations and collective-bargaining implications of such moves and allocations, and pre-decisional involvement. The workshop focused on resolving labor-relations issues associated with the RTF policy in a cooperative and collaborative manner, and it featured presentations by all components of the FLRA (the Authority, the OGC, and the Federal Service Impasses Panel); the FMCS, and the GSA. As a follow-up to that training, the FLRA – along with the FMCS, the GSA, and the National Federation of Federal Employees – also recently presented a webinar that addressed the requirement in the RTF memorandum that all Chief Financial Officer Act agencies adopt an Office Space Design Standard Policy by March 25, 2016, specifying how requirements to reduce square footage for agency office space will be met, and

including a design standard for maximum useable square feet by workstation for use in the design of owned and leased domestic office space. The webinar covered how this requirement presents opportunities for union pre-decisional involvement, employee engagement, and traditional labor-management relations, which can improve employee satisfaction and mission performance.

The FLRA is listed as a training resource on the National Council's website, and the FLRA promotes all of the trainings described above in its daily interactions with customers, on its own website, and through its work with the National Council. These types of efforts are effective because they help to reduce the number of cases that require formal adjudication and costly litigation, and they lead to more effective and productive labor-management relationships.

22. The purpose of E.O. 13522 is to establish a cooperative and productive form of labor-management relations throughout the executive branch, and to improve delivery of government services to the American people. To what extent do you believe the initiatives under E.O. 13522 have been successful at meeting those two goals? What have been the greatest challenges to meeting these goals?

Effective labor-management relations operate to improve the efficiency of the government's delivery of its services. Government agencies are able to more efficiently and effectively deliver their services to the American people when they can resolve labor-management issues collaboratively and quickly, without the need for costly litigation. E.O. 13522 and pre-decisional involvement facilitate more cooperative and collaborative labor-management relationships across government, which, in turn, increases the likelihood of collaborative resolution of disputes, and reduces the need for costly and sometimes protracted litigation.

The greatest challenges to accomplishing the goals of E.O. 13522 seem to arise when workplace cultures are steeped in traditional forms of dispute resolution and case adjudication, and are resistant to even attempting to utilize more collaborative and cooperative approaches. That situation is often the result of fractured labor-management relationships, so providing outreach and assistance to help develop and repair those relationships is key.

23. E.O. 13522 also called for the development of metrics to monitor improvements in labor-management satisfaction, productivity gains, and cost savings. Please describe the metrics that have been developed and applied. What does data show about what has been accomplished and about what more remains to be done?

As set forth on the [Metrics page](#) of the website for the National Council on Federal Labor-Management Relations, the three metrics categories include: (1) mission accomplishment and service quality; (2) employee satisfaction and engagement; and



(3) labor-management relationship. In FY 2014, the National Council advised that labor-management forums should be placing more emphasis on mission accomplishment and service delivery as their primary metrics category. It further advised that agency performance-improvement officers are ideal resources to assist forums regarding this category of metrics.

Representatives from both labor and management have jointly developed a "Quick Tips" series of videos on metrics development for labor-management forums, which guide users through the process of developing metrics to measure their forum's performance and progress. The Council's Metrics working group is going to continue to analyze the data that it has, identify forums to interview for further assessment of accomplishments and areas in need of improvement, and develop additional data-collection points.

24. Does pre-decisional involvement (PDI) as promoted by the National Council for Labor-Management Forums (NC) weaken the chain of accountability by which agency management is held responsible for the administration of government? Why or why not?

In my view, PDI as promoted by the National Council for Labor-Management Relations does not weaken the chain of accountability by which agency management is held responsible for administration of the government. Management continues to be ultimately responsible for its actions – PDI simply envisions employees and their union representatives as stakeholders whose viewpoints and input should be obtained in a collaborative labor-management engagement process before agency leaders make decisions. PDI also allows for increased transparency around agency decision-making, and it often results in eliminating the need for costly formal adjudication around those decisions, while preserving all rights guaranteed under the Statute.

25. Would you agree that PDI, as advanced by the NC, presents inherent conflicts of interest for the member unions? If not, please explain.

I do not agree that PDI, as advanced by the National Council, presents inherent conflicts of interest for member unions. PDI presents unions with a unique opportunity to provide input into decisions affecting represented employees' conditions of employment – before their statutory right to do so is triggered. This not only leads to better, more thorough agency decision-making, but it also increases employee engagement and overall agency efficiency because it allows the agency to secure union – and thereby employee – buy-in about workplace changes, leading to more efficient, timely, and successful changes in the workplace.

26. According to 5 USC §7131, federal employees can be granted official time, or time to perform representative functions, in "any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest." What kind of activities do you consider to be "reasonable, necessary, and in the

public interest?" What kind of representative functions should not be considered "reasonable, necessary, and in the public interest?"

Section 7131 establishes the authority for the granting of official time under the Statute, and expressly addresses under subsections (a), (b) and (c) the authorization of official time for contract negotiations, impasse proceedings, and proceedings before the Authority, respectively. While subsection (d) authorizes the granting of official time to employee representatives in "any amount" that the parties agree to be "reasonable, necessary, and in the public interest," such authorization is expressly limited to those matters that are not already provided for in the other portions of § 7131.

FLRA case law provides that subsection (d) clearly can be read to authorize only the negotiation of official time for other labor-management-related representational matters such as contract administration, participation in grievance arbitration, and the like. The Statute does not define the terms "reasonable and necessary" as used in § 7131(d). However, "Congress has provided that the agency and the union together should determine the amount of official time 'reasonable, necessary, and in the public interest.'" *Am. Fed'n of Gov't Emps., Council of Locals No. 214 v. FLRA*, 798 F.2d 1525, 1530 (D.C. Cir. 1986) (emphasis deleted). In determining what activities are – or are not – "reasonable, necessary, and in the public interest," I would be guided by the wording of the Statute, Congressional intent, and FLRA case law.

27. According to an October 2014 GAO report, OPM does not accurately compute official time, and should require agencies to better track official time costs. What is the most effective way for federal agencies to track the use of official time to ensure that it helps them meet their goals? How could federal agencies, federal employee unions, and the American public all benefit from a more accurate accounting of official time?

It is the purview of Congress and the Administration to determine what, if any, is the most effective way for federal agencies to track the use of official time to ensure that it helps them meet their goals, as well as how the American public and federal agencies, employees, and unions could benefit from a more accurate accounting of official time.

28. How do the FLRA and Federal Courts compare as venues for resolving federal employment disputes?

In the Statute, Congress vested the FLRA with broad authority to resolve Executive-branch labor disputes. 5 U.S.C. §§ 7103, 7105. Under that statutory scheme, the FLRA brings its institutional knowledge to expeditiously decide negotiability, representation, and ULP disputes, and to review federal-sector arbitrators' decisions. 5 U.S.C. § 7105(2)(A)-(I). The Supreme Court has observed that Congress intended the FLRA "to develop specialized expertise in its field of labor relations and to use that expertise to give content to the principles and goals set forth in the [Statute]." *Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 97 (1983).

Congress, in turn, envisioned a more limited role for the federal courts in resolving federal-sector labor disputes. Section 7123 of the Statute gives the federal courts of appeals jurisdiction to review Authority orders in ULP and negotiability cases. 5 U.S.C. § 7123(a). But Congress denied the courts of appeals the power to review most arbitration cases and certain representation decisions. 5 U.S.C. § 7123(a)(1), (2). It is also settled that the federal district courts have no jurisdiction to consider FLRA decisions. *Griffith v. FLRA*, 842 F.2d 487, 491 (D.C. Cir. 1988).

Consequently, the role of the Federal Courts in resolving federal labor disputes is similar to their role in resolving other administrative-law disputes. The well-settled principles of judicial review of administrative agency action apply, which requires the courts to give the FLRA “considerable deference when it exercises its ‘special function of applying the general provisions of the Act to the complexities’ of federal labor relations.” *Nat’l Fed’n of Fed. Employees, Local 1309 v. Dep’t of Interior*, 526 U.S. 86, 99 (1999) (internal quotations omitted).

29. What is your view of the level of timeliness and quality of case processing and decision-making within the FLRA at present? How do you believe the FLRA can best achieve timeliness and high quality in the future?

In FY 2015, the FLRA’s Decisional Component eliminated its backlog of “overage” cases – cases that had been pending with the Member offices for more than 180 days. And the average age of pending cases dropped from 182 days at the beginning of the fiscal year to 40 days at the end of the fiscal year. However, due to the backlog of cases that resulted from the extended period in FY 2013 when the Decisional Component lacked a quorum of Members to issue decisions (January to November 2013) – as well as the Component’s focus in FY 2015 on issuing the oldest cases – the Component did not meet several of its performance goals for the timely issuance of cases. Nevertheless, the Component performed better in all timeliness categories than it did in FY 2014. And as a result of successful elimination of our backlog, the Decisional Component, with a full complement of Members and staffing at the budgeted level, is well-positioned to issue timely decisions at or above our targeted level of performance moving forward. As to quality, beginning in 2009, the Decisional Component has engaged in initiatives to review and improve upon how our decisions are written, such as the development of a Drafting Guide, the implementation of a “decision-writing initiative” that changed the way that Authority decisions are written, and the provision of continual training and education such as legal-writing training and “Lunch and Learn” case-law updates. These initiatives have resulted in higher quality Authority decisions.

Additionally, the OGC exceeded its strategic-performance goals for the timely resolution of both ULP and representation cases, and it continued closing cases at increased rates – closing over 4,600 ULP cases and 220 representation cases, and conducting over 70 secret-ballot representation elections, in FY 2015. Similarly, in FY 2015, the FSIP exceeded all of its strategic-performance goals, including timeliness goals. And, in both of those components, exceeding timeliness goals has not come at the expense of quality.

In sum, I believe that the FLRA currently in a good position with respect to the timeliness and quality of its case processing and decision-making. Looking to the future, I believe that, by continuing case-processing efficiencies that we have developed in the past, and looking for new efficiencies as well, we can meet or exceed our timeliness goals. Further, with regard to quality, I believe that a continuation of previous quality initiatives and planned FY 2016 initiatives – such as revising the Drafting Guide and implementing additional employee-driven training activities, which were developed as a part of an agency-wide strategic-planning initiative – will ensure and enhance high-quality case-processing and decision-making in the future.

#### **V. Relations with Congress**

30. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

31. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

#### **VI. Assistance**

32. Are these answers your own? Have you consulted with FLRA or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with FLRA and Administration staff.

**Chairman Ron Johnson**  
**Supplemental Pre-hearing Questionnaire For the Nomination of**  
**Carol Waller Pope to be a Member of the**  
**Federal Labor Relations Authority**

1. Private sector unions pay for the activity of their union leaders and representatives out of union dues. Do you think that public sector unions should pay for union activity in a similar manner? Why or why not?

Financial matters of labor organizations are not within the jurisdiction of the FLRA. I have no views regarding the manner in which public-sector unions should pay for union activity.

2. OPM reported that 77 percent of official time was used on "General Labor-Management Relations," or activities other than negotiated collective bargaining agreements or resolving disputes between bargaining unit employees and agencies, for an estimated cost of over \$120 million in salaries and benefits. Do you believe that this is an appropriate use of federal resources? If so, please explain.

Section 7131 establishes the authority for the granting of official time under the Federal Service Labor-Management Relations Statute (Statute), and expressly addresses under subsections (a), (b) and (c) the authorization of official time for contract negotiations, impasse proceedings, and proceedings before the Authority, respectively. While subsection (d) authorizes the granting of official time to employee representatives in "any amount" that the parties agree to be "reasonable, necessary, and in the public interest," such authorization is expressly limited to those matters that are not already provided for in the other portions of § 7131.

It is the purview of Congress and the Administration to determine what, if any, is the most appropriate use of federal resources as it relates to official time under the Statute.

3. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

4. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

5. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

**Ranking Member Tom Carper  
Supplemental Pre-hearing Questionnaire For the Nomination of  
Carol Waller Pope to be a Member of the  
Federal Labor Relations Authority**

1. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?  
  
Yes.
2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?  
  
Yes.

I, Carol Waller Pope, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
(Signature)

This 18<sup>th</sup> day of November, 2015



**Opening Statement of Robert A. Salerno**  
**Nominee to be an Associate Judge of the Superior Court of the District of Columbia**  
**December 3, 2015**

Mr. Chairman and members of the Committee, I am honored to appear before you today as a nominee for Associate Judge of the Superior Court of the District of Columbia. I would like to thank the District of Columbia Judicial Nomination Commission and its chair, District Judge Emmet Sullivan, for recommending me to the White House, President Barack Obama for nominating me, and Congresswoman Eleanor Holmes Norton for introducing me to the Committee.

With me today are my wife, Juanita, and my son, Evan. My daughter, Alex, is finishing up her Fall semester at Skidmore College in New York. She and other family members are watching the streaming video on the Committee's website. My parents are no longer with us, but they would have been proud today if they were – especially my father, who always encouraged me to become a lawyer. Finally, I want to recognize friends and colleagues in attendance. I would not be here today without their support and encouragement.

I am excited by the opportunity to serve on the Superior Court. I would bring to the position more than two decades of experience as a litigator in the District of Columbia, recent "quasi-judicial" experience, and a deep commitment to this City.

I have been a resident of the District of Columbia for 25 years and raised two children here. During that time, I have had a varied and rewarding career in private practice. I have litigated civil and criminal matters in federal and state courts across the country, as well as administrative proceedings and arbitrations. I have handled everything from high-stakes commercial litigation, to alleged criminal conduct by individual clients, to pro bono matters on behalf of our most vulnerable residents. I have been fortunate to work on sophisticated matters with extremely talented colleagues. At the same time, I have also always had a strong interest in public service. Prior to becoming a lawyer, I was a Peace Corps Volunteer in Ecuador, where I met my wife. I also volunteered to serve as a Hearing Committee Chair for the Board on Professional Responsibility. In that capacity, I conducted evidentiary hearings on formal charges of professional misconduct by members of the District of Columbia Bar.

I am at a point in my life where I am ready and able to focus 100% of my energy on public service. It would be a privilege for me to do so as an Associate Judge of the Superior Court. Judges have a unique ability to make a difference in the community on a daily basis, and for many citizens, judges are the personification of the judicial system. I can think of no greater honor for a lawyer than to be entrusted with the responsibility that comes with being a judge. My broad and diverse experience in private practice and my experience as a Hearing Committee Chair make me confident that I would be a good judge and that I would enjoy serving in that role. If I am confirmed, I would work hard every day to achieve fair outcomes, in accordance with the law, for all persons who come to the Superior Court seeking justice and due process, and to do so as efficiently as possible.

Thank you for considering my nomination. I look forward to answering your questions.

## PENDING NOMINATIONS

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### HEARING

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

NOMINATIONS OF HON. PATRICK PIZZELLA, NOMINEE TO BE A  
MEMBER, FEDERAL LABOR RELATIONS AUTHORITY, JULIE H. BECKER,  
NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA, STEVEN N. BERK, NOMINEE TO BE AN  
ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF  
COLUMBIA, AND ELIZABETH WINGO, NOMINEE TO BE AN  
ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

MARCH 2, 2016

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## CONTENTS

Opening statements:	Page
Senator Lankford .....	1
Senator Carper .....	2
Senator Ernst .....	11
Senator Heitkamp .....	13
Senator Peters .....	16
Prepared statement:	
Senator Lankford .....	25
Senator Carper .....	27

### WITNESSES

WEDNESDAY, MARCH 2, 2016

Hon. Patrick Pizzella, Nominee to be a Member, Federal Labor Relations Authority	
Testimony .....	4
Prepared statement .....	33
Biographical and financial information .....	34
Letter from the Office of Government Ethics .....	57
Responses to post-hearing questions .....	59
Julie H. Becker, Nominee to be an Associate Judge, Superior Court of the District of Columbia	
Testimony .....	5
Prepared statement .....	61
Biographical and financial information .....	62
Responses to post-hearing questions .....	98
Steven N. Berk, Nominee to be an Associate Judge, Superior Court of the District of Columbia	
Testimony .....	6
Prepared statement .....	99
Biographical and financial information .....	100
Responses to post-hearing questions .....	119
Elizabeth C. Wingo, Nominee to be an Associate Judge, Superior Court of the District of Columbia	
Testimony .....	7
Prepared statement .....	120
Biographical and financial information .....	121
Responses to post-hearing questions .....	155

### APPENDIX

Statement submitted by the Honorable Paul Strauss, Shadow Senator from the District of Columbia .....	29
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## NOMINATIONS HEARING

WEDNESDAY, MARCH 2, 2016

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:01 a.m., in room SD-342, Dirksen Senate Office Building, Hon. James Lankford, presiding.

Present: Senators Lankford, Ayotte, Ernst, Carper, Heitkamp, and Peters.

### OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Good morning. Today we will consider the nominations of Ms. Julie Becker, Mr. Steven Berk, and Ms. Elizabeth Wingo for the position of Associate Judge on the Superior Court of the District of Columbia, as well as the nomination of Mr. Patrick Pizzella to be a member of the Federal Labor Relations Authority (FLRA). The Committee takes these nominations extremely seriously, so we are pleased to have strong nominees before us today.

The Superior Court for the District of Columbia is a busy place, with more than 100,000 cases heard each year. I am proud to say that these three superior court nominees will mark the 5th, 6th, and 7th that the Committee has considered in just the past year. This is more than triple the number of nominees who received hearings during the entire 113th Congress.

Julie Becker is a native of Detroit, Michigan. She received her Bachelor of Arts degree from the University of Michigan and her law degree from Yale Law School. After graduation, Ms. Becker clerked for then-Judge Sonia Sotomayor on the Second Circuit Court of Appeals. Currently, Ms. Becker is a supervising attorney at Legal Aid where she has spent the past 14 years.

Steven Berk is originally from Chicago, Illinois. He received his undergraduate degree from Washington University in St. Louis. He has a Master's degree from the London School of Economics and a law degree from Boston College Law School. Mr. Berk has worked at the Securities and Exchange Commission (SEC), as an Assistant U.S. Attorney for the District of Columbia, and practiced at several prestigious law firms.

Elizabeth Wingo is a native of Washington, D.C. She received her Bachelor of Arts from Dartmouth College and her law degree from Yale Law School. Following law school, she clerked for Judge T.S. Ellis in the Eastern District of Virginia. Ms. Wingo worked as a prosecutor at the U.S. Attorney's Office in the District of Columbia

and for the District of Columbia's Attorney General's (AG) office before being appointed as a magistrate for the superior court in 2006.

In addition to these impressive resumes, Ms. Becker, Mr. Berk, and Ms. Wingo possess the necessary legal skills and judgment to serve the District of Columbia.

Mr. Pizzella is a native of Rochelle, New York. Rochelle?

Mr. PIZZELLA. Rochelle.

Senator LANKFORD. Rochelle. Thank you. Sorry, an Oklahoman trying to pronounce a New York name. I will just take it under advisement.

He received his Bachelor of Arts degree from the University of South Carolina. After graduation, he served in a variety of government entities, including the General Services Administration (GSA), the Small Business Administration (SBA), the Department of Education, and the Department of Labor (DOL). In 2013, he was appointed to the Federal Labor Relations Authority.

Committee staff has reached out to a variety of these nominees' colleagues and affiliates, who all spoke highly of them. You would be very impressed at the kind of things many people that were interviewed said about each of you.

Committee staff has also had the opportunity to be able to interview Ms. Becker, Mr. Berk, Ms. Wingo, and Mr. Pizzella on an array of issues, ranging from notable cases to community service and pro bono work. They have thoughtfully and competently answered each of the questions to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated to, and I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

With that, I would recognize the Ranking Member of the Committee, Senator Carper, for any opening statement he would like to make.

#### OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Senator Lankford. I want to thank you and I want to thank your staff for moving these nominations forward. We are, I think, fortunate—the people of the District of Columbia are fortunate to have men and women with the kind of credentials as the three of you bring, and they would probably be pleased about the other credentials for the fourth person, too.

So thank you for moving these along. I like to say justice delayed is justice denied, and I am happy to see us moving these forward. I want to welcome not only the nominees but certainly members of their families that are here, including some very young ones. And we are happy that you have joined us, and we appreciate the parents who have raised at least one of these young people, and the children and the spouses that are willing to share your loved ones with the folks of this town.

I want to start by welcome Patrick—is it Pizzella?

Mr. PIZZELLA. Correct, sir.

Senator CARPER. Pizzella, OK. Who has been renominated to be a member, as we heard, of the Federal Labor Relations Authority. That is an Authority that plays an important role, as we know, in



promoting constructive relationships between management and unions and, in turn, helps improve the effectiveness and the efficiency of the Federal Government.

Mr. Pizzella has had a long career in public service, including the past few years serving in the position to which he has been now renominated, and we are grateful for his service and his willingness to continue to serve in this very important role.

I am also pleased today that we are considering three nominees for the Superior Court of the District of Columbia. Julie Becker, Steven Berk, and Elizabeth Wingo all have very impressive backgrounds and legal careers that I believe make them extremely well qualified to serve as judges on the Superior Court. And we thank you all for joining us and for your willingness to serve.

Before I close so we can hear from our nominees, I just want to note again how pleased I am that, in the last months of last year, the Senate finally moved to confirm nominees to fill four other vacancies on the D.C. Superior Court.

That said, I thought it was shameful that it took us 2 years to get two of those judges confirmed. But I am delighted that we have started to move nominees more quickly now, and I hope we can continue that momentum with these three nominees and others to the Superior Court as we go forward.

Most Americans probably do not know that local judges in the District of Columbia must be confirmed by the U.S. Senate. I will have to admit I did not know that a number of years ago. But while these judgeships are comparable to the State courts that each of us is familiar with in our respective States, the D.C. Superior Court and Court of Appeals are operated by the Federal Government, not by the local government here. Their judges are appointed by the President from a slate of candidates thoroughly vetted and recommended by a nonpartisan nomination commission. They must then be confirmed by the Senate in order to serve 15-year terms.

But these courts do not handle Federal matters. They are the local courts for the District of Columbia and hear cases related to local crimes and domestic and civil disputes between the people who live here in the District.

I know of no other jurisdiction in our country that must have its local judges approved by the Congress. And no other State or locality is denied the representation here in the Senate that might help it pursue its priorities here, including nominations.

Some have suggested that local D.C. judges should not have to go through Senate confirmation. I continue to believe that we ought to seriously consider that idea. But at a minimum, we should develop an expedited process for the confirmation of these local judges, as we have for some other positions that also have required Senate confirmation in the past but do not anymore.

In the meantime, I hope that the Senate will move forward quickly on the nominees we are considering today. I believe that the people of the District of Columbia are fortunate that men and women as impressive as you are willing to go through a protracted nominating process, a great deal of scrutiny, and a full measure of uncertainty—which can stretch out in some cases for years—all for the possibility that they may one day serve on the bench in the

District of Columbia. In this case, it has not taken that long. Mr. Chairman, to you and your staff and others who worked hard, and my staff, we thank you all.

Senator LANKFORD. Thank you.

It is the custom of this Committee to swear in all witnesses that appear before us, so if you do not mind, if you would please stand, raise your right hand. Do you swear that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PIZZELLA. I do.

Ms. BECKER. I do.

Mr. BERK. I do.

Ms. WINGO. I do.

Senator LANKFORD. Thank you. You may be seated, and let the record reflect all the witnesses answered in the affirmative.

We will all do opening statements on this. I would ask you a favor, that when you do your oral opening statements you all introduce your family. I have had the opportunity to be able to meet your family, but many people in this room have not. So if you could, when you make your opening statements, also introduce your family, that would be a great honor for everyone here in the room as well.

Mr. Pizzella, since you are the experienced one on this, if you want to be able to make any opening statement—you have been through this rigor before—we would receive your oral testimony if you have any at this point.

**TESTIMONY OF THE HONORABLE PATRICK PIZZELLA,<sup>1</sup> NOMINEE TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. PIZZELLA. Thank you. Unfortunately, I am unable to introduce my family because my wife is taking care of a family matter—but thank you, Mr. Chairman and Chairman Lankford and Senator Carper and Members of the Committee. I want to thank you and your staff for all the courtesies shown to me as I have prepared for this hearing. Given the seriousness of the issues that presently confront you, I am especially appreciative of the time you have taken to ensure that the Federal Labor Relations Authority operates at full strength.

This is the fourth time I have had the privilege of being nominated by a President for a position of public trust. I am honored that the President nominated me once again to be a member of the Federal Labor Relations Authority, and, if confirmed, I will continue to dedicate myself to discharging the responsibilities of the FLRA in accordance with laws, rules, and regulations.

I began my tenure in Federal service in the early 1980s, and I believe my 23 years of experience in the Executive Branch will continue to be an asset to the FLRA.

I enjoyed the past 2 years as a member of the FLRA and with your support hope to continue in that role.

I am looking forward to answering any questions you may have. Thank you.

<sup>1</sup>The prepared statement of Hon. Pizzella appears in the Appendix on page 33.

Senator LANKFORD. Thank you. Ms. Becker.

**TESTIMONY OF JULIE H. BECKER,<sup>1</sup> NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. BECKER. Thank you. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today as a nominee to be an Associate Judge of the District of Columbia Superior Court. It is a great honor to be nominated and considered for this position. I would like to thank the Judicial Nomination Commission and its Chair, the Honorable Emmet Sullivan, for recommending me to the White House, and I thank the President for nominating me.

I am here today with my parents, sitting behind me, Allan and Patricia Becker, and my husband, Alan Silverleib. I am immeasurably grateful for their love and support and for the joy I receive every day from my 3-year-old daughters, Anna and Rebecca, who are at school today. I am also fortunate to be joined by a number of friends, mentors, and colleagues who have encouraged me not only during this process, but throughout my career as an attorney. I would not be here today without them.

I have spent the past 15 years at the Legal Aid Society of the District of Columbia. I have been privileged to work with hundreds of individuals and families to secure and maintain decent, safe, and affordable housing. I have represented clients in every ward of the city, and I have dedicated my career to the goal of ensuring that all members of our community have meaningful access to the legal system.

The vast majority of my work as an attorney has taken place in D.C. Superior Court. I have tried cases in its courtrooms, spent time in the clerks' offices, and negotiated settlements in the hallways. I have served on two of the court's Rules Committees, helping to write and revise rules of procedure for the Landlord and Tenant Branch and the Housing Conditions Calendar. These experiences have given me the opportunity to think critically about every aspect of court proceedings and to help create a better, more efficient process for all parties.

Over the years, I have learned a great deal from judges on the Superior Court bench about the skill, patience, and dedication that the job requires. I look forward to the challenge of living up to their example. If I am confirmed, I will work every day to ensure that the law is applied fairly in every case, and that all parties appearing in court are treated with the dignity and respect they deserve.

Thank you again for the honor of considering my nomination. I look forward to answering any questions you may have.

Senator LANKFORD. Thank you. Mr. Berk.

<sup>1</sup>The prepared statement of Ms. Becker appears in the Appendix on page 73.

**TESTIMONY OF STEVEN N. BERK,<sup>1</sup> NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. BERK. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, I am honored and truly humbled to appear before you today as a nominee for the position of Associate Judge of the Superior Court for the District of Columbia. I would like to thank the D.C. Judicial Nomination Commission, and in particular its Chairman, Federal District Court Judge Emmet Sullivan, who was nice enough to come here today.

Senator CARPER. Would you raise your hand, please? Higher? Welcome. Good to see you.

Judge SULLIVAN. Thank you.

Mr. BERK. I would like to thank the White House and I would like to thank the President for nominating me. And I would like to acknowledge my colleagues, friends, and family who are here today and have been with me throughout this journey.

I would like to recognize first my two sons, Corey and Jacob, who are actually twins—it may not seem like that, but you can try to guess who is older. And I would like to recognize my mother, who is here from Chicago, sitting right behind me. She raised me to always strive for excellence in whatever I did and whatever I chose to pursue.

And, finally, to my wife, Jenny, who is also behind me, who has never wavered in her support of me, picking me up when my spirits lagged, and believing in me sometimes more than I believed in myself.

Someone who I wish were here today is my father, who died last year after a long and valiant battle with cancer. At the close of World War II, American soldiers liberated my dad from the Dachau concentration camp in Germany. He was days from death, suffering from profound malnutrition and typhus. He eventually regained his health and came to the United States as an orphan in 1948. Two years later, he was a member of the United States Army serving two tours of duty on the front lines in Korea before returning to Chicago, marrying my mom, and eventually becoming a successful entrepreneur. He loved this country, and I miss him very much today.

I attended law school because I was interested in public service. That interest brought me to Washington in 1989 where I worked as a prosecutor at the Securities and Exchange Commission and the United States Attorney's Office for the District of Columbia. After leaving the U.S. Attorney's Office, I went on to become a partner at the law firm of Jenner & Block. In more recent days, I have been representing individuals such as defrauded investors, consumers, small business owners, and whistleblowers. I have had a 30-year career in the law, and in those 30 years, I have appeared in courtrooms throughout the country in administrative proceedings, Federal court, State courts, and legislative bodies.

Over the past 5 years, I have continued to demonstrate a commitment to public service by volunteering for and being elected to leadership positions at the D.C. Bar. I served as a member of and

<sup>1</sup>The prepared statement of Mr. Berk appears in the Appendix on page 111.

later chair of the Judicial Evaluations Committee. I have also been elected treasurer and currently sit as a member of the Board of Governors.

If I am fortunate enough to be confirmed, I will commit to having everyone in my courtroom treated with dignity and respect. I will be decisive and make timely and thoughtful decisions. And I will be prepared each day to dispense with justice.

Thank you for your consideration of my nomination, and I will be pleased to answer any of your questions.

Senator LANKFORD. Thank you. Ms. Wingo.

**TESTIMONY OF ELIZABETH C. WINGO,<sup>1</sup> NOMINEE TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. WINGO. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today as you consider my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank the Judicial Nomination Commission and its chair, the Honorable Emmet Sullivan, for recommending me to the White House, and I would like to thank President Obama for nominating me. In addition, I would like to express my thanks and appreciation to the Committee Members and the Committee staff for their hard work and for considering my nomination so expeditiously.

I would also like to acknowledge and thank Chief Judge Lee Satterfield for his leadership, his support, and his presence here today.

Senator CARPER. Would he raise his hand—Lee Satterfield? Thank you, sir. Welcome.

Judge SATTERFIELD. Thank you.

Ms. WINGO. I am also very fortunate to have a number of members of my family, who have been very supportive, here with me to today, and I would like to introduce and thank them: my husband, Harry Wingo; my children, Alexandra and Natalie Wingo—

Senator LANKFORD. Which, by the way, I discussed with them possibly them doing testimony later as well. [Laughter.]

And they declined that.

Ms. WINGO. I also have here my parents, Tony and Judy Carroll; my brother and sister-in-law, Tom and Katherine Carroll; my sister and brother-in-law, Michaela and Ted Lizas, and their children, my nieces Amy and CC Lizas.

Senator CARPER. Is that all? [Laughter.]

Ms. WINGO. I would also like to acknowledge and thank my stepdaughter, Hailey, who is a junior in high school and was unable to be here today.

Finally, I would also like to thank the many friends and current and former colleagues who have supported me over the years, some of whom are also present here today.

I was born and raised in the District of Columbia and have spent most of my legal career serving the citizens of the District. After clerking for the Honorable T.S. Ellis in the Eastern District of Virginia, I spent 4 years at the U.S. Attorney's Office for the District

<sup>1</sup>The prepared statement of Ms. Wingo appears in the Appendix on page 132.



of Columbia, prosecuting a wide variety of crimes, from misdemeanor simple assaults to homicides. Following my time at the U.S. Attorney's Office, I continued to work on behalf of the people of the District at the Office of the Attorney General for the District of Columbia, where I served as the Chief of the Criminal Section and then as the Assistant Deputy Attorney General for Public Safety.

Since 2006, I have had the honor of serving as a magistrate judge in the Superior Court, where I have had the opportunity to preside over calendars in the Criminal and Civil Divisions, as well as in the Family Court and Domestic Violence Unit. It would be a privilege and an honor for me to continue my public service as an associate judge in the Superior Court.

Thank you for your consideration, and I look forward to answering your questions.

Senator LANKFORD. I thank all of you.

There are three questions that I am going to ask for this entire group, and I am going to need an oral yes or no on this. What I will do is I will ask the question and then we will just go down the row. It will be very informal. Sorry about that. These are questions that we find extremely important to be able to ask every candidate as they come through.

First—and I will ask all four of you to answer this question yes or no—is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Pizzella.

Mr. PIZZELLA. No, sir.

Senator LANKFORD. Ms. Becker.

Ms. BECKER. No.

Senator LANKFORD. Mr. Berk.

Mr. BERK. No.

Senator LANKFORD. Ms. Wingo.

Ms. WINGO. No.

Senator LANKFORD. Second question: Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Pizzella

Mr. PIZZELLA. No, sir.

Senator LANKFORD. Ms. Becker.

Ms. BECKER. No, sir.

Senator LANKFORD. Mr. Berk.

Mr. BERK. No, sir.

Senator LANKFORD. Ms. Wingo.

Ms. WINGO. No, sir.

Senator LANKFORD. Thank you.

Third, do you agree without reservation to comply with any request or summons to appear and to testify before any duly constituted committee of Congress if you are confirmed? Mr. Pizzella.

Mr. PIZZELLA. Yes, sir.

Senator LANKFORD. Ms. Becker.

Ms. BECKER. I do.

Senator LANKFORD. Mr. Berk.

Mr. BERK. Yes, sir.

Senator LANKFORD. Ms. Wingo.

Ms. WINGO. Yes.

Senator LANKFORD. Thank you. I recognize Ranking Member Carper for any questions.

Senator CARPER. Mr. Chairman, thank you. Thank you so much.

Those were wonderful testimonies. I was especially touched, Mr. Berk, by the story you told us about your dad and shared that with us. What a guy. What a life he lived. And I appreciated the lovely comments that you have made about your mom and about your wife. Those are lovely—and all of you for introducing your family and friends. It is one of my very favorite parts of these hearings, so we are glad that you are all here.

I just want to start with a quick question, if I can, for you, Ms. Wingo. The role of a magistrate judge is a bit different, as you know better than anybody else, the role of an associate judge. Just take 30 seconds and describe some of the differences.

Ms. WINGO. One of the primary differences is that an associate judge has a broader range of responsibilities. There are calendars that associate judges are assigned to that magistrate judges do not handle. There is also a broader range of types of things that an associate judge can do, the biggest one being jury trials. A magistrate judge does not handle jury trials, so we, generally speaking are limited to misdemeanors; whereas, an associate judge can handle the jury trials and, therefore, can handle anything in the court.

Senator CARPER. Take another 30 seconds and just give these two people closest to you, Mr. Berk and Ms. Becker, just give them some friendly advice. [Laughter.]

Ms. WINGO. Well—

Senator CARPER. Unfriendly advice. [Laughter.]

Ms. WINGO. Truly, the friendly advice that I would give is to rely on your colleagues, because I have found at the court that there is no greater resource and that there is no greater willingness anywhere in any employment for your colleagues to help you out. The other judges, the staff, the clerks—everyone is very supportive of each other, and everybody is working toward the same goal, which is to ensure that there is equal justice for all. And so you should feel free to rely on those folks if you need them.

Senator CARPER. All right. Thanks. Thanks for that advice.

I would note that our judicial nominees come from very different legal backgrounds and have focused on certain areas of the law throughout your career. That is not uncommon. However, if confirmed, I understand that you will preside over time over cases arising under many different areas of the law. And we have a similar situation with the Federal district court judges in Delaware. But how has your career prepared each of you to handle the wide range of legal issues that you will confront as an associate judge? And how will you ensure that you are prepared to preside over cases in areas of law which you may be not as familiar with? Ms. Becker, do you want to lead off on that one? Then Mr. Berk.

Ms. BECKER. Thank you, Senator. I certainly would have a lot to learn, particularly in divisions in which I have not frequently appeared, and I will say I look forward to the challenge of learning new areas of the law.

I think what I would come in with is that the folks that I have been representing during my career are, by and large, the litigants



who appear in D.C. Superior Court. And I have had quite a lot of experience working with individuals of all education levels and, by and large, people who are not familiar with and not comfortable with the legal system.

And so what I have gained from those experiences is I think primarily communication skills. I can listen to the story that a person tells and be able to extract from that story what are the legally relevant facts for deciding the case. And I have also become good at communicating sometimes complex legal concepts in a way that is accessible to people who are not lawyers.

Senator CARPER. OK, good.

Mr. Berk, same question. How will you ensure that you are prepared to preside over cases in areas that you are not as familiar with?

Mr. BERK. If I may, Senator, let me just say that Ms. Wingo has been terrifically generous with both of us in terms of giving us the insights for today's hearing.

Senator CARPER. No kidding.

Mr. BERK. She has been great.

Senator CARPER. Isn't that against the rules? [Laughter.]

Senator LANKFORD. No. But that does mean the harder questions will gear toward her then the rest of the day.

Senator CARPER. OK. [Laughter.]

Mr. BERK. I am sorry if I got you in trouble.

Senator CARPER. You are OK.

Mr. BERK. I have been practicing law 30 years. It goes quickly. And I have been fortunate, very lucky to be able to practice in jurisdictions all over the country and to do different types of cases. It has been heartening. I will get phone calls from people, and they will say, "Have you done something like this?" And I will be, like, "No, but I am willing to try." And I think on the Superior Court there will be things that I have not seen before, certain areas of the law that I am not as familiar with.

But I am very familiar with getting up to speed quickly on matters, and I am confident that those skills can be used by me if I am lucky enough to be confirmed.

There are areas where there is probate and there is tax and there is property and landlord-tenant. I have not done those areas. But I have applied facts to law, and at the end of the day, that is what lawyers do and judges do, is apply facts to the law and respect the rule of law. And so regardless of the type of case it is, I think those basic sort of tenets are with you, and I am confident I can provide good judging on a wide array of cases.

Senator CARPER. The situation you face as a new associate judge will be not unlike what we face in coming here as a new Senator. We end up with assignments to committees. Some of us come as attorney generals. Some of us come as leaders in our State. Senator Lankford has an incredible background, a military background and other things. But I ended up on this Committee, and I could barely spell "cybersecurity," and I ended up as the Chairman of the Committee a couple of years ago. And there was a profile done of the new Chairman of the Committee, and they noted that I was the Senate expert on cybersecurity at the time. And I showed this to my staff, and I said, "Look at this. Now I am the expert on

cybersecurity." And they said, "In the land of the blind, the one-eyed man is king." [Laughter.]

So do not get too puffed up.

A question for you, Mr. Pizzella.

Mr. PIZZELLA. Yes.

Senator CARPER. Could you just discuss with our colleagues here how you and your fellow members of the FLRA achieved the goal of significantly reducing the backlog—you had a huge backlog, and I think you now have reduced the amount of time that it takes to issue a timely decision. Just briefly, how did you do it? How did you guys do it?

Mr. PIZZELLA. Well, the backlog was acquired because for a period of about a year there was a lack of a quorum. That was primarily what did it. And the Senate, when we had nominations made by the President, moved rather quickly to get a quorum in place. Both my colleagues, each had served as Chairman of the Federal Labor Relations Authority at one time or another before, and so they had much more experience than I did. And it took me a little while to get up to speed, but once we got going, we got going. And in the first year, for instance, 70 percent of the cases that we issued decisions on were unanimous. And that pattern has continued because the law is the law.

So we worked cooperatively and collegially and shared resources when necessary among offices, and we were able to put the backlog behind us.

Senator CARPER. Oh, good. My time has expired. I have to go to another meeting. I will stay here for a while and hear some of the questions, but I have to leave. But I want to thank you again for being here and for all who have joined you. Thank you.

Senator LANKFORD. Senator Ernst.

#### OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman, and thanks to all of you for your great service. You all have many years of valuable experience that you will take into these positions, so thank you for that. And thanks for the lovely introduction of all of your family and friends. And, Mr. Berk, to you, that was a great introduction of your family and many blessings to your family in the absence of your father. He sounds like an extraordinary man, so thank you for that. I appreciate that very much.

To Ms. Wingo, Ms. Becker, and Mr. Berk, a very easy question, actually. Please describe your current thoughts on what it means to be an independent judge as well as the importance of judicial independence. Ms. Wingo, if we could start with you, please.

Ms. WINGO. Judicial independence means that a judge is able to make decisions based on the evidence in the case before it and the law as applied to that evidence free from outside pressures, free from outside considerations. I think that it is essential to achieving the goal of equal access to justice for all, and that is one of the fundamental goals of the judicial system, and in the Superior Court in particular.

Senator ERNST. Very good. Thank you. Mr. Berk.

Mr. BERK. Yes, I think about the time that I spent being the chair of the Judicial Evaluations Committee here at the D.C. Bar

and looking at what lawyers would say about judges. And, by and large, judges are rated quite highly, but there are some that are not. And it is because of some—not so much a flaw but a perception that they are not being independent, that they are flawed by preconceived ideas or notions or where they came from. And I hope to think that because my perspective is broad, because I have been on all sides of the table—I have been on the government side of the table, the defense side of the table, the plaintiff side of the table—that I can be independent because I understand everyone's perspective.

Senator ERNST. Very good.

Mr. BERK. And I think that will be helpful.

Senator ERNST. Thank you very much. Ms. Becker.

Ms. BECKER. Thank you. I think that independence is really inherent, possibly central to the role of the judge. A judge has to be able to make decisions based on the facts that are presented in that individual case and applying the law that is governing to those facts, free from any outside pressures of any kind. And if a judge cannot do that, then we have a problem.

Senator ERNST. Exactly. Thank you. Very good.

And, Mr. Pizzella, a little tougher one for you. You dissented in a July 2014 opinion regarding a union grievance about U.S. Immigration and Customs Enforcement's (ICE) decision to block access to personal email on government computers without first offering an opportunity for collective bargaining. And to paraphrase your dissent, you suggested that Federal agencies should not be required to bargain with the union before they can act to secure the integrity of the Federal information technology (IT) systems. This became an issue again last year when, following the devastating breach at the Office of Personnel Management (OPM), the agency attempted to block access from government computers to certain websites that they deemed security risks. But the union threatened a lawsuit, and, ironically, then the union also sued OPM for failing to protect Federal Government employees' information. And just a note. My husband and I were also included in those that had information that was leaked.

I have great concerns about how the 2014 FLRA decision could be used to inhibit Federal agencies' efforts to enhance their cyber defenses. As OPM Acting Director Beth Cobert acknowledged during her recent confirmation hearing before this Committee, personal email accounts are the way a lot of threats come in.

So, accordingly, for the Committee's benefit, could you elaborate on your dissent from that 2014 case? And if you can provide us with any update on that situation as well.

Mr. PIZZELLA. Yes, thank you, Senator. I did feel strongly about that at the time. The dissent pre-dated the now well acknowledged security breach at OPM. In my capacity as Assistant Secretary of Labor for almost 8 years, from 2001 to 2009, I also had the role of the Chief Information Officer (CIO), so I had some knowledge—far from an expert, not a technology guru, but I had some knowledge about the sensitivity of protecting data, particularly from outside sources getting in. And I felt that the head of an agency, if determining after consultation with the technology experts at his or her department, felt the need to shut down access to personal

websites and email, then that should be a decision that the head of that agency should be able to make without wasting time on anything, but to get to the core of the matter, which was obviously preventing and protecting us from cybersecurity attacks.

I still believe strongly about that. As a matter of fact—you mentioned the OPM instance—I, too, was notified of my exposure in that.

Senator ERNST. Many of us were.

Mr. PIZZELLA. About a month after the OPM incident, Acting Director Cobert unilaterally shut down access to web email and Gmail without even informing the employees. And I know of no action that the union took in response to that, because I think common sense has caught up with perhaps this deference to needing to consult when there is something that could be called sort of an emergency or sensitive situation.

So I do think it is important for agency heads to have that authority to act quickly and to do so without having to consult with unions or other third parties.

Senator ERNST. Well, thank you. I appreciate that. Whenever there is an active threat out there, I think it is very important that those department heads are able to respond to those threats. But I appreciate it. Thank you all very much for being here today. I truly do appreciate it.

Thank you, Mr. Chairman.

Senator LANKFORD. I recognize Senator Carper.

Senator CARPER. I am not going to ask any more questions. I would like to note—and thanks for giving me this chance—that Congresswoman Norton wanted to be here, expected to be here to introduce you, Ms. Becker, Mr. Berk, and Ms. Wingo. She is in a markup over in the House of Representatives offering an amendment or amendments at the markup, so that is her day job. That is her job. And she wishes she could be here, be in two places at once, but she sends her best.

Senator LANKFORD. Senator Heitkamp.

#### OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Mr. Chairman.

I am always struck by how remarkably well qualified folks are who come in front of us and by the fact that all of you really in the prime of your careers could be making, six, probably seven figures doing something else, and you are willing to step up and serve the public and serve this community, which has unique challenges, being in the District, and use your enormous talents and your remarkable academic credentials for the betterment of the community. And so I think I start out by just saying thank you, thank you, thank you, thank you for everything that you do and for being willing to go through this process, which not a lot of what I would say State courts judges are required to do, but still willing to serve.

And so I do not have a lot of questions, but I was struck, Ms. Becker, by your comments about the skills that you have learned serving the public the way you do right now. I recently had an encounter with somebody who was looking for the court, the D.C. court, and they were mistaken and ended up here looking at the Supreme Court and looking quite confused. I think this man was

probably homeless. He had a roller board with him. And I thought—I did not ask him why—I was trying to help him find the court he was going to, and I did not ask him why he was seeking out the court, but I thought when he left—and I offered to get him a ride on Uber, and he said, no, he would walk, he still had an hour. And I was struck with I hope when he gets there—and I do not care what his crime is—that he is treated with respect and that he is given an opportunity to really understand why he is there, because he seemed quite confused to me.

And I want to really applaud your answer and say how difficult it is. You are not dealing at the Supreme Court level with very sophisticated jurists and lawyers who, are at the peak, the pinnacle. You are dealing with people who are homeless, who may have done something that, as a result of mental illness or extreme poverty, seemed like the only choice at the time.

So I guess when you look at that—and my question is to you, Ms. Wingo. You look at the kind of folks who come into the court—because you have seen them—and you realize that if we are going to have a judicial system, it has to be accessible to people at all levels, as you have said.

So what changes would you make or recommend once you get into this next step on making the court more accessible, making the court function better to better serve all the people of the district? I know there are some real judges out there, so do not worry about them. They will never know what you said. [Laughter.]

Ms. WINGO. Well, I do not know that I can count on that, but I think that I would answer on two levels.

One, I think—and this is not precisely a change, but on an individual level, I think individual judges have an obligation to make sure that they are treating every individual with respect, making sure that they do understand the process, that they are taking the time to explain it, and that they are explaining it in language that anybody can understand.

Senator HEITKAMP. What percentage of people who appear in the court appear pro bono—without counsel?

Ms. WINGO. That depends on what courtroom you are in. So, for example, when I was in a small claims courtroom, it was everybody.

Senator HEITKAMP. Sure.

Ms. WINGO. Pretty much everybody. In the criminal courtrooms, they have a right to counsel, and so the court appoints counsel for almost everybody. In the traffic courtroom, there are some cases that are immediately diverted where they are trying to seek a resolution that is not heading toward trial and conviction but, for example, doing community service and getting your case dismissed. Those folks are not necessarily assigned counsel. There are counsel for the courtroom who can assist everybody in that kind of category. So it really depends on what kind of courtroom you are in, I think, what the percentage would be.

Senator HEITKAMP. So I did not mean to interrupt, but how can we make the court more accessible, more understandable to everybody who comes there, whether you are in small claims or whether you are in, some kind of diversion program?



Ms. WINGO. So for the second part, once you are out of the individual level, when you look at it from an institutional level, this is something that the Superior Court has focused on a lot. And so continuing some of the things that they are already doing and expanding them, for example, we have resource centers or self-help centers in many divisions—the family court self-help center, there is a consumer law resource center, there is a small claims resource center. All of those programs could always be expanded because there is more that you could do for folks. But they are places where people can go when what folks need is more than what a judge can do without stepping outside their role as a neutral arbiter.

Senator HEITKAMP. I think that is an excellent answer, and as we look at criminal justice reform, whether we are able to do it or not, that is going to involve courts at all levels kind of reexamining the kinds of people who are entering the criminal justice system who also—if you ask many people in my State do we do a pretty good job giving people access to the courts on the criminal side, yes, because we have *Gideon v. Wainwright*. But, if they come in and they have a spouse who is able to afford a lawyer in a family matter, they are really disadvantaged.

And so I am curious about all of your opinions about mediation, whether you think that is a diversion that we should use more, about restitution and other kinds of new judicial tools that could, in fact, make the court more accessible, reform the court in ways that it is not, a judge sitting on a dais and looking down at the citizens who are seeking justice. Ms. Becker.

Ms. BECKER. I am a supporter of mediation. Over the years that I have been practicing—my area is primarily landlord-tenant law, and the court has shifted to requiring mediation at some point in all landlord-tenant cases. And I have found that to be a very useful process because most cases do settle. Probably most cases should settle. And mediation is a chance for the parties to reach a settlement that is in their own control. That is sort of the mantra of the mediation center, that “The power is in your hands” in a way that it is not if the case goes to trial.

I think that mediation can pose problems if one side is represented and the other is not, because obviously there is an imbalance in information, there is an imbalance in bargaining power. And so I think one of the ways that the court can address that is to make the mediators aware of that and sensitive to it, and also make it easier, as they have done in recent years, for unrepresented individuals going into mediation to connect with counsel on some level to advise them about their rights.

Senator HEITKAMP. Thank you. Mr. Berk.

Mr. BERK. It is a difficult question, because I think that the judge has to be—it is a balancing act, if you will. On the one hand, you do not want the judge being too active in the litigants’ dispute. The judge has to be a referee. The judge has to be calling balls and strikes, so to speak.

On the other hand, for efficiency purposes, you cannot give everyone—there is just not enough time in the day nor is there the need for everyone to have a trial. A lot of things can be resolved through people of good faith coming together and realizing what the issues are and making a decision based on that.

So I think in my practice I would say 75 percent of the cases start with mediation, and it is a good vehicle, but it is not a perfect vehicle. I can only tell you that on an individual basis in a courtroom, if I was confirmed, that I would want to set the tone for respect for everybody, not just the litigants but the court clerk and the police officers that come in and every individual so that there is a tone of respect. And I think once people have that, they are more willing to consider options and consider settlements and consider resolutions, whereas if they feel they are in an adversarial proceeding or an adversarial room or an adversarial forum.

I am not yet familiar with the larger policy issues. I have not been in the court to that extent. But I know on an individual issue or in individual cases you can set the tone in your courtroom for a place that is welcoming, if you will, to resolution of cases and not the adversarial system. And what I have seen too much in my career—and I am sorry to go—is, lawyers that get angry at each other and there is a lot of vitriol that does not accomplish anything.

Senator HEITKAMP. My apologies. My time is up, so thank you so much.

Senator LANKFORD. Senator Peters.

#### OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Thank you, Mr. Chairman, and thank you to the nominees for your statements and for appearing here today this morning.

I certainly know that your families and friends are all very proud of you, as they should be with your distinguished career and accomplishments. And, Ms. Becker, I am particularly pleased to see you as a native Michigander. I know that you will definitely represent the State of Michigan with great distinction should you be confirmed. You do already, but should you be confirmed, that track record will continue.

There are certainly a number of qualities that I believe and I think most of the folks on this panel believe every judicial nominee should have, and that would include a strong legal background, experience handling a variety of cases, as well as a fair approach to legal issues.

So maybe if I could ask each of the judicial candidates to give me a little sense of what is your view of the appropriate temperament of a judge, what elements of temperament do you believe are essential to fairly considering cases? And take a moment to describe how your experience working with diverse roles has helped you develop what you consider to be this appropriate judicial temperament. We will start down here. Ms. Becker.

Ms. BECKER. Thank you, Senator. I think that in order to be a good judge, a judge has to possess the qualities of patience, of integrity, and a true interest in what I would characterize as the intellectual and human challenges of the law. Sitting as a trial court judge, you really see the gamut of human experience coming in through the courthouse doors every day. And some of the cases present challenging, difficult factual issues. Some of the cases present challenging legal issues. And I think a judge really has to want to delve into those issues and be excited about trying to fig-



ure out what the answers are. And I believe that I would be suited to that role.

Senator PETERS. Mr. Berk.

Mr. BERK. Thank you, Senator. I think the first quality of a good judicial temperament is somebody who listens. And that may seem really basic, but I always will tell folks that you learn more from listening, and so you really need to listen to your witnesses, you need to listen to the litigants. If a defense attorney or an attorney comes in and wants their third extension and comes up with some excuse, you want to listen to that and really determine whether they are telling you the truth or not. So listening is key.

I think that you have to be decisive. The worst thing that can happen to you as a litigant is that the judge does not decide, that you are asked to come back in 6 weeks, 8 weeks, or 9 weeks. You have to have the courage to be decisive, and I think that that is part of the temperament.

And I guess the last one—and I do not mean to sound trite at all, but you need to be fair. And when I talk about fairness, I talk about fairness in a procedural way so that I know when I have argued an appeal or argued a motion or argued something, you want to know why the judge is going to rule against you. “Mr. Berk, you have not made the fourth element,” or something to that effect, so that the judge is fair to you and you respect that decision more afterwards because you have gotten that opportunity to know what you were missing.

So it is decisiveness, it is fairness, and it is listening, I think, for me that would be the three.

Senator PETERS. Thank you.

Ms. WINGO. I think that I would echo the comments of Ms. Becker and Mr. Berk to some degree. I definitely agree that fairness is the first and foremost quality, and by that, you have to be calm, you have to be able to treat everyone in front of you with a dignity and respect so that you can hear what they are saying, so that you actually get the information from all sides, so that you can make an appropriate decision.

I think you need to add to that a substantive knowledge of the law that you are deciding and a willingness to do the work to get the answer if you do not already know it.

I think also, as Mr. Berk said, you need to be decisive because as the saying goes, justice delayed is justice denied. And it is not enough to come to the correct decision. You need to do it efficiently so that you can handle the high volume of cases that our court has.

And then, finally, I think you really need to be someone who is articulate in a way that you can talk to everyone who comes before you, whether they have a law school background or no background at all, so that everyone who walks in the door walks out feeling like they have had an opportunity to be heard, they understand what happened, and they know why it happened.

Senator PETERS. Great. Well, thank you.

A followup question to Ms. Becker. First off, I want to say I have had an opportunity to talk with you prior to this hearing, and I appreciated that opportunity. And I am certainly impressed by your background, first and foremost, of course, from the University of Michigan, which is a great educational background, but then going

off to Yale University. You were an individual who was on a fast track that could have gone any way with your legal career but chose to help those who often do not have a voice, which I commend you for your career. And given that, and given your previous work focusing on helping and representing low-income District of Columbia residents at Legal Aid Society, you helped clients challenge the termination of housing subsidies, assisted tenant associations in preserving affordable housing, and a variety of other areas that you worked on.

Could you describe the importance of your work and your experience working with low-income populations and how that makes you particularly well qualified to serve on the D.C. Superior Court?

Ms. BECKER. Thank you, Senator. Let me answer that in two ways.

First, I want to talk a little bit about housing because that has been my primary focus. I think that although I have been focusing on that area, I think the reality is that housing is really critical to every aspect of an individual's life, and particularly a low-income individual's life. Housing is critical to maintaining family stability, which is critical to retaining custody. Housing is critical to allowing children to get a good education. Housing is critical to giving citizens returning from incarceration the stability that they need to avoid recidivism and become productive members of society. And so through my housing work, I have really come to understand all of the other factors that impact the litigants who are appearing in Superior Court.

And then more generally, I think that because I have spent such a long time in Superior Court, because I have appeared in so many of the courtrooms and had a chance to observe so many of the things that happen there, I think that I would be well prepared to join the bench there. I am excited by the prospect of doing that, and I think that my experience has prepared me to communicate with individuals at all levels, with attorneys, with individuals who are not represented by counsel, with individuals who know something about the law and individuals who do not, because I have had practice in doing all of those things throughout my career.

Senator PETERS. All right. Thank you. My time has expired, Mr. Chairman.

Senator LANKFORD. Thank you.

We blocked off about an hour and a half for this, which means the last round of questions I get 35 minutes, and we will go from there. [Laughter.]

I will quick run through a series of questions, but I do have quite a few questions, and we will go through several of these.

Mr. Pizzella, you previously indicated you would bring the taxpayer viewpoint to your responsibility as well. Can you help me understand a little bit about that, what you have done already as you think about the taxpayer in your decisions? How does that affect you? And how do you use that as a filter?

Mr. PIZZELLA. Two items come to mind. One deals with the subject of union official time and the need, at least I believe, to have a lot of transparency in that, current data about its usage, because union official time is paid for by the taxpayer. So I have pointed

that out in a variety of decisions, and I think it will be a recurring issue.

Senator LANKFORD. In your view, how should official time be used in the transparency you describe?

Mr. PIZZELLA. Well, No. 1, I think it should be limited to collective bargaining activities. But, No. 2, I think that there should be timely information provided to Members of Congress and to the public as to how much is being utilized. The most recent information available is from, I believe, fiscal year (FY) 2012, and my recollection as a former Assistant Secretary at the Department of Labor is that we collected information on official time in the payroll system. So it was done every other week. A person who was in official time status, that would be recognized in the payroll system. So I do not think it is a rather cumbersome thing to accumulate. But since there is no requirement on OPM or any other agency to provide that information to Members of Congress or the public in general, it is only obtained through a persistent Member of Congress or a congressional hearing sometimes. So I think that would be much more helpful in the area of transparency so we really know what is being spent. The last time they released information on this, I think it was \$159 million, but that is now at least 3-year-old information.

Senator LANKFORD. OK. So tell me about an example when an agency action or instruction is non-negotiable, so when some agency or some action that they have taken you would say that is non-negotiable, that is going to be outside of the relationship and bargaining.

Mr. PIZZELLA. Well, there are certain things that are statutorily non-negotiable: wages and benefits of Federal employees, any type of agency shop type of recognition. Then there are other things that the collective bargaining agreement itself may not specify as negotiable, which then can be subject to debate between the parties, which often ends up in arbitration and sometimes comes to the FLRA.

Some things could be rather serious; some things could be rather trivial. We have had cases where employees felt aggrieved because the temperature in their worksite was 3 degrees below what the contract required and it did not get fixed until later in the day. But a case like that reached all the way to the Federal Labor Relations Authority. So that is an example, I guess.

Senator LANKFORD. Yes, kind of a tough example on that.

Let me ask a question that is a process question for us. It is very difficult for Members of the Senate or Members of the House to get information from agencies about recommendations for statutory changes that are needed. You and the folks that are around you understand more than anyone else the needed changes in things like the Federal Service Labor-Management Relations Statute. You get it because you experience it and you see the problems.

The problem is you see the problems but are often not permitted to tell us what the problems are. We cannot fix a problem that we cannot see when you are dealing with it day to day. How do we get information and clarity on those issues so we do not have problems persist because we did not know about it and you are not allowed to tell us?

Mr. PIZZELLA. Well, I guess I would use two examples. One would be this very issue that we discussed earlier regarding cybersecurity. Certainly through any dissent or opinion of the Federal Labor Relations Authority, you can glean from that what might be wrong and needs corrective action. And I believe I read just the other day, I think it might have been the House has moved some legislation that deals with this issue of cybersecurity and the responsibility in the head of the agency to make the final decision rather than have it subject to collective bargaining. So that is one.

And the other thing that, again, is recently in the news was on the issue of recording official time, and once again I thought I just read just the other day that your counterparts in the House, at least at the committee level, have adopted a proposal to require more transparency in that.

So I guess the best answer is our decisions speak for themselves.

Senator LANKFORD. OK. That is good to note. There is a lot more mediation that is happening now, which is a good thing. But that also reduces the caseload obviously since you are caught up at that point. There are other entities that also deal with relationship issues. Are there any recommendations or ideas that you would have to be able to combine any functions of what currently happens with any other agency?

Mr. PIZZELLA. Well, I have often commented to my colleagues in jest that, if labor peace breaks out, we are no longer necessary.

Senator LANKFORD. And so Lord come.

Mr. PIZZELLA. Yes. But I do not know if there is anything in particular—

Senator LANKFORD. Not fishing for a particular answer, by the way, so—

Mr. PIZZELLA. Right. I would say from a generic standpoint that the statute that governs the Federal workforce and labor-management disputes and all is about 38 years old now. It has had very little in the way of changes or tweaking in that time period, and like many pieces of legislation that old, it is probably useful for a thorough review. The world has changed. Just in the example of cybersecurity, the legislation was passed before we had cell phones and the Internet and all that. So it probably could be updated into the 21st Century, and I would encourage Congress to maybe consider that.

Senator LANKFORD. All right. Good word.

Ms. Becker, let me ask you, you and I have had this conversation before about civil versus criminal, that the preponderance of your background is civil in nature, and that the criminal side of it is a learning curve for you that you can jump into. I have no doubt based on your own mental aptitude that you can get up to speed on that quickly.

How does that happen for you as you are facing your earliest days of criminal cases that you do not get so overwhelmed with the number of cases coming at you, you do not have time to be able to study and be well prepared for the issues at hand?

Ms. BECKER. Thank you, Senator. I think the best way that I can answer that is that I would work as hard as I possibly could on my own to understand the governing law and the rules of procedure in the courtroom, and I would seek out guidance and

mentorship from more senior judges on the Superior Court. I think that any person not coming from a criminal background has had the same challenge, has had to get up to speed on the law and the procedure without sort of taking that learning curve out on the litigants, so to speak.

And so I would look forward to getting their advice and making sure that I was as prepared as I possibly could be walking into the courtroom to know the law and to apply it to what is before me.

Senator LANKFORD. OK. I am going to ask this of all three of the judicial nominees as well, and we will just kind of walk through this. And since, Ms. Wingo, you have given advice to the other two, we will start with you and go from there since they will base their comments off yours, anyway, so we will go from there.

The challenge every judge has, regardless of their role, is setting aside your own biases, which all of us have our own biases from our own background and everything else, and applying the law equally and fairly. In Washington, D.C., that gets ramped up to a different volume because in front of your bench at any given point, you may have any ethnicity, you may have elected officials and unelected officials, you may have powerful folks downtown, and you may have folks that cannot find downtown. At any given time, you have this wide variety of individuals that are in front of you from multiple classes and backgrounds. To equally apply the law to all individuals is a tremendous challenge for you on a day-to-day basis.

So my question is not, yes or no, will you do it, because I assume you are going to say yes, you will. It is how do you manage that personally and how do you manage that from your own background of making sure that the person in front of you now versus the person in front of you at 3 o'clock this afternoon, regardless of background, gets an equal application of the law. How do you manage that?

Ms. WINGO. I think the place you start is by treating each case individually. You really have to look at each case, listen to the person who is before you, and then respond to that case. You really cannot be looking out over your courtroom and seeing who else is there. And when you are dealing with people as individuals, I think it is a much easier prospect to treat them without bringing any of your own experiences.

And I do think as a judge, and particularly as a trial judge, you get used to doing that. There are things that you have to do as a trial judge when, for example, you are excluding evidence. You know that the evidence is out there. You ignore it because you have excluded it. So you really get used to looking and limiting yourself very carefully to what is on the record, what is the evidence before you, and what is the law.

Senator LANKFORD. Mr. Berk.

Mr. BERK. I have talked about my father, but I think I would like to bring him up again because he has informed so much of who I am. We used to go to lunch together a lot, and when we would go to lunch, he knew the guy who parked the car, and he knew the busboy, and he knew the server, and he knew the owner of the restaurant, always loved to know the owner of the restaurant. And he treated them all the same way. He asked them how they were doing. In some ways he treated the guy who parked the car better



than the restaurant owner. And I guess I just learned at an early age that, folks are the same and you treat everybody the same way.

I am the son of immigrants. I am not very far away from the experience of some of the people that will appear before me in court. And so those are sort of core values that I think I would bring to the bench and will always sort of be at my heart.

Senator LANKFORD. How do you fight your own biases on that, not to defer to that immigrant—because you have walked that experience—or defer to that individual that you so closely relate to? Because, again, that is our natural bias. If a redhead comes in front of me, they are always treated— [Laughter.]

But how do you process that?

Mr. BERK. I think, Senator, you acknowledge it. I think you acknowledge it to yourself, and then, to come back to it, I mean, we are governed by the rule of law, and we can always fall back on that. And in my mind, yes, sure, an immigrant, their story has to make sense. It has to have the ring of truth to it.

So while in some instances it could be difficult, I do think that when you are governed by the rule of law and you are governed by your good judgment, you can get over those kinds of things?

Senator LANKFORD. Ms. Becker.

Ms. BECKER. Thank you, Senator. I think the way to ensure that people are treated equally primarily is to apply the law to the facts presented in each individual case, because although the facts are different in each case, the law is not. And so the best way to ensure that people with similar facts are given similar treatment is to apply the law to those facts.

I think as attorneys one of the things we are best at is making analogies and making distinctions. Every time we argue in court, we are trying to persuade the judge that our case is like this other case in relevant ways or is not like this other case in relevant ways. And I think that is just as important a skill for a judge, if I am making a decision that is different from one I made in another case with similar facts, I have to be able to justify, first to myself and then to the litigants in front of me, the reasoning for that different judgment and why I am ruling differently in this case than the one that came before. And I think that that has to be sort of a constant thread running through the work that you do as a judge.

Senator LANKFORD. Mr. Berk, let me ask a question of you as well on this. What do you see are the largest or most significant criminal issues currently in D.C.? And as a judge, what can you do to be able to help in that area? I know there are lots of civil issues and everything else, but just focusing on the criminal issues, some of the most significant criminal issues we face in D.C., and as a judge, what is your best use of being able to help in that area?

Mr. BERK. Well, I think the best thing you can do is move cases and not delay. There unfortunately are too many crimes committed, and if all these cases go to trial, they back up the system.

I know Judge Sullivan is here, and I remember back in the day when Judge Sullivan was on the Superior Court—that was before he was on the Federal bench—and I know he moved his cases. And I think that is the best you can do as an individual judge.

Senator LANKFORD. Ms. Becker, same question for that. Crime within the D.C. area, what you can do as a judge, the best thing to be able to help?

Ms. BECKER. So I will echo some of what Mr. Berk said. I think that one of the greatest challenges facing the Criminal Division is just that there is a high volume of cases moving through the system because, unfortunately, there is a lot of crime of various kinds here in the District of Columbia. And so I think the greatest challenge for a judge in that situation is not only moving the cases through, but while doing so making sure that he or she is trying to strike the right balance between a system that is fair to defendants but also accounts for the experiences of victims and, of course, the predominant need for community safety, because that is overall what is going to benefit all the residents of the District.

Senator LANKFORD. Ms. Wingo, you have a unique perspective on this, already serving as a magistrate judge. What do you see as one of the most significant crime issues we are currently facing in D.C.? And as a judge, what is the best thing you can do to be able to help in that role?

Ms. WINGO. Well, I do think that, as a judge, your role is to handle the cases that come before you, and so that is really what you do in order to address the criminal issues.

I also think that as a judge, we have a fair number of resources, and one of the things that I think is quite clear leads to criminal activity is drug use. And utilizing those resources in order to help people address their problems so that they are not going to recidivate is one of the things that you can do as a judge.

Senator LANKFORD. Any other tools for recidivism that you can use or express as a judge or ideas of things that you would like to bring at some point to say that this is an issue for this individual, this is the third time I have seen him, things that you can do from the bench?

Ms. WINGO. Well, that is one of the things that you do. When you are trying to sentence someone, you are trying to come up with a sentence that will make it the least likely that they will appear before you again. And so it depends a little bit on what the kind of crime is. For example, in a traffic court, you are going to order traffic alcohol programs and victim impact panels so people understand the impact of what they did, even if they did not cause any harm this time, that they really could have killed somebody.

When you structure your probations, that is what you try to do.

Senator LANKFORD. I appreciate all of your answers and the conversation today. The only comment that I would make for anyone's responses is for you, Mr. Berk, on a previous question that was spoken to you when you mentioned when that attorney comes to you with the third extension and to treat him fairly, I would say do not. If it is a third extension— [Laughter.]

They just need to get their work done and bring it to you.

Other than that, I appreciate very much what you all have said today and what you bring to it and the experience. I know this is a difficult process to go through. I am fully aware. You all are much more aware of the length of the process. Mr. Pizzella, you have been through this several times now, so I appreciate what



this means to you and your families and such. So, with that, I would like to be able to move things along. Give me just a moment.

[Pause.]

Ms. Becker, Mr. Berk, Ms. Wingo, and Mr. Pizzella have filed responses to a biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and have had financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the hearing record, with the exception of the financial data, which is on file and available for public inspection in the Committee offices.

The hearing record will remain open until 12 p.m. tomorrow, March 3, 2016, for the submission of statements and questions for the record.

With that, unless there are any other comments, this hearing is adjourned. Thank you very much.

[Whereupon, at 11:12 a.m., the Committee was adjourned.]

## APPENDIX



SENATOR JAMES LANKFORD, CHAIRMAN

SENATOR HEIDI HEITKAMP, RANKING MEMBER

March 2, 2016

### Opening Statement of Senator James Lankford

#### Homeland Security and Governmental Affairs Subcommittee Hearing:

#### Nominations of Hon. Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie Becker, Steven Berk, and Elizabeth Wingo to be Associate Judges, D.C. Superior Court

Good morning. Today we will consider the nominations of Ms. Julie Becker, Mr. Steven Berk, and Ms. Elizabeth Wingo for the position of Associate Judge on the Superior Court for the District of Columbia, as well as the nomination of Mr. Patrick Pizzella to be a member of the Federal Labor Relations Authority. The Committee takes these nominations very seriously, and so we are pleased to have strong nominees before us.

The Superior Court for the District of Columbia is a busy place, with more than 100,000 cases heard each year. I am proud to say that these three Superior Court nominees will mark the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> that the committee has considered in just the past year. This is more than triple the number of nominees who received hearings during the entire 113<sup>th</sup> Congress.

Julie Becker is a native of Detroit, Michigan. She received her Bachelor of Arts degree from the University of Michigan, and her law degree from Yale Law School. After graduation, Ms. Becker clerked for then-Judge Sonia Sotomayor on the 2<sup>nd</sup> Circuit Court of Appeals. Currently, Ms. Becker is a supervising attorney at Legal Aid where she has spent the past fourteen years.

Steven Berk is originally from Chicago, Illinois. He received his undergraduate degree from Washington University in St. Louis, he has a master's degree from the London School of Economics, and a law degree from Boston College Law School. Mr. Berk has worked at the SEC, as an Assistant U.S. Attorney for the District of Columbia and practiced at several prestigious law firms.

Elizabeth Wingo is a native of Washington, D.C. She received her Bachelor of Arts from Dartmouth College, and her law degree from Yale Law School. Following law school, she clerked for Judge T.S. Ellis in the Eastern District of Virginia. Ms. Wingo worked as a prosecutor at the U.S. Attorney's Office in the District of Columbia and for the District of Columbia's Attorney General's office before being appointed as a magistrate for the Superior Court in 2006.

In addition to these impressive resumes, Ms. Becker, Mr. Berk, and Ms. Wingo possess the necessary legal skills and judgement to serve the District of Columbia.

Mr. Pizzella is a native of Rochelle, New York. He received his Bachelor of Arts degree from the University of South Carolina. After graduation, he served in a variety of government entities, including: GSA, the Small Business Administration, the Department of Education, and the Department of Labor. In 2013, he was appointed to the Federal Labor Relations Authority.

Committee staff reached out to a variety of these nominees' colleagues and affiliates, who spoke highly of them. Committee staff also had the opportunity to interview Ms. Becker, Mr. Berk, Ms. Wingo, and Mr. Pizzella on an array of issues, ranging from notable cases to community service and pro bono work. They have thoughtfully and competently answered each question to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated, I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

**Statement of Ranking Member Tom Carper**  
**"Nomination of the Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior Court of the District of Columbia."**  
**Wednesday, March 2, 2016**

*As prepared for delivery:*

I want to thank all of our nominees and their families for being here today. My thanks as well to Senator Lankford for chairing this hearing and for the good work that he and his staff have done in enabling us move forward in considering these nominees.

First, let me welcome Patrick Pizzella, who has been re-nominated to be a Member of the Federal Labor Relations Authority, or FLRA. The FLRA plays an important role in promoting constructive relationships between management and unions and, in turn, helps improve the effectiveness and efficiency of the federal government.

Mr. Pizzella has had a long career in public service, including the past few years serving in the position to which he has been re-nominated. We are grateful for his service and his willingness to continue to serve in this very important role.

I'm also pleased that we are also considering three nominees for the Superior Court of the District of Columbia today. Julie Becker, Steven Berk, and Elizabeth Wingo all have very impressive backgrounds and legal careers that I believe make them extremely well-qualified to serve as judges on the Superior Court. Thank you all for joining us and for your willingness to serve.

Before I close so we can hear from our nominees, I want to note that I am also pleased that, in the last months of last year, the Senate finally moved to confirm nominees to fill four other vacancies on the D.C. Superior Court.

That said, it is shameful that it took us two years to get two of those judges confirmed. I am delighted that we have started to move these nominees more quickly, and I hope we can continue that momentum with these three nominees and other nominees to the Superior Court going forward.

Most Americans probably don't know that local judges in the District of Columbia must be confirmed by the U.S. Senate. While they are comparable to the state courts that each of us is familiar with in our respective states, the D.C. Superior Court and Court of Appeals are operated by the federal government. Their judges are appointed by the President from a slate of candidates thoroughly vetted and recommended by a non-partisan nomination commission. They must then be confirmed by the Senate in order to serve 15 year terms.

But these courts don't handle federal matters. They are the local courts for the District of Columbia and hear cases related to local crimes and domestic and civil disputes between the people who live here in the District.

No other jurisdiction in our country must have its local judges approved by Congress. And, no other state is denied the representation here in the Senate that might help it pursue its priorities here, including nominations.

Some have suggested that local D.C. judges should not have to go through Senate confirmation. I continue to believe that we should seriously consider that idea. But at a minimum, we should develop an expedited process for the confirmation of these local judges.

In the meantime, I hope that the Senate will move forward quickly on the nominees we are considering today. I believe that the people of the District of Columbia are fortunate that men and women as impressive as these nominees are willing to go through a protracted nominating process, a great deal of scrutiny and a full measure of uncertainty, all for the possibility that they might one day serve on the bench in the District of Columbia.

Again, I thank you all for being here, for your testimony and for your responses to our questions.

U.S. SENATOR PAUL STRAUSS  
DISTRICT OF COLUMBIA (SHADOW)

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**Prepared Statement of**  
**THE HONORABLE PAUL STRAUSS**  
**UNITED STATES SENATOR**  
**DISTRICT OF COLUMBIA (Shadow)**

**On the Nomination of**

**Ms. Julie H. Becker, Esq.,**

**Mr. Steven N. Berk, Esq.,**

**and**

**Magistrate Judge Elizabeth C. Wingo, Esq.**

**To be Associate Judges on the**  
**District of Columbia Superior Court**

**Before the**

**United States Senate**

**Committee on Homeland Security & Governmental Affairs**

**Dirksen Senate Office Building, Room 342**

**March 2, 2016, 10:00 AM**

Senator Lankford, Ranking Member Carper, and other Members of the United States Senate Committee on Homeland Security & Governmental Affairs, I am Paul Strauss, a U.S. Senator elected by the voters of the District of Columbia, a position sometimes referred to as the Shadow Senator. I am also an attorney practicing in our local courts. In each of these capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. I wish to express my enthusiastic and wholehearted support of the three candidates nominated by President Barack Obama to be Associate Judges of the Superior Court of the District of Columbia. The nominees – Ms. Julie H. Becker, Esq.; Mr. Steven N. Berk, Esq.; and Judge Elizabeth C. Wingo, Esq. – are all distinguished members of the legal profession and long-time practitioners in the District of Columbia. I have taken the time over the last several weeks to study their career records, and I have spent time to get to know them on an individual and personal basis. As a result of these efforts, I am confident that these three distinguished lawyers possess excellent qualifications to be judges and that they all would be exceptional additions to the District of Columbia Superior Court bench.

I would like to take this opportunity to address the specific qualifications of each nominee.

**Ms. Julie H. Becker, Esq.**

I begin with Ms. Julie H. Becker, a supervising attorney at the Housing Law Unit of the Legal Aid Society of the District of Columbia. Ms. Becker's practice includes representing tenants in D.C. Superior Court and the D.C. Court of Appeals; helping clients challenge the termination or reduction of housing subsidies; and representing tenant associations in cases involving the preservation of secure and affordable rental housing. Ms. Becker also supervises staff attorneys, loaned associates, and fellows in the Housing Law Unit. In addition, she serves on the D.C. Superior Court Advisory Subcommittee on Landlord-Tenant Rules and is active in policy advocacy at the Council of the District of Columbia and the D.C. Housing Authority, including drafting and commenting on legislation and administrative rulemaking.

In 2006, Ms. Becker received the National Housing Law Project's Housing Justice Award, given nationally to an advocate for success in "tackling the systemic and often hostile obstacles that stand in the way of safe, decent, and affordable housing for low-income and marginalized people." In 2009, the National Law Journal named Ms. Becker as one of Washington's "Rising Stars" in its article captioned "40 Under 40."

Ms. Becker received her A.B. with highest distinction, from the University of Michigan and her J.D. from Yale Law School. While in law school, she served as an editor on the Yale Law Journal and won the Cardozo Prize for Best Brief in the Morris Tyler Moot Court of Appeals competition. The President has clearly chosen wisely in nominating Ms. Julie H. Becker to the bench.

**Mr. Steven N. Berk, Esq.**

Mr. Steven N. Berk is a veteran trial lawyer and litigator whose experience includes work in both the public and private sectors. He began his government service with the Securities and Exchange Commission in the Office of the General Counsel. At the Commission, Mr. Berk prosecuted cases against professionals (accountants and attorneys) and represented the SEC in federal court on a number of administrative matters. In 1994, Mr. Berk was appointed an



assistant U.S. Attorney for the District of Columbia. As a federal prosecutor, he served as lead trial counsel in more than 25 jury trials in the Federal District Court and Superior Court for the District of Columbia.

After his tenure in the government, Mr. Berk became a partner in the Washington, D.C., office of Jenner & Block, a top 100 firm. At the firm, he was lead trial counsel in a number of commercial cases in both federal and state courts. His substantive expertise includes federal and state regulatory issues, antitrust litigation and counseling; internal corporate investigations; and white-collar criminal defense.

Over the past 10 years, Mr. Berk has developed a considerable expertise in class action litigation. He has been named lead counsel or has had a substantial leadership position in several nationwide cases seeking to protect the rights of consumers and investors.

In May 2009, Mr. Berk opened his own firm, Berk Law PLLC. In addition to prosecuting class action cases, the firm has been retained in an array of litigation and counseling matters in state and federal courts throughout the country. The firm has counseled nominees in connection with Senate confirmation hearings, represented investors and corporations in arbitration proceedings and filed claims on behalf of whistleblowers in connection with the False Claims Act, Sarbanes-Oxley, Dodd-Frank, and the Internal Revenue Service's Whistleblower program.

In September 2011, Mr. Berk became an adjunct professor of law at Boston College Law School where he teaches a seminar in Federal Court Litigation. He was also recently elected and serves as treasurer and as a member of the Board of Governors of the District of Columbia Bar Association. In October 2013, he was selected by the District of Columbia's Judicial Nomination Commission and recommended to the White House for a vacancy on the District of Columbia Superior Court.

Mr. Berk holds an A.B. with honors from Washington University and a Master's degree in international relations from the London School of Economics. He received his law degree from the Boston College Law School, where he served as managing editor of the Law Review.

In addition, Mr. Berk launched a unique youth hockey program serving the needs of children with autism and other special needs. He served as the Chairman of the Board of Directors and Founder of the Montgomery Cheetahs from 2006 until 2012. The program has grown to include 6,075 special needs families and more than 100 student mentors who participate in a nine-month season. The Cheetahs have received numerous awards including recognition from the Governor of Maryland in 2010 and the City of Rockville, Maryland, in 2008.

Thus, I most sincerely recommend that the Committee confirm Mr. Steven N. Berk's nomination.

**Magistrate Judge Elizabeth C. Wingo, Esq.**

It is with great enthusiasm that I endorse the nomination of Judge Elizabeth C. Wingo, who was appointed by Chief Judge Rufus G. King, III and installed as Magistrate Judge on August 18, 2006.

Judge Elizabeth Wingo was born and raised in Washington, D.C. Judge Wingo received her Bachelor's degree from Dartmouth College *magna cum laude* and her law degree from Yale Law School, where she served as Notes Editor of the Yale Law Journal and Co-Director of the Temporary Restraining Order Project. As Co-Director, Judge Wingo coordinated law student volunteers who assisted victims of domestic violence in obtaining temporary restraining orders, by explaining the process, assisting in filling out paperwork, and providing support while waiting for, and during, the TRO hearing.

Prior to law school, Judge Wingo worked as a paralegal at Wilmer, Cutler and Pickering prior to joining the Jesuit Volunteers Corps. During her JVC year, Judge Wingo served as volunteer coordinator for the Pediatric AIDS Program in New Orleans, Louisiana, supervising work with children infected by HIV and their siblings. After law school graduation, she worked as an associate in the Washington office of the law firm of Sullivan and Cromwell, and then clerked for the Honorable T.S. Ellis, III in the U.S. District Court for the Eastern District of Virginia. Judge Wingo then joined the U.S. Attorney's Office for the District of Columbia.

As an Assistant U.S. Attorney, Judge Wingo served in the Appellate, General Felony, Sex Offense/Domestic Violence and Homicide/Major Crimes Sections. She tried more than 50 bench and jury trials and argued several cases before the U.S. Court of Appeals for the D.C. Circuit and the D.C. Court of Appeals. Judge Wingo received a number of Special Achievement awards while working in different sections of the U.S. Attorney's Office. She then joined the Office of the Attorney General for the District of Columbia and served for two years as Chief of the Criminal Section, and then briefly as Deputy of the Public Safety Division of the Office, prior to joining the Courts.

Judge Wingo has volunteered since 2005 with the D.C. Rape Crisis Center Hotline, helping to counsel survivors of sexual assault. Judge Elizabeth C. Wingo greatly deserves to be elevated to the position of Associate Judge at this time.

In conclusion, I would like to state again for the record that upon examining the information made available to my office and having the opportunity to meet each candidate personally, I am confident that each will uphold the honor of our justice system. I look forward to their prompt investiture on the Court.

There is no doubt that if anyone is deserving of the prestige that comes from a Presidential appointment and Senate confirmation, it is these three nominees. Yet, I am obligated by the very nature of the proceedings here today to point out that despite all the honor that comes with the ceremony of federal oversight, the fact that these nominees and all residents of the District of Columbia lack autonomy over our judiciary diminishes our collective dignity. As I am not seated with the full rights and privileges of a U.S. Senator, I am not able to cast a vote in favor of these nominations. Today I ask that you extend to me a degree of Senatorial courtesy and cast your vote in support of these nominees for the residents of the District of Columbia who do not have anyone in this body who may cast a vote on their behalf.

Statement – Patrick Pizzella – 3/2/2016

Senate Homeland Security & Government Affairs Committee

Thank You Mr. Chairman.

Chairman Johnson, Senator Carper and Members of the Committee, I want to thank you and your staff for all the courtesies shown to me as I have prepared for this hearing. Given the seriousness of the issues that presently confront you, I am especially appreciative of the time you have taken to ensure the Federal Labor Relations Authority operates at full strength.

This is the fourth time I have had the privilege of being nominated by a President for a position of public trust. I am honored the President nominated me once again to be a member of the Federal Labor Relations Authority and, if confirmed, I will continue to dedicate myself to discharging the responsibilities of the FLRA in accordance with laws, rules and regulations.

I began my tenure in federal service in the early 1980's and I believe my 23 years of experience in the executive branch will continue to be an asset to the FLRA.

I enjoyed the past 2 years as a member of the FLRA and with your support hope to continue in that role.

I would be happy to answer any questions you may have.

Thank you.

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Member, Federal Labor Relations Authority	November 19, 2015

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Patrick		Pizzella	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 1400 K. St NW		
City: Alexandria	State: VA	Zip: 22302-1813	City: Washington	State: DC	Zip: 20424

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Middle Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
Pat		Pizzella	Jr.		5/54 Est <input type="checkbox"/>	3/71 Est <input checked="" type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
<u>1954</u>	<u>New Rochelle, NY</u>

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
<u>Marv</u>	<u>Joy</u>	<u>Pizzella</u>	

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
		<u>Jameson</u>			<u>October 1945</u> Est <input type="checkbox"/>	<u>February 2005</u> Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
University of South Carolina	University	N/A <input type="checkbox"/> Est <input type="checkbox"/>	Present 12/75 <input type="checkbox"/> Est <input type="checkbox"/>	B.S. Business Administration	12/75
		Est <input type="checkbox"/>	Present <input type="checkbox"/> Est <input type="checkbox"/>		

## 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Federal Employment	Federal Labor Relations Authority	Member	Washington, DC	Nov, 2013	"present"
Self-Employed	Patrick Pizzella, LLC	Principal	Alexandria, VA	Feb. 2002	August 2013

<u>Federal Employment</u>	<u>U.S. Department of Labor</u>	<u>Assistant Secretary for Administration &amp; Management</u>	<u>Washington, DC</u>	<u>Mar. 9, 2001</u>	<u>Jan. 28, 2002</u>
<u>Federal Employment</u>	<u>U.S. Department of Labor</u>	<u>Senior Advisor to the Secretary</u>	<u>Washington, DC</u>	<u>March 26, 2001</u>	<u>Mar. 8, 2001</u>
<u>Federal Employment</u>	<u>U.S. Office of Personnel Management</u>	<u>Chief of Staff</u>	<u>Washington, DC</u>	<u>Jan. 22, 2001</u>	<u>March 25, 2001</u>
<u>Volunteer</u>	<u>Bush-Cheney Presidential Transition</u>	<u>Policy Coordinator, GSA Team</u>	<u>Washington, DC</u>	<u>Dec. 2000</u>	<u>Jan. 2001</u>
<u>Non-Government Employment</u>	<u>Preston Gates Ellis &amp; Rouvelas Meeds</u>	<u>Government Affairs Counselor</u>	<u>Washington, DC</u>	<u>Jan. 1998</u>	<u>Jan. 2001</u>
<u>Non-Government Employment</u>	<u>Preston Gates Ellis &amp; Rouvelas Meeds</u>	<u>Director of Coalitions</u>	<u>Washington, DC</u>	<u>March 1996</u>	<u>Dec. 1997</u>
<u>Unemployment</u>				<u>July 1992</u>	<u>Feb. 1996</u>
<u>Federal Employment</u>	<u>Federal Housing Finance Board</u>	<u>Director, Office of Administration</u>	<u>Washington, DC</u>	<u>May 1990</u>	<u>June 1992</u>
<u>Unemployment</u>				<u>Oct. 1989</u>	<u>April 1990</u>
<u>Federal Employment</u>	<u>U.S. Environmental Protection Agency</u>	<u>Full-time expert/consultant</u>	<u>Washington, DC</u>	<u>March 24, 1989</u>	<u>Sept. 23, 1987</u>
<u>Federal Employment</u>	<u>U.S. Department of Education</u>	<u>Deputy Under Secretary for Management</u>	<u>Washington, DC</u>	<u>Sept. 1988</u>	<u>March 21, 1989</u>
<u>Federal Employment</u>	<u>U.S. Department of Education</u>	<u>Administrator for Management Services</u>	<u>Washington, DC</u>	<u>Sept. 1986</u>	<u>August 1986</u>
<u>Federal Employment</u>	<u>U.S. Small Business Administration</u>	<u>Director of Intergovernmental &amp; Regional Affairs</u>	<u>Washington, DC</u>	<u>May 1986</u>	<u>Sept. 1986</u>
<u>Federal Employment</u>	<u>U.S. Small Business Administration</u>	<u>Special Assistant to the Associate Deputy Administrator</u>	<u>Washington, DC</u>	<u>July 1985</u>	<u>May 1986</u>
<u>Federal Employment</u>	<u>U.S. General Services Administration</u>	<u>Special Assistant to the</u>	<u>Washington, DC</u>	<u>Nov. 1982</u>	<u>July 1985</u>



		<u>Administrator</u>			
<u>Non-Government Employment</u>	<u>Irish for Governor</u>	<u>Campaign Director</u>	<u>Albuquerque, NM</u>	<u>July 1981</u>	<u>Nov. 1981</u>
<u>Federal Employment</u>	<u>U.S. General Services Administration</u>	<u>Special Assistant to the Administrator</u>	<u>Washington, DC</u>	<u>Nov. 1981</u>	<u>June 1982</u>
<u>Federal Employment</u>	<u>U.S. General Services Administration</u>	<u>Confidential Assistant to the Administrator</u>	<u>Washington, DC</u>	<u>April 1981</u>	<u>Nov. 1981</u>
<u>Volunteer</u>	<u>Reagan Transition</u>	<u>GSA Team</u>	<u>Washington, DC</u>	<u>Jan. 1981</u>	<u>March 1981</u>
<u>Non-Government Employment</u>	<u>Delaware Citizens for Right to Work</u>	<u>Executive Director</u>	<u>Dover, DE</u>	<u>April 1979</u>	<u>Sept. 1980</u>
<u>Non-Government Employment</u>	<u>New Mexico Citizens for Right to Work</u>	<u>Executive Director</u>	<u>Santa Fe, NM</u>	<u>Dec. 1975</u>	<u>Dec. 1980</u>
<u>Non-Government Employment</u>	<u>Burger for U.S. Senate Committee</u>	<u>Youth Coordinator/Special Groups Coordinator</u>	<u>Billings, MT</u>	<u>May 1976</u>	<u>Nov. 1976</u>
<u>Non-Government Employment</u>	<u>Citizens for Reagan</u>	<u>Youth Fieldman</u>	<u>Washington, DC</u>	<u>Jan. 1976</u>	<u>Mar. 1976</u>

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
<u>U.S. Overseas Private Investment Corporation</u>	<u>Board Director (appointed by President George W. Bush)</u>	<u>Jan. 2004</u>	<u>April 2005</u>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>

#### **4. Potential Conflict of Interest**

**(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

In connection with the 2013 nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

**(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.**

Over the years, I have attended a variety of seminars and meetings hosted by public policy and educational organizations on issues such as healthcare reform, employee free-choice act, financial regulatory reform, and religious liberty where the possible impact of pending legislation or enacted law was debated and/or analyzed and information by subject matter experts was shared. My purpose was to provide my clients with timely and authoritative information and to be able to discuss current issues with potential clients.

#### **5. Honors and Awards**

**List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.**

Top Doers, Dreamers and Drivers award by *Government Technology* (GT) magazine and Center for Digital Government (March 2005)

Outstanding Leadership Award in Support of Federal Government Management Excellence from President's Council on Management Improvement (September 1988)

OPM Director Constance Homer appointed to OPM Senior Executive Service Advisory Board (March 1987)

America's Top Forty Performers in Public Service -- 40 years of age and younger—by Management Magazine a publication of the U.S. Office of Personnel Management (March 1987)

GSA Administrator's Public Service Award (February 1984)

## 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
President's Council on Management Improvement (PCMI) (former)	1987-1989	Member
Federal Administrative Managers Association (former)	1986-1988	Member
Reagan Deputy Assistant Secretaries organization (former)	1987-1989	President
Army-Navy Country Club. Arlington, VA	2005-2007	Member
Pinehurst Country Club, Pinehurst, NC	2012-present	Member

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### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

None.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Friends of John Boehner	\$250	2015
Friends of John Boehner	\$250	2015
Mitch McConnell Senate Committee	\$250	2015
The President's Club (RNC)	\$250	2014
Barbara Comstock for Congress	\$500	2014
Friends of Scott Walker	\$250	2014
Mitch McConnell Senate Committee 2014	\$2600	2014
Ed Gillespie for Senate	\$1000	2014
The President's Club (RNC)	\$250	2014
Friends of Scott Walker	\$250	2014
McConnell Senate Committee 2014	\$500	2014
Ed Gillespie for Senate	\$1000	2014
Adam Laxalt for Attorney General (Nevada)	\$500	2014
Americans for Murray	\$250	2012
George Allen for U.S. Senate	\$500	2012
Romney for President	\$2500	2012
Tim Scott for Congress	\$250	2012

Romney for President	\$2500	2012
Wilson for Senate	\$1000	2012
Club for Growth Action	\$250	2012
The Freedom Project	\$1000	2012
Friends of Scott Walker	\$250	2012
Madison PAC for Constitutional Limited Government	\$1000	2012
Gary Glenn for U.S. Senate	\$500	2011
Republican National Committee	\$250	2011
The President's Club (RNC)	\$250	2011
Madison PAC for Constitutional Limited Government	\$1000	2011
Friends of John Boehner	\$250	2011
Ted Cruz for Senate	\$500	2011
Friends of Scott Walker	\$250	2011
Republican National Committee	\$250	2011
The President's Club (RNC)	\$250	2011
Republican National Committee	\$250	2011
Club for Growth	\$250	2011

The President's Club (RNC)	\$250	2011
Senate Conservatives Fund	\$250	2011
Marco Rubio for Senate	\$200	2010
Americans for Murray	\$250	2010
Republican Party of Virginia	\$250	2010
Club for Growth Action	\$250	2010
Lollar for Congress	\$250	2010
Findley for Iowa (AG)	\$250	2010
Senate Conservatives Fund	\$250	2010
Findley for Iowa (AG)	\$250	2010

#### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

I have done my best to identify titles, publishers and dates of books, articles, reports or other published materials, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Ruling on IG Investigations is a Victory for Good Government	Government Executive	September 29, 2014



How To Cut The Budget, For Real	Washington Examiner.com	September 1, 2011
'Card Check'--A Time to Reflect, But Not Rest	The American Spectator	April 7, 2011
It's Still Ronald Reagan's World	WashingtonExaminer.com	February 5, 2011
GovBenefits.gov: E-government vision realized	GCN.com	February 11, 2009
Commentary: Staying Power: Continuity led to successes at Labor	Federal Times	February 1, 2009
Good Management, Good Policy	American Society for Public Administration, PA Times	December 2008
DOL CIO Talks Federal E-Government	www.Govtech.com	December 29, 2008
ADVICE & DISSENT: A Beneficial Union – Better Technology Combined with Open Labor Relations Can Cut the Cost of Official Time	Government Executive Magazine	October 2008
THE HR EXECUTIVE'S VIEWPOINT: Employees Aid One Another – Leave Bank Programs Benefit Labor Employees in Need	Federal Times	August 18, 2008

PROVIDING THE LATEST WORKERS' COMPENSATION NEWS AND TRENDS MONTHLY: Controlling Federal Workers' Comp Costs: A Case Study	Workers' Compensation Educational Conference eNewsletter	May 5, 2008
THE HR EXECUTIVE'S VIEWPOINT: Bringing New Skills to Labor – MBA Fellows Program Bolsters Work Force	Federal Times	July 30, 2007
THE HR EXECUTIVE'S VIEWPOINT: Managing Leave – Monitoring, Counseling Reduce AWOL at Labor	Federal Times	April 23, 2007
TENDING TO E-GOV: How Labor Got to Green on the PMA	FedTech magazine	November 2005, Vol. 2, Number 4
Labor's Successes Prove Value of Political Appointees	Federal Times	November 28, 2005
VIEWPOINT: Shedding Light – Annual Reports Must Include the Bad with the Good to be Effective	Government Executive Magazine	October 1, 2005
Pizzella: Labor Models Getting 'Green'	Federal Computer Week	December 13, 2004

THE HR EXECUTIVE'S VIEWPOINT: Cutting Costs on Workers' Comp – Labor Reduces Injuries, Illnesses, Returns Employees to Work	Federal Times	October 11, 2004
THE HR EXECUTIVE'S VIEWPOINT: Top Score for Human Capital – Planning, Coordination Brought Labor to Green	Federal Times	June 7, 2004
COMMENTARY: Senior Executive Pay: Raise, However Small, is Critical Now	Federal Times	January 19, 2004
SPOTLIGHT: Making the Best Use of Government's Best Resource	Federal Times	November 24, 2003
The CIO VIEWPOINT: The Digital Department: Labor Creates a Focused E- Government Plan	Federal Times	April 21, 2003

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
NOMINATIONS OF HON. CAROL W. POPE., HON. ERNEST E. DUBESTER,	HEARING before the COMMITTEE ON HOMELAND	SEPTEMBER 25, 2013

AND PATRICK PIZZELLA	SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE	
REDUCING THE PAPERWORK BURDEN ON THE PUBLIC: ARE AGENCIES DOING ALL THEY CAN?	One Hundred Thirteenth Congress HEARING before the SUBCOMMITTEE ON REGULATORY AFFAIRS of the COMMITTEE ON GOVERNMENT REFORM HOUSE OF REPRESENTATIVES	JUNE 14, 2005
	Serial No. 109-42  Available via the World Wide Web: <a href="http://www.gpoaccess.gov/congress/index.html">http://www.gpoaccess.gov/congress/ index.html</a>  <a href="http://www.house.gov/reform">http://www.house.gov/reform</a>	

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

None.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>

#### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)

Yes.

- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

No.

- Have you been charged, convicted, or sentenced of a crime in any court?

No.

- Have you been or are you currently on probation or parole?

No.

- Are you currently on trial or awaiting a trial on criminal charges?

No.

- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

No.

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

A) Date of offense:

- a. Is this an estimate (Yes/No): April 11, 2014.

B) Description of the specific nature of the offense:

Reckless driving excess 20 mph over posted (81)

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

Petersburg, VA, 23803, USA

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

- 1) Name of the law enforcement agency that arrested/cited/summoned you:  
Department of State Police (summons)
  - 2) Location of the law enforcement agency (city, county, state, zip code, country):  
Petersburg, VA 23803, USA
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country): General District Court, Petersburg, VA 23803, USA
  - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:  
  
Original Charge: Reckless driving excess 20 mph over posted (81).  
Plead guilty to lesser offense: traffic infraction, improper driving.
  - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: Yes / No
- H) Provide a description of the sentence:
- I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No
- J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:  
N/A
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:  
N/A
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No
- N) Provide explanation:

#### **10. Civil Litigation and Administrative or Legislative Proceedings**

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

Yes.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
August 1998	Fairfax County General District Court	Patrick Pizzella & Fox Seko Construction	Payment/billing dispute	Judgement for Fox- Seko on Feb. 5, 1999 for \$1,762.93

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

#### 11. Breach of Professional Ethics



(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>
FLRA Inspector General	June, 2015	Allegation of improper use of Government resources	IG advised, no "violation of standards of conduct for employees of the Executive Branch, nor was it otherwise improper."
Office of Special Counsel (OSC)	1993 OSC file No. MA-92-1647	Allegation of a prohibited personnel practice brought by an employee of the Federal Housing Finance Board (FHFB) who worked for me	OSC Associate Special Counsel for Prosecution stated in July 8, 1993 letter to FHFB Chairman that file was closed due to insufficient evidence
FHFB Inspector General	April, 1992 Grievance Procedures/Reprisal allegation	Allegation that a performance rating review lacked impartiality	IG advised compliant to avail himself of administrative remedies

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

## 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED**

**13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

**14. Outside Positions**

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)
Reagan Alumni Association	904 Vicar Lane, Alexandria, VA 22302	Non-Profit	Executive Committee, Board of Directors	10/90	10/15

#### 15. Agreements or Arrangements

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)
---	----------------	-----------------------------

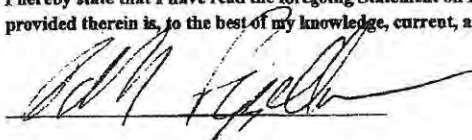

**16. Additional Financial Data**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

## SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

A handwritten signature in black ink, appearing to read "Adam L. Givens", is written over a horizontal line.

This 2<sup>nd</sup> day of Dec, 2015

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



DEC - 1 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Patrick Pizzella, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures

**REDACTED**

November 30, 2015

Fred B. Jacob  
Solicitor  
Federal Labor Relations Authority  
1400 K Street, NW Suite 300  
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

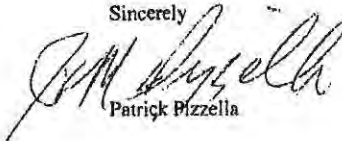
As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I am the sole proprietor of Patrick Pizzella, LLC, a management consulting firm. This firm ceased engaging in business in 2013 and remains inactive. During my appointment to the position of Member of the Federal Labor Relations Authority, Patrick Pizzella, LLC will remain dormant and will not advertise. I will not perform any services for the firm, except that I will comply with any requirements involving legal filings, taxes and fees that are necessary to maintain the firm while it is in an inactive status. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Patrick Pizzella, LLC, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13490) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Sincerely



Patrick Pizzella



**Post-Hearing Questions for the Record  
Submitted to Patrick Pizzella  
From Senator Claire McCaskill**

**Nomination Hearing to Consider  
The Honorable Patrick Pizzella to be a Member, Federal Labor Relations Authority, and  
Julie H. Becker, Steven N. Berk, and Elizabeth C. Wingo to be Associate Judges, Superior  
Court of the District of Columbia  
March 2, 2016**

Pursuant to 41 U.S.C. 1710 and 10 U.S.C. 2461, agencies are precluded from converting, in whole or in part, functions performed by federal employees to contract performance absent public-private competition. I am concerned that this practice, also known as "direct conversion," is occurring on a regular basis without the necessary cost comparison analysis.

Q. Do you believe that the laws, guidance and regulations are sufficiently clear on direct conversion?

Based on my experience as the Assistant Secretary of Labor for Administration and Management at the U.S. Department of Labor from 2001 to 2009, wherein I served as the Department's "competitive sourcing official," I believe that the rules concerning "direct conversion" as they are set forth in 41 U.S.C. § 1710 and 10 U.S.C. § 2461 are sufficiently clear.

Q. Do you believe that there is sufficient awareness among managers and contracting officers to effectively enforce the prohibition against direct conversions?

Based on my experience as the Department of Labor's "competitive sourcing official" (detailed in the preceding answer), the federal managers and contracting officers from within the Department of Labor and from other federal agencies with whom I engaged on these matters, I believe that federal managers and contracting officers are sufficiently aware of their responsibilities and the prohibitions and restrictions enumerated in 41 U.S.C. § 1710 and 10 U.S.C. § 2461.

Q. Does the FLRA have the authority to adjudicate disputes over direct conversions, and, if not, should it?

As a general rule, the Authority does not have the authority to adjudicate disputes concerning direct conversions. The United States Court of Appeals for the District of Columbia Circuit has determined that specific wording in Circular A-76 – "[n]oncompliance with [A-76] shall not be interpreted to create a substantive or procedural basis to challenge agency action or inaction" – "preclude[s] bargaining over a union proposal to subject alleged violations of A-76 to the negotiated grievance procedure." *U.S. Dep't of the Treasury, IRS v. FLRA*, 996 F.2d 1246, 1250 (D.C. Cir. 1993).

Nonetheless, in several instances, federal unions have raised through negotiated grievance procedures and the negotiability procedures of the Federal Service Labor-Management Relations Statute various matters concerning agency determinations on contracting out.

For example, in a 2006 grievance and arbitration, a federal union argued that the agency did not comply with “applicable laws” – e.g. 10 U.S.C. § 2461 and Circular A-76 – when the agency made its contracting-out decision. In resolving exceptions filed by the union, the Authority determined that “even assuming that the legal and regulatory provisions relied on by the [u]nion constitute enforceable ‘applicable laws’ . . . the [u]nion failed to demonstrate that the [a]gency violated those laws and regulations.” *NFFE Local 1442 and U.S. Dep’t of the Army, Letterkenny Army Depot, Chambersburg, Pa.*, 61 FLRA 857, 858-59 (2006).

In a 2011 negotiability dispute (which predated my appointment as a Member of the Authority in 2013), the union asked to bargain over a proposal which would give to bargaining-unit employees, who would be “potentially adversely affected by a decision to contract out work,” a “right of first refusal.” *NTEU and U.S. Dep’t of the Treasury, Bureau of the Public Debt, Washington, D.C.*, 65 FLRA 509, 518 (2011). The Authority determined, in that case, that neither “the plain wording of A-76[,] [*IRS v. FLRA*], [nor] Authority decisions support a conclusion that the parties are precluded from agreeing to, and enforcing in arbitration, contract provisions that independently impose on agencies obligations that are the same as, or similar to, the requirements set forth in A-76.” *Id.* at 519.

Thank you.

S. Hrg. 115–420

# NOMINATIONS OF HON. ERNEST W. DUBESTER, HON. COLLEEN D. KIKO, AND JAMES T. ABBOTT

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## HEARING

BEFORE THE

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

---

NOMINATIONS OF THE HONORABLE ERNEST W. DUBESTER,  
HONORABLE COLLEEN D. KIKO, AND JAMES T. ABBOTT TO BE  
MEMBERS, FEDERAL LABOR RELATIONS AUTHORITY

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NOVEMBER 7, 2017

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# CONTENTS

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Opening statements:	Page
Senator Lankford .....	1
Senator Heitkamp .....	2
Senator McCaskill .....	12
Senator Hassan .....	13
Senator Harris .....	17
Prepared statement:	
Senator Heitkamp .....	23

## WITNESSES

TUESDAY, NOVEMBER 7, 2017

Hon. Jim Sensenbrenner, a Representative in Congress from the State of Wisconsin .....	3
Hon. Colleen D. Kiko to be a Member, Federal Labor Relations Authority	
Testimony .....	4
Prepared statement .....	24
Letter from the Office of Government Ethics .....	26
Biographical and financial information .....	29
Responses to pre-hearing questions .....	50
Responses to post-hearing questions .....	69
Hon. Ernest W. DuBester to be a Member, Federal Labor Relations Authority	
Testimony .....	6
Prepared statement .....	72
Letter from the Office of Government Ethics .....	74
Biographical and financial information .....	77
Responses to pre-hearing questions .....	103
Responses to post-hearing questions .....	123
James T. Abbott to be a Member, Federal Labor Relations Authority	
Testimony .....	7
Prepared statement .....	126
Letter from the Office of Government Ethics .....	128
Biographical and financial information .....	131
Responses to pre-hearing questions .....	154
Responses to post-hearing questions .....	173
Letter of support .....	177



**NOMINATIONS OF  
HONORABLE ERNEST W. DUBESTER,  
HONORABLE COLLEEN D. KIKO, AND  
JAMES T. ABBOTT TO BE MEMBERS,  
FEDERAL LABOR RELATIONS AUTHORITY**

**TUESDAY, NOVEMBER 7, 2017**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:29 a.m., in room SD-342, Dirksen Senate Office Building, Hon. James Lankford, presiding.

Present: Senators Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris.

**OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Good morning, everyone. Today we will consider of Colleen Kiko, James Abbott, Ernest DuBester as to be members of the Federal Labor Relations Authority (FLRA). The Committee takes these nominations very seriously, so we are pleased to have three very strong candidates before us. All three nominees are highly experienced in Federal Labor Relations and have largely dedicated their careers to public service in the Federal Government. We thank you for your work.

The Honorable Colleen Duffy Kiko, originally of North Dakota—earned a B.S. from North Dakota State University and her law degree from George Mason School of Law. Ms. Kiko began her career at the Federal Labor Relations Board in 1976 as a supervisory labor relations specialist while it was still a division of the Department of Labor (DOL). She has been associated with FLRA longer than it has been in its current capacity as an independent agency.

After her initial job at FLRA, Ms. Kiko went to law school, then returned to Federal service, working first at the Department of Justice (DOJ), then the House Judiciary Committee. In 2002, Ms. Kiko became a judge in the Department of Labor's Employees' Compensation Appeals Board. Then in 2005, she was appointed by President Bush to serve as General Counsel (GC) at the Federal labor Relations Board, a post she held until 2008 when she returned to the Department of Labor Employees' Compensation Appeals Board.

Ms. Kiko, you began your career at the FLRA as a worker bee, and now you are sitting here before us nominated to be the Chair



of FLRA. I believe you would call that a real Washington, D.C., success story in many ways.

Mr. James Thomas Abbott of Virginia earned his B.A. from Malone University of Canton, Ohio, in 1980 and his J.D. from Temple University in 1983. Mr. Abbott spent almost two decades working as an Army civilian as counsel who focused on labor, personnel, and ethics issues. During this time, he was awarded the Commander's Award for Civilian Service, Department of the Army, in 1996, and in 2002, he was awarded the Meritorious Civilian Service Award from the U.S. Defense Contract Management Agency.

After a career with the Army, Mr. Abbott came to Capitol Hill and served as the Deputy General Counsel in the Congressional Office of Compliance. Since 2007, Mr. Abbott has served as the Chief Counsel to the Chairman of the Federal Labor Relations Authority.

Thank you, by the way, for your service as well.

Finally, the Honorable Ernest William DuBester, who currently serves as the Member of the FLRA. Mr. DuBester, welcome back. Glad to be able to see you again here. Certainly, you are familiar with this process, as the third time you have been nominated to be a Member of the FLRA.

Mr. DuBester received his B.A. from Boston College in 1972, his law degree from Catholic University in 1975, and his master of law from Georgetown in 1980. Mr. DuBester has 40 years of experience in labor-management relations. He began his career at the National Labor Relations Board. He has been a counsel to the AFL-CIO and a professor at both Catholic University School of Law and the George Mason School of Law where he was named the Distinguished Professor of Law and Chair of the Dispute Resolution Program. Mr. DuBester has also been a mediator and Chairman of the National Mediation Board. Mr. DuBester was first appointed to be a Member of the FLRA by President Obama in 2009 and re-appointed in 2013.

Clearly, we have three very qualified nominees before us who are all experienced and have extensive previous experience at FLRA.

Committee staff reached out to all these nominees and colleagues and affiliates who all spoke very highly of them. Committee staff also had the opportunity to interview all three nominees on an array of Federal labor relations issues. They thoughtfully and competently answered each question to the staff's satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated. I look forward to speaking with you a bit more on your experience and accomplishments, how you intend to be able to bring those to be fair and impartial in your leadership in the FLRA.

I now recognize Ranking Member Heitkamp for her opening statement.

#### **OPENING STATEMENT BY SENATOR HEITKAMP**

Senator HEITKAMP. Thank you, Chairman Lankford. I do not want to give an extensive opening statement. He took most of the material already, anyway.

Senator LANKFORD. That is what Chairmen do.

Senator HEITKAMP. Yes. Mr. Chairman did.

Senator LANKFORD. That is what Chairmen do.

Senator HEITKAMP. Oh, that is what Chairmen do, I guess.

But unlike the Chairman, I would like to welcome our Congressman from Wisconsin, Congressman Sensenbrenner. Thank you so much for coming, and thank you so much for being involved to the point where you will introduce one of our witnesses today. It is an honor, and it is also an honor to welcome a fellow North Dakotan to the table.

That is how you say it, "North Dakotan."

Senator LANKFORD. That is how you say it.

Senator HEITKAMP. Yes.

But I will acknowledge that your father also had a very distinguished career in Federal service, and so you come from good stock and hardy stock since she comes from the very far reaches of our Northern Border, Pembina. I really appreciate all of your willingness to serve and look forward to your testimony.

Thank you.

Senator LANKFORD. Thank you.

It is the custom of this Committee to swear in all witnesses that appear before us. If you do not mind, if the three nominees would please stand. Raise your right hand. Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Thank you. You may be seated.

Let the record reflect all three answered in the affirmative.

We are going to recognize our witnesses for their opening statements. We will begin with Ms. Kiko, who has a special guest introducing her. Is that correct?

Jim Sensenbrenner, who is a friend and who has served faithfully in the U.S. Congress for a very long time, it is very good to be able to see you, to be able to do a formal introduction there.

I recognize Congressman Sensenbrenner.

**TESTIMONY OF THE HONORABLE JIM SENSENBRENNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. SENSENBRENNER. Thank you very much, Chairman Lankford, Ranking Member Heitkamp, and Members of the Committee.

I want to thank you for the opportunity to come before this Committee and endorse the qualifications of Ms. Colleen Duffy Kiko for the position of Chairman of the FLRA. She is a great friend and is superbly qualified for this position through her years of experience as well as her personal character.

I have known Colleen Kiko for more than 35 years. In that time, I have seen her commitment to public service, dedication to the rule of law, and the devotion to her family.

Colleen began her career as a newly hired attorney at the Department of Justice, where she worked in the Office of Legal Policy in the Civil Rights Division. She spent her time investigating and prosecuting housing and credit discrimination complaints. She also served as a detailee to the Eastern District of Virginia in prosecuting criminal cases.

I hired Colleen as my committee counsel, where she worked on the successful impeachment of Judge Walter Nixon for which I

served as one of the House Managers during the Senate trial. She served as the principal negotiator for both me and Judiciary Republicans on the Americans with Disability Act, one of the hallmark Civil Rights laws of our Nation. As my counsel, Colleen provided me with sound advice, and I trusted her judgment, discretion, and intuition.

This is not the first time Colleen and I have sat in these seats. I introduced Colleen before this Committee when she was previously confirmed as General Counsel of the FLRA. During her tenure, she demonstrated her excellent legal skills, independent judgment, and commitment to the rule of law. With open lines of communication, she helped revamp the FLRA training programs and also prosecuted unfair labor practices while serving as a respectable negotiator.

Finally, she serves as a judge on the Employees' Compensation Appeals Board. During her time there, Ms. Kiko worked with her colleagues on the board to make appropriate determinations with respect to Federal employees injured during the course of their employment. Each of her experiences has helped prepare her as a nominee as chairman of the FLRA. She undoubtedly possesses the knowledge, temperament, and commitment required for this position.

I am fortunate to be able to present such a qualified public servant with such a distinguished background who deserves swift confirmation by this Committee and the Senate as a whole, and I appreciate your courtesy.

Senator LANKFORD. Congressman Sensenbrenner, thank you again for all your service over the years, and thank you for being here as well.

For each of you, as we begin and as you begin your opening statement, I would ask you to also introduce family, guests, and friends that are here. We understand full well that this is not only bringing you into the Federal service in this role, but you bring friends and family in your community with you as well. Please recognize those folks as you go.

Ms. Kiko, you will go first.

**TESTIMONY OF THE HONORABLE COLLEEN DUFFY KIKO<sup>1</sup> TO  
BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Ms. KIKO. Thank you, Mr. Chairman, Ranking Member Senator Heitkamp, Members of the Committee. I would like to thank you and your staff for all the kindnesses that have been shown to me as I have prepared for this hearing.

I also deeply appreciate Congressman Sensenbrenner for taking the time away from his very booked schedule to introduce me today. I respect his dedicated service to the U.S. House of Representatives and am deeply honored to call him a friend.

I am here today with some of my family members who represent the others. Our son Philip Kiko Jr. and his wife, Molly, who are expecting our fifth grandchild; our son Michael Kiko; my sister, Tama; and of course, my best friend and husband, who currently serves as the Chief Administrative Officer of the House of Rep-

<sup>1</sup> The prepared statement of Ms. Kiko appears in the Appendix on page 24.

representatives, Phil Kiko. I appreciate their love and support and the love and support from those who have not been able to be here today.

I would also like to thank Member DuBester and Nominee James Abbott for the welcoming attitude that they have shown me during this confirmation process. I look forward to working with both of them as we journey forward, should I be confirmed.

I would also like to personally thank Pat Pizzella, Acting Chairman; Fred Jacob, Solicitor; and Gina Grippando, Counsel for Regulatory and Public Affairs at the FLRA, for helping me get to this point in the confirmation process.

It is indeed an honor to have been nominated to serve as a Member of the Federal Labor Relations Authority and, if confirmed, to be designated as Chairman of that agency.

My first job was a GS-3 clerk typist in the Department of Treasury, Office of Personnel. My father, Lawrence Duffy, proudly spent over 49 years, almost a half a century, in the Federal service before he retired. He was a railway mail carrier for the U.S. Postal Service (USPS) and later became a customs inspector at the North Dakota-Canadian border. He always considered Federal service to be an honorable profession. His work ethic, extreme pride in his job, and impeccable character were examples for me, and I hope I live up to his standards.

My mother, Angie Duffy, was also an example to me as someone who always wanted to learn new things, have different and varied experiences—she began oil painting in her 50s—and to broaden her horizons. In her quiet, loving way, she pushed all four of her children to be strong and independent.

Congressman Sensenbrenner and, of course, Chairman Lankford have spoken about my background, but I would like to point out a few areas of my career that I believe affirmatively qualify me for this position.

Before the agency became an agency, I was working in a part of the Department of Labor that was transferred into this new agency in 1979. I was there when it opened its doors, and I was there celebrating with a cake on its first birthday. It was a very important part of shaping me as a professional employee, and it was and continues to be a very great place to work.

I have worked in almost every component of the agency. In the regional office, I investigated unfair labor practices, chaired hearings on representational disputes, monitored Federal union elections, and conducted training for both agencies and unions. At the Authority level, I reviewed representational disputes, administrative law judge (ALJ) decisions, and drafted decisions for Authority members. My last position was a supervisory labor relations specialist handling procedural motions before I decided to attend law school.

I graduated from George Mason University, now Antonin Scalia Law School, in 1986, and just 19 years later, I would find myself back at the FLRA serving as the Senate-confirmed position of General Counsel in 2005. And now, another 12 years later, I have again been nominated to serve as a Member of the agency. My career keeps taking me back to my roots.

In my current position as a judge of the Employees' Compensation Appeals Board (ECAB), where I have served for 12 years and rendered over 10,000 decisions, I have polished the attributes necessary to render decisions in an impartial manner, such as reviewing the facts presented, considering arguments provided by the parties, and applying the existing law to the particular facts of the case.

I also have experience in management. While serving as General Counsel, I was responsible for managing the seven regions of the FLRA, which would include budgeting and performance management, leading change, policy development, staff and customer training, in addition to the mission requirements of the office.

Further, as part of the management team under a former Chairman of ECAB, we managed a staff at that time of approximately 50 employees, which included updating performance standards, initiating programs to increase the quality, quantity, and timeliness of the work, and developed an updated case tracking system, to name a few. I believe this experience has prepared me while to serve as a leader in the FLRA.

I believe my 29 years of service in the Federal Government should serve me well in this agency, where we are commissioned to provide leadership and establish policy and guidance relating to matters under the Federal Service Labor-Management Relations Statute, and to effectively administer the nine specific mandates of this statute.

I greatly appreciate the opportunity to appear before you and am willing to answer any questions.

Senator LANKFORD. Thank you. Mr. DuBester.

**TESTIMONY OF THE HONORABLE ERNEST W. DUBESTER<sup>1</sup> TO  
BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. DUBESTER. Thank you, Chairman Lankford, Senator Heitkamp, Senator McCaskill, and Senator Peters. I greatly appreciate the opportunity to come before this Committee again for its consideration of my nomination to be a Member of the Federal Labor Relations Authority.

I also would like to thank the Committee's staff for their hard work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would like to introduce my wife, Karen Kremer, who is sitting in the first row behind me. In a few months, we will celebrate our 30th Anniversary. When I first met Karen, she was working for Senator Howell Heflin on the Senate Judiciary Committee. So the Senate will always hold a special, personal meaning in my life.

I also want to recognize the presence here this morning of quite a few people from the FLRA, including my personal staff. These dedicated public servants, as well as many FLRA staff who are not present, are the key to the FLRA's many successes in recent years.

I am pleased to appear here today with Colleen and James who, hopefully, if confirmed by the Senate, will be my colleagues.

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<sup>1</sup> The prepared statement of Mr. DuBester appears in the Appendix on page 72.

Mr. Chairman, as you mentioned, this is the fifth time I have had the privilege to come before the Senate after being nominated by a President for a position of public trust. During the 1990s, I was nominated twice to serve as Chairman and Member the National Mediation Board, another independent agency. This is the third time that I have had the honor to come before this Committee after being re-nominated by President Trump to continue serving as a Member of the FLRA. I have now served as a Member for over 8 years.

The last 8 years reflect many accomplishments at the FLRA. Exercising our statutory responsibility to provide leadership in labor-management relations, we have engaged in a variety of outreach, facilitation, and training activities, which include the delivery of a variety of training sessions to tens of thousands of labor and management representatives in the Federal community, and during this period, we have also made timely issuance of decisions a major priority.

In addition, with an agency focus on human capital initiatives, such as training and development, performance management, and work-life balance, employee morale has improved dramatically. For the last 2 years, we have ranked in the top five overall in the Partnership for Public Service (PPS) rankings for “Best Places to Work in the Federal Government,” and in 2015 and 2016, we received No. 1 rankings in the specific categories of teamwork and effective leadership.

Mr. Chairman, as you mentioned, I am not a kid anymore, with over 40 years of experience in labor-management relations, working as a public servant, as an advocate, a mediator, an arbitrator, and an academic, over 25 of those years are in the Federal sector. I remain strongly committed to the FLRA’s mission and to the importance of stable, constructive labor-management relations in the Federal sector, and if re-confirmed, I will continue to work tirelessly so that the FLRA is recognized by the Federal sector’s labor-management community as one of the most effective and efficient agencies in the Federal Government.

Again, I appreciate the opportunity to appear before you, and I am pleased to answer any questions that you have.

Senator LANKFORD. Thank you, Mr. DuBester. Mr. Abbott.

**TESTIMONY OF JAMES T. ABBOTT<sup>1</sup> TO BE A MEMBER,  
FEDERAL LABOR RELATIONS AUTHORITY**

Mr. ABBOTT. Good morning. Mr. Chairman, Ranking Member McCaskill, Senator Heitkamp, and Members of the Committee, I want to thank you for conducting this hearing at a time when so many other pressing issues are competing for your time and attention. I would also like to thank your Committee staff for the outstanding support which they provided to me as I prepared for this hearing. I appreciate your warm reception.

I am honored and humbled to have been nominated by President Trump to become a Member of the Federal Labor Relations Authority. If confirmed, it will be, for me, the highest privilege of my professional life.

<sup>1</sup> The prepared statement of Mr. Abbott appears in the Appendix on page 126.



With me today are my husband of 21 years, Daniel Gri, and our sons, Caleb and Alfred, who are the pride of my life. That Daniel is able to join me today is nothing short of a miracle. Just 4 months ago, he was on life support following a serious automobile accident. This is his first public outing since that accident and is testament to his indomitable spirit. I rely upon that spirit every day.

My sister and brother-in-law, Linda and Don Walde, and my niece, Heather Legore, as well as my cousin, Gayle Abbott, and her daughter, Elizabeth, are here as well.

My professional career has spanned 34 years, 33 devoted to public service. I learned about service and hard work from my parents and grandparents. Grandfather Whipple worked as a farmhand in Kansas in the 1910s until he saved enough money to buy his own land. His farm survived the Great Depression through his hard work and determination.

Grandfather Abbott singlehandedly operated a grist mill in Painesville, Ohio. He hired helpers only when, in his words, "I could pay a fair wage for a fair day of work."

My mother, a nurse, and my father, a minister, served as missionaries in Congo where they built churches to serve not just as centers of worship but also to serve as local medical clinics and schools.

But for me, the ultimate example of public service was my brother, Denis Abbott, who gave his life in service to his country in Pleiku, Vietnam.

Before joining the FLRA as Chief Counsel, I sat at dozens of bargaining tables negotiating local and nationwide collective-bargaining agreements. Through those experiences, I learned firsthand how differences can be constructively resolved but also how they can end up in dispute. I have witnessed the dynamics of labor relations at work between first-line supervisors and hardworking union stewards in a variety of settings, such as work floors where artillery equipment and attack helicopters are serviced and repaired.

I have met with employees and union stewards at sites where the working conditions were difficult, even dangerous. I have had to tell first-line supervisors and generals that they were wrong and what they must do to comply with the statute. Therefore, I understand why the protections of our statute are so important to Federal employees.

I believe that we can all agree that the Federal workforce in 2017 looks very different than it did in 1978 when our statute was enacted. In this changed environment, the Authority must clearly define what matters affect working conditions and those which constitute negotiable conditions of employment. To that end, I pledge that if I am confirmed, I will adjudicate all matters fairly and impartially, enforce the statute as it is written, but above all respect judicial precedent.

I look forward to working with my colleagues to ensure that the FLRA remains relevant and to drafting decisions that can be understood by laypersons as well as attorneys.

It is my privilege to appear before you today, and as my colleagues, I am happy to answer any questions.

Thank you.

Senator LANKFORD. Thank you, Mr. Abbott.



I am going to ask three mandatory questions of all three of you, and then I am going to defer to Ranking Member Heitkamp. She has another hearing that is happening simultaneous to this. I want to make sure that we get to her questions immediately.

The three questions I am going to ask of all three of you—and I will need a verbal response—and I will just kind of come down the road, starting with Mr. DuBester, Ms. Kiko, and Mr. Abbott.

Is there anything that you are aware of in your background that might present a conflict of interest with the duties of your office to which you have been nominated? Mr. Dubester.

Mr. DUBESTER. No.

Senator LANKFORD. Ms. Kiko.

Ms. KIKO. No, sir.

Senator LANKFORD. Mr. Abbott.

Mr. ABBOTT. No, sir.

Senator LANKFORD. Second question. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibility of the office of which you have been nominated? Mr. DuBester.

Mr. DUBESTER. No, Mr. Chairman.

Senator LANKFORD. Ms. Kiko.

Ms. KIKO. No, sir.

Senator LANKFORD. Mr. Abbott.

Mr. ABBOTT. No, sir.

Senator LANKFORD. Third question. Do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed? Mr. DuBester.

Mr. DUBESTER. I do.

Senator LANKFORD. Ms. Kiko.

Ms. KIKO. I do.

Senator LANKFORD. Mr. Abbott.

Mr. ABBOTT. Yes, I will.

Senator LANKFORD. I recognize Ranking Member Heitkamp.

Senator HEITKAMP. Thank you so much, Mr. Chairman.

These are incredible years of service to this organization and to this agency sitting before us, and I cannot imagine a panel more qualified to do this work. But you also have the wisdom of time. You have had a chance to see this agency grow and change.

The question that I have is, What do you believe today is a challenge that will come to you that you did not anticipate all those very many years that you have been serving and been associated?

We will start with Mr. DuBester.

Mr. DUBESTER. Well, the world, of course, is always rapidly changing, and that certainly applies to the field of labor-management relations.

I think that probably one of the changes that is a fairly recent change that will remain a challenge in the years ahead is the approach our agency brings to the resolution of disputes. On the one hand, of course, we have a very direct statutory responsibility for resolving particular cases, and that remains fairly constant over time. But we also have responsibility under our statute that was referred to earlier to provide leadership and guidance to help agen-

cies throughout the Federal Government develop successful labor-management relations programs.

I think among other things, the kind of outreach that we have done over the last few years in terms of training them and developing their skills and abilities to improve their own relationships, so agency representatives and labor representatives can learn how to resolve more of their disputes, even voluntarily, so that a lot of the disputes that come to us now will not necessarily come to us anymore. Day in and day out throughout the Federal Government, it is those agency reps and those labor reps who have to work together, who have to address the problems that are unique to their agency. By giving them the problem-solving skills, learning how to treat with certain situations through the use of alternative dispute resolution services, I think is and has been a recent challenge but will remain a challenge in the future, in my view.

Senator HEITKAMP. Thank you. Ms. Kiko.

Ms. KIKO. Thank you, Senator Heitkamp.

I would say that the immediate challenge is, not disagreeing at all with Mr. DuBester, I would certainly agree with those, but I would also say that cybersecurity is an issue that is facing all the agencies right now. I would take that as a very serious concern for every agency.

But also, I believe that the backlog that is sitting there at the moment, we would like to get those moved.

Senator HEITKAMP. How does that compare to your recollection back when you were previously with the agency?

Ms. KIKO. When I was with the General Counsel, there was a backlog waiting for me when I got there, and I am sure there is a backlog waiting for a full complement of the Authority when we get there, so—

Senator HEITKAMP. Is it worse today than it was 10 years ago?

Ms. KIKO. Right now, there is a General Counsel. When I came in as the General Counsel, there had not been a General Counsel for several months, and so there had been an inability to file any kind of unfair labor practice complaints or issue decisions on appeals. Those decisions were waiting for me to be issued.

At the current moment, we have a General Counsel. So from that perspective, I do not think there is anything waiting there to be decided.

On the Authority side, I do not have anything to compare it to since I was not on the Authority side.

Senator HEITKAMP. We always say justice delayed is justice denied, and I agree that that we need to make decisions in a timely fashion. Mr. Abbott.

Mr. ABBOTT. Well, Senator, just as when Congress enacted our statute in 1978 and the original Members of the Authority, when the statute was created, just as they could not have anticipated a workforce that had computers at every desk, the availability of email, and the ability of enemies of the country to have access to our security and cyber systems and to wipe out swaths of information in a moment, I think we cannot, sitting here, anticipate all of the changes that will be coming during our terms. I believe that requires that the Authority be certain to maintain its relevancy to the labor-management community by looking at our statute and

being clear in our decisions to give a road map to our customers, which is the labor relations community.

Senator HEITKAMP. In response to a question regarding political difficult choices in your policy questionnaire, each of you stated you do not make political choices, which I think is great, but could you describe a time when you made a difficult or unpopular decision or choice that you thought was in the best interest of the country or your agency? Probably just give me one of the most difficult decisions that you have had to make. Mr. DuBester.

Mr. DUBESTER. Senator Heitkamp, I think as I mentioned in my questionnaire, I probably refer back to my service as Chairman of the National Mediation Board. That agency has jurisdiction in the transportation sector over airlines and railroads. Not all, but many of the disputes that arise are high-profile disputes, often with a national impact. Given the nature of that statute, it also allows for the intervention of the White House, if you will, the President, to take certain actions that will have a bearing on the dispute.

It was my responsibility, of course, to make recommendations to the White House, and I had to bring my sense of the situation as well as my experience in labor-management relations to bear and often—sensitivities, if you will, of a political nature. My decisions were not political, but I was serving a White House, and obviously, all of you as public servants and elected officials understand considerations of your constituencies.

I think those were challenging situations, where I often knew they were tough decisions and I had to give the best decision I could.

Senator HEITKAMP. Ms. Kiko.

Ms. KIKO. Well, I have certainly made difficult decisions in my life. Probably the most difficult decision that I ever made was when I chose to stay home and quit my career and stay home with my four children and raise them. I do believe I think that might have been of service to this country, I am hoping. [Laughter.]

Senator HEITKAMP. Thank you. Mr. Abbott.

Mr. ABBOTT. Yes. One of the most difficult decisions that I had to make as a Federal manager was in January of this year when Acting Chairman Pizzella transitioned to our new Acting Chairman. We had to assess the needs of the agency that were the resources that we had.

We had an office, by way of example, that had increased its staffing by 200 percent in a matter of 1 year with the plan and hope that the new program developed would create workload. That workload did not develop, and there was a decrease in caseload. The Acting Chairman and myself, we had to make the difficult choice in recognizing that the Office of General Counsel (OGC) did not have resources, and as difficult as it always is to change priorities such as that, we had to make that difficult decision for the good of the agency and so the labor-management community, would be served in processing unfair labor practices.

Senator HEITKAMP. Thank you so much.

Senator LANKFORD. I would like to recognize the Ranking Member of the full Committee, Claire McCaskill.

# **OPENING STATEMENT OF SENATOR MCCASKILL**

Senator MCCASKILL. Thank you very much.

I just have a simple question for the three of you, and it probably will not take you long to answer, at least I hope not. I would ask each of you to respond to this question. Do you fully support the right of government employees to organize and bargain collectively?

Ms. KIKO. I can answer that absolutely, positively. I am there to provide leadership and establish guidance under the Federal Service Labor-Management Relations Statute and effectively administering all of these mandatory mandates under the statute, and I absolutely would agree with that.

Senator MCCASKILL. Mr. Abbott.

Mr. ABBOTT. I do as well. I believe that our statute serves a very important part of the construct of Title 5 and Title 7 to provide an avenue of recourse for employees who are aggrieved, and I have witnessed and seen myself how constructive positive labor-management relations are.

Yes, I believe that the statute, as written, establishing collective bargaining is a positive force in the Federal Government.

Senator MCCASKILL. You would support it even if the statute were not there. Your support is because you believe in the concept, not because you are following the statute?

Mr. ABBOTT. I believe in the concept and the statute. Yes, ma'am.

Senator MCCASKILL. OK. I know you have to follow the law. I am not asking about whether or not—I am asking whether you agree with the law that that should be something that is allowed in the United States of America for government employees to organize and collectively bargain.

Mr. ABBOTT. Without a doubt.

Senator MCCASKILL. OK.

I probably know your answer, Mr. DuBester.

Mr. DUBESTER. The answer is yes, Senator. I very strongly believe in the institution of collective bargaining. And beyond that, I often say one reason is because I am a great believer in mechanisms that afford the opportunity for interaction and dialogue between employer representatives and their employees through exclusive representatives. I think that is the best way to address problems in any workplace, in any jurisdiction, whether it is the private sector, the public sector, or the Federal sector.

But beyond that, of course, I saw that Ms. Kiko was holding up our statute, and while I know you were not asking for a statutory commitment, but in the very first section of the statute, Findings and Purpose, it talks about collective bargaining and the findings of Congress that it is in the public interest. I believe in the statute and the agency's mission.

Senator MCCASKILL. Thank you.

Thank you, Mr. Chairman.

Senator LANKFORD. Senator Hassan.

### OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you very much, Mr. Chairman, and good morning to you all. Congratulations on your nominations and being here.

I wanted to follow up a little bit. I had a similar question to Senator McCaskill, and I thank you for your answers to that.

I also come from an employment law background. I represented management for years, and I, too, believed that collective bargaining has proved to be not only an excellent mechanism for workers to protect themselves and each other and have the benefit of concerted action, but also it has been a very good tool for communication between labor and management and resolving issues.

Toward that end—and this is for each of you—do you all believe, as I do, that official time can be used to resolve important matters and, in turn, save time and resources?

We will start with you, Mr. Abbott.

Mr. ABBOTT. Official time is defined by our statute, and it provides that reasonable official time is what is agreed to by management and the union together.

I believe that official time is a necessary part of most of the areas that are covered by our statute particularly in the traditional labor relations setting where the management and the union are sitting down at the bargaining table negotiating a contract.

Beyond that, I do believe it is for Congress to make that decision.

Senator HASSAN. I thank you for that answer. I think one of our concerns is that if you believe in collective bargaining, then if you do not have the mechanism of official time, you are really making it very difficult for workers to enjoy the benefit of collective bargaining because they do not have anybody who is in the position to really work with the management side in an effective way. I would ask you to think about that.

Is it Kiko—"Kiko." Yes. Thank you.

Ms. KIKO. Good morning, Senator.

Senator HASSAN. Good morning.

Ms. KIKO. As Mr. Abbott has explained, the statute does require that there is official time for collective bargaining negotiations and also for presenting before the Authority, and all other official time is to be negotiated between the agency and the union. I certainly would support that that it is a very a specific part and an important part of the collective bargaining experience.

Yes, I do believe in the collective bargaining experience, if I suggested differently in my earlier answer.

Senator HASSAN. Thank you very much.

Mr. DuBester.

Mr. DUBESTER. Well, Senator, I think the answer to your question very much relates to the question of Senator McCaskill about your commitment to collective bargaining.

I have heard a lot of questions raised about official time over the last few years within the halls of Congress, and in my view, among other things, often the discussions are taken out of context because under our Federal statute at least, we have a carefully crafted statute which, of course, Congress always reserves the right to consider and perhaps amend. But it is a carefully crafted statute, which has a lot of different dimensions to it, including a very explicit statu-

tory management rights provision, obviously the concept of no use of economic weapons, in the employees' case, the right to strike. But it does have the—and in the union's instance, no right to support itself through union security as unions do in other sectors.

Again, my view on official time, beyond what is already contained in the statute, is if you believe in the institution of collective bargaining—and as I said in my prior answer, I believe in it among other things because I believe in any mechanism that affords or promotes the ability for employer reps—in our case, agency reps—and employee reps—in this case, exclusive representatives, their unions—to sit down and talk, to engage in dialogue, hopefully to problem solve.

Senator HASSAN. Yes.

Mr. DUBESTER. The application of official time were to exist in the Federal sector to me is not just a matter which I think is often, in my view, mischaracterized, as for the union, it is in the agency and employer's interest as well when used appropriately because it affords that kind of a mechanism that promotes dialogue and communication.

Senator HASSAN. Thank you, and I thank you all for your answers.

One of the privileges of being from New Hampshire is that I have the good fortune of representing the men and women at the Portsmouth Naval Shipyard, who have a terrific labor-management model going, and I would recommend it to you. They work together incredibly well in part because there is a strong acknowledgement of the value of collective bargaining and official time.

With that, thank you very much again for your willingness to serve, and I yield the remainder of my time, Mr. Chair.

Senator LANKFORD. Thank you, Senator.

Ms. Kiko, you have seen a lot change over the years since the birth of the agency and the first birthday and the cake to now. I have an odd question for you: What has changed in the operation of the agency over that time period, and how did it change? Was it statutory? Is it drift? Are we still on mission? Are we getting better at what we are doing? I am looking for somewhat of a historical look.

Mr. DuBester, I am going to come right back to you on this as well.

Give me a feel for what you have seen, and are we still on track?

Ms. KIKO. Thank you, Senator.

I think the biggest change in the FLRA since I was there is the technology change. We were writing decisions on yellow legal pads and handing them off to a clerk typist to type in a big, giant Wang that was about the size of this table. That has changed, where everyone clearly has all of their technology in their pockets anymore. So that has changed.

The mission of the agency has not changed. The direction of the agency has not changed. We are still doing the best to manage the cooperation of labor-management relations in the Federal Government, and I think that continues to be our mission.

That would be it. If you have any further questions. Yes.

Senator LANKFORD. Mr. DuBester.



Mr. DUBESTER. Well, I certainly agree with Ms. Kiko that the rapid changes in technology cannot be ignored, and among other things, like many agencies, we have gotten in recent years—in terms of providing better customer service gotten into e-filing, if you will, which facilitates the parties' abilities to process cases with us.

Again, I think beyond just the specific case responsibilities we have, certainly over time, we have developed as an agency like ours is designed to do, with certain expertise in the specific areas of case handling that certainly evolves over time, and I think it is helpful to the labor-management community.

As I said before, we are a small agency but with a large mission because we are not just the FLRA, which is a rather small, modest agency, but we have a responsibility for the labor-management relations programs throughout the Federal Government.

If we are doing effective outreach activities, which in recent years we have trained tens of thousands of agency reps and union reps in a variety of activities that are designed to help them do their jobs better. We are helping if you will, labor-management relations through the Federal Government. I think that perspective and appreciation about just how large the impact can be on our mission is—

Senator LANKFORD. Well, that is part of my question, actually. Are we still on track with the mission, or is the mission continuing to be able to grow and the task beginning to grow? When it is one thing to be able to make decisions, the other thing to think we have expertise, how do we actually proactively get this out to agencies?

When we talk about things like guidance, for instance, getting help to entities, somewhat that has been the role of Office of Personnel Management (OPM) to be able to do. Are we drifting into the role of someone else, or are we providing advice to them, or are we finding instructions to them? Where do you draw that line?

Mr. DUBESTER. In the areas that fall within, again, specifically labor-management relations, in the areas mentioned in our statute, then I think, at least in recent years, we have been on the mark and hopefully will continue to be on the mark by doing a variety of things; first, providing information, making available information on our website in the areas that our parties have to handle, like in arbitration cases, negotiability cases, basic statutory rights. We have been actually doing training with our parties in those areas, that kind of outreach.

As I mentioned, I believe, consistent with our statutory responsibility to provide leadership and guidance—and when we are talking about labor-management relations, as I often say, the word that is often overlooked in that phrase is the word “relations.”

Senator LANKFORD. Right.

Mr. DUBESTER. Providing training in problem solving and relationship building is very much part of the statute and—

Senator LANKFORD. Sure.

Mr. DUBESTER [continuing]. Part of the service that we can provide to them.

Senator LANKFORD. I think what I am trying to get the boundary here is between OPM and their statutory responsibility and the re-



sponsibility of your agency as well, to be able to say where do you draw the line in things like guidance, between what is helping and providing resources or what is instructing.

Mr. DUBESTER. Again, this is not a pure answer, but to me, OPM, of course, provides information, which to my way of thinking involve the employment relationship and personnel kinds of matters that would apply to any employee in the Federal Government, whereas we have a specific mission involving labor-management relations, which is something that OPM would not get into, if you will, elsewhere in the Federal Government, per se. That is where I think the line pretty much is. It is kind of uniform personnel matters that apply throughout the Federal Government. We would not be providing guidance in that area, I do not think, not appropriately, and I know during my tenure, we certainly have not.

We have complied with OPM directives for our employees, but in the labor-management arena, that is where I think we have an obligation to provide information.

Senator LANKFORD. Same question for Mr. Abbott. Where do you draw that line on what is the difference between guidance and instructions or actually telling someone what to do, or how do you draw that line in the relationship with different agencies?

Mr. ABBOTT. Thank you, Senator.

Yes, I think the Authority has been very effective over the years of its existence when the Authority does what it was created to do, and that is to determine matters under our statute.

In respect to training and outreach, I believe that when the Authority is doing what is basically required under our statute—and that is to provide statutory training and how our statute works and explaining Authority precedent—I think we have been very effective.

When we engage in training on basic interest-based bargaining and problem solving, we are being very effective.

However, I am concerned that when our training outreach goes into areas such as relationship repair, dealing with difficult people, decisionmaking and communication skills, I am not sure that we are the best agency or the best provider of that. There are many qualified, trained individuals in the private sector to provide that.

I think when we go astray of the statutory limits is the time when we are not being effective. I think that we lose an ability—I think the best training that the Authority can give to the labor-management community is when we write decisions that are clear and understandable to laypersons as well as attorneys, and I think that the Authority does best when it answers the questions that the parties bring to it.

But over the last 2 years, 52 percent of the decisions of the Authority have dismissed cases either in part or in whole on procedural technicalities. Every time we dismiss an argument on a technicality, we are not providing guidance to our customers who have had a dispute, an honest dispute, and they are looking to us for an answer.

Senator LANKFORD. Yes. That should be helpful.

Mr. DuBester, I do want to clarify one issue as well. There was a difference of opinion between you and the Appeals Court on the Inspectors General and whether the interviews of the Inspector

General can fall under collective bargaining and negotiations as well. Obviously, that decision was done in 2012, then was later overturned on it. Where are you on that now and your perspective on the relationship between interviews from the Inspectors General and collective bargaining negotiation?

Mr. DUBESTER. I do not have a detailed specific recollection of the case you are talking about, but I am aware, I think, of what you are referring to.

In that particular situation, of course—

Senator LANKFORD. It has been a few years, so I would give you some mercy on that one as well. So yes.

Mr. DUBESTER. The majority decision was overturned by the—I believe the D.C. Circuit, and of course, in that particular instance, the D.C. Circuit ruling becomes the law of the case. It was remanded to us, and of course, that was implemented, and that has now become the law.

These kinds of situations are not necessarily uniform. Number one, they are going to be driven and determined by perhaps unique facts that may arise, and moreover, while the D.C. Circuit—because we are the seat of the Federal Government and that is our jurisdiction, probably matters that are appealed to the circuit courts go to the D.C. Circuit more often than not. But the parties have a right to go to any circuit.

Right now, what I would say is the matter that you referred to became the law of the case in that instance based on the D.C. Circuit ruling, but I am not sure that it is necessarily the law either within the FLRA, depending on what might come back to us in terms of the facts, or what other circuit courts might say about the case.

Senator LANKFORD. In that case, you would not consider that settled?

Mr. DUBESTER. Again, I do not want to make a judgment without seeing the particular facts, but I think in the spirit of what you are asking, I would say that is right in my mind. Yes, Senator.

Senator LANKFORD. What was right in your mind?

Mr. DUBESTER. It is not settled.

Senator LANKFORD. It is not settled?

Mr. DUBESTER. No.

Senator LANKFORD. OK. Senator Harris.

#### **OPENING STATEMENT OF SENATOR HARRIS**

Senator HARRIS. This question is for Ms. Kiko.

The FLRA is an important mechanism, obviously, for more than a million Federal employees, and it has a history, unfortunately, however, of backlogs, including a backlog of nearly 400 cases in 2009. Are you familiar with that?

Ms. KIKO. I am not familiar with the backlog in 2009.

Senator HARRIS. Are you aware of the backlog as it currently exists?

Ms. KIKO. I am aware that there is a backlog with some cases waiting to be decided because at this point there is not a full membership of the Authority, and so I would say that that is a backlog sitting there for those decisions. Several of the decisions with just

the two members have been going out, though, in addition to the ones that are pending.

Senator HARRIS. If confirmed, what would your plan be for addressing the backlog and eliminating it?

Ms. KIKO. Well, I think my purpose there is to efficiently and effectively promote the statute, and one of the major jobs is to decide the cases that are before us. I would think of that as a very high priority to get the cases out that are before us.

Senator HARRIS. Have you had any conversations with anyone there about what is going to be most efficient in terms of moving the cases along?

Ms. KIKO. I have had discussions with both Member DuBester and Mr. Abbott on what the situation is at the agency and how the cases are processed, and I would like to work with both of them as we move forward to find out the best way to move the cases and so that we have a good, effective way to get them out efficiently.

We have shareholders, I believe, that are looking for us to spend the money wisely that has been appropriated to us, and one of our jobs is to issue those decisions. I would think of that as a very high priority.

Senator HARRIS. Thank you. Mr. Abbott.

Mr. ABBOTT. I think the most effective way to deal with the backlog that we have when we have not had a full complement is simply we have established internal guidelines for moving cases forward. Upon the three of us being confirmed, we will need to establish and see if those timelines and internal processes are effective.

I would say in my experience, there is no right or wrong way of addressing the matters, but I believe it does require each of us to address as expeditiously as possible holding our own staffs accountable for performance and effective service.

Senator HARRIS. Thank you.

I yield back my time.

Thank you. Thank you both.

Senator LANKFORD. Senator Heitkamp.

Senator HEITKAMP. Thank you for that line of questioning. I think, again, in our oversight capacity, we are going to be very concerned about cleaning out the backlog and making sure, and if you do not have the resources, we need to know that because it is only going to get worse if systemic changes are not made.

Ms. Kiko, in your questionnaire, you talked about your leadership style and how you like to energize and motivate people. One thing that will be inevitable in your position as Chairman, if confirmed, is you are leading an organization through periods of disagreement. The three of you will not always see things the same way, and it is important that the Chairman have the ability to lead and manage the organization through that disagreement.

How would you change your leadership and management style when it comes to leading the Authority through periods of disagreement and challenges?

Ms. KIKO. Thank you, Senator, for that question.

I do not know that I would change my management style necessarily. I do believe that my management style is very collegial, and I would want to work with both Mr. DuBester and Mr. Abbott in trying very hard to find the best way to lead this organization.

Open communication is one of my primary requirements on a management style. I would want to hear what people have to say, find out the best way to lead this agency, but to me, open communication is the key to all of that. I believe that working together with Mr. Abbott and Mr. DuBester is the best way to find the best solutions—by working together and hearing different ideas, if that answers your question.

Senator HEITKAMP. I think it does. I think one of the great challenges that you might have is trying to figure out how you are going to work through this backlog and how you are going to challenge an entire organization to make decisions in a way that is very attentive to the facts and not shortchanging anything but also clearing this docket because those challenges will continue, and it will get bigger and bigger. The problem will be bigger, and it is going to take a lot of communication, and it is going to take a lot of leadership.

As I said in my opening statement, you are three incredibly qualified candidates, but you are coming in at a time when we need to know that it is not business as usual, that things will get done in a timely fashion.

Thank you for that answer, and good luck to all over you.

Ms. KIKO. Thank you, Senator.

Senator LANKFORD. Thank you.

Any final comments from anyone?

[No response.]

I see an overwhelming shaking of the heads here.

Senator HEITKAMP. Quit while you are ahead.

Senator LANKFORD. Yes. I can see that as well.

I do want to be able to say to all of our witnesses, there is an expectation here that the backlog will be taken care of, individuals will be heard, that we are working, as Mr. DuBester said—working on the relations side of things. That the focus continues to be a healthy working environment not only in that entity, but in the entities where we get a chance to serve across the Federal Government.

You have an incredibly important role that hardly anyone knows exists, unless you are in conflict, and then everyone is looking for you. We do count on you to be able to help on those very difficult days.

Mr. DuBester, at some point, you and I can visit at greater length on this other case with the Inspectors General. The one thing that I would say on it is, there is a great challenge of opinion at times that once it goes up to an appeals course, does that resolve the issue, or does that not resolve the issue? I would only say if it goes up to an appeals court, we are under that until the Supreme Court says something different. But in the meantime, we are under that court.

There have been plenty of appeals court decisions across the country that I have not liked, but we live as a nation under law, and that is the way we balance that out. When the facts may change or circumstances may come up differently on that, we can push back and forth on it. That is the fun of our system on it, but I would encourage us to be able to do that.

I would assume you are in that same boat, but based on your previous answer, I was trying to think through the possibilities of what that would mean to have a situation where someone in that position would say an appeals court has spoken on it, but I am not sure I like it. We are all going to try to apply it as well.

I will give you an opportunity to be able to say anything, if you want to, on that as well. I am not trying to shut you out.

Mr. DUBESTER. I certainly agree with your representation about the importance of precedent and stare decisis and the rule of law, and as I mentioned, without any question, in that particular case that you asked about, that became——

Senator LANKFORD. Right.

Mr. DUBESTER [continuing]. The law of the case. That is how we acted, including myself, upon remand.

The only point I was making is that, as you know, there are many circuit courts out there, and they do not always agree either.

Senator LANKFORD. Right.

Mr. DUBESTER. Sometimes there is a split among the circuits, and that raises questions about what the state of the law is too.

Senator LANKFORD. That, we have seen as well, as recently as the last couple of weeks, even, in different well-popularized cases, so——

Mr. DUBESTER. But I would certainly be happy, though, as you suggested in your lead-in to follow up with you and/or your staff about it.

Senator LANKFORD. Yes. I would be glad to, and again, we want you to be able to work independently. It is of great value to the Nation to have independent voices that do not all have to nod their heads the same way, to be able to have disagreement, have open argument, though at this dais, we all agree with every issue all the time. [Laughter.]

That is not an issue for us.

The nominees have made financial disclosures and provided responses to biographical and prehearing questions submitted by the Committee.<sup>1</sup> Without objection, this information will be made a part of the hearing record,<sup>2</sup> with the exception of the financial data, which are on file and available for public inspection at the Committee offices.<sup>3</sup>

The hearing record will remain open until 12 p.m. tomorrow, November 8, 2017, for the submission of statements and questions for the record. We would encourage Members to hurry to be able to get that in so that we can walk through this process if there are any pending questions that are there.

However, if Members wish to receive responses to questions prior to the Committee vote on Thursday, which we hope to do, they must submit questions for the record by 5 p.m. today.

Again, thank you for your service already to the Nation and for being willing to be able to go through this process, for Mr. DuBester to go through this process again and again and again and again and again actually for you. Thank you very much for engaging with that.

<sup>1</sup> The information of Ms. Kiko appears in the Appendix on page 29.

<sup>2</sup> The information of Mr. Dubester appears in the Appendix on page 77.

<sup>3</sup> The information of Mr. Abbott appears in the Appendix on page 131.

With this, this hearing is adjourned.

[Whereupon, at 10:29 a.m., the Committee was adjourned.]





## APPENDIX

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### U.S. SENATOR HEIDI HEITKAMP

**Event:** Hearing for the Federal Labor Relations Authority (FLRA) Nominations: Hon. Ernest W. DuBester, Hon. Colleen D. Kiko, and James T. Abbott to be Members

#### Opening Statement

Thank you, Chairman Lankford.

Over the past few months the President has nominated three new members to serve on the Federal Labor Relations Authority. As you know, the Authority is comprised of three presidentially nominated and Senate confirmed Members responsible for adjudicating unfair labor practice complaints, determining whether to grant exceptions to arbitrators' grievance-arbitration awards, resolving disputes over the negotiability of proposals and provisions made during collective bargaining, and reviewing representation decisions of Regional Directors in representation disputes over union elections and unit determinations.

Our first nominee is Colleen Kiko. This nominee has the distinguished honor of being a native of North Dakota, having been born in the town of Pembina, North Dakota, near the Canadian border. Her father, Lawrence Duffly, was a career federal employee, serving the Postal Service as a railway mail carrier and the Customs Service as a customs inspector. Ms. Kiko also earned a Bachelor of Science at North Dakota State University in 1972. With her stellar North Dakotan roots and education, it is no wonder that she has been so successful. Currently, Ms. Kiko is an Administrative Judge for the Employees' Compensation Appeals Board where she has been since 2008. Previously she served with the FLRA in 2005 when President George W. Bush appointed Judge Kiko to be the FLRA's General Counsel. If confirmed, Judge Kiko will serve as the Chair of the Authority.

Next, we have Ernest DuBester. Member DuBester is currently serving out his second term as a Member of the Federal Labor Relations Authority. He began his career at the National Labor Relations Board, serving as counsel to former Chairman and Member John Fanning. If confirmed, Mr. DuBester will continue to serve as a Member.

Lastly, we have James Abbott. James Abbott has served as Chief Counsel to the Federal Labor Relations Authority since 2007. He is currently serving with Acting Chairman Patrick Pizzelli and previously served with Chairman Dale Cabaniss and Member Thomas Beck. Prior to his appointment to the Authority, Mr. Abbott served as Deputy General Counsel for the Congressional Office of Compliance from 2004 to 2007.

I thank all the nominees for their willingness to serve the citizens of the United States and I look forward to your testimony.

I look forward to learning more about your qualifications and desire to serve.

Thank you.

Statement of Colleen Duffy Kiko  
Before The Committee on  
Homeland Security and Governmental Affairs  
United States Senate  
November 7, 2017

Thank you, Mr. Chairman.

Chairman Lankford, Senator Heitkamp, Members of the Committee, I would like to thank you and your staff for all the kindnesses that have been shown to me as I have prepared for this hearing.

I also deeply appreciate Congressman Sensenbrenner for taking the time away from his very booked schedule to introduce me today. I respect his dedicated service to the U.S. House of Representatives and am deeply honored to call him a friend.

I am here today with some of my family members – who represent the others. My son Philip and his wife Molly, who are expecting our 5<sup>th</sup> grandchild, my son Michael, my sister, Tama, and of course my best friend and husband, who currently serves as the Chief Administrative Officer of the House of Representatives – Phil Kiko. I appreciate their support and the support of all of those who are not here.

I would like to thank Mr. DuBester and Mr. Abbott for the genuine kindnesses that they have shown me. I look forward to working with both of them as we journey forward, should I be confirmed. I would also like to personally thank Fred Jacob, the Solicitor at the FLRA for helping me get through the ethics clearance process and Gina Grippando, Counsel for Regulatory and Public Affairs at FLRA, who has truly gone above and beyond to offer me any assistance I needed – even responding to my emails at midnight or early, early morning. She has been of invaluable assistance.

It is indeed an honor to have been nominated by President Trump to serve as a Member of the Federal Labor Relations Authority and, if confirmed, to be designated as Chairman of that agency.

My career with the Federal government began after I moved here from North Dakota in 1972. My first job was a GS-3 clerk typist in the Department of Treasury, Office of Personnel. My father, Lawrence Duffy, proudly spent over 49 years (almost ½ century) in the Federal service before he retired. He was a railway mail carrier for the U.S. Postal Service on the Soo Line Railroad that ran from Enderlin, North Dakota to Portal, North Dakota. He later became an inspector for the U.S. Customs Service at the North Dakota/Canada border. He always considered Federal service to be an honorable profession. His work ethic, extreme pride in his job, and impeccable character were examples for me and I hope I live up to his standards. My mother, Angie Duffy, was also an example to me as someone who always wanted to learn new things, to have different and varied experiences (she began oil painting in her 50s), and to broaden her horizons. In her quiet, loving way, she pushed all four of her children to be strong and independent.

Congressman Sensenbrenner was very kind to speak about my background. But I would like to point out a few areas of my career that I believe affirmatively qualify me for this position. Before FLRA became an agency, I was working in the Department of Labor, Labor Management Services Administration. The duties of that organization were transferred into the new agency in 1979 when it was created – so I was there when FLRA opened its doors. I was there celebrating with a cake on its first birthday party. It was a very important part of shaping me into a professional employee. It was a great place to work.

I have worked in almost every component of the FLRA. In the Regional office, I investigated unfair labor practice charges, chaired hearings on representational disputes, monitored federal union elections, and conducted training for both agencies and unions. In the Authority level, I reviewed representation disputes, Administrative Law Judge decisions and drafted decisions for the Authority Members. My last position was a supervisory labor relations specialist handling procedural motions before the Authority when I decided that I needed to broaden my career perspectives by attending law school.

I graduated with my law degree from George Mason Antonin Scalia Law School in 1986 and, who knew, that just 19 years later I would find myself back at the agency serving in the Senate-confirmed position of General Counsel in 2005. And now – another 10 years later and I have again been nominated to serve as a Member of the Agency. My career keeps taking me back to my roots.

Most recently, having served as the General Counsel of the FLRA provided me more specific experience in managing a diverse and geographically dispersed staff. I managed the seven regions of the FLRA which included all aspects of management from budgeting and budget management, instituting performance standards and evaluating performance, leading change, policy development, staff and customer training, etc.

In my current position as a Judge of the Employees' Compensation Appeals Board, where I have served for 12 years, I have polished the attributes necessary to render decisions on issues that would come before the FLRA. Those attributes include reviewing the facts presented, considering arguments provided by the parties, and applying the existing law to the particular facts of each case. Further, as a part of the management team, we managed a staff at that time of approximately 50 employees, which included updating performance standards, initiating mentor programs to assist staff in increasing the quality, quantity, and timeliness of the work, and developed an updated case tracking system to more readily track the time it takes for cases to work their way to issuance, to name a few of our initiatives. I believe this experience has prepared me well to become a Member of the FLRA.

I believe my 29 years in the Federal government should serve me well in this agency where we are commissioned to provide leadership in establishing policies and guidance relating to matters of Federal Service Labor-Management Relations Statute and by effectively administering the nine specific mandates of the statute. I greatly appreciate the opportunity to appear before you and am willing to answer any questions.

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



September 10, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Colleen Kiko, who has been nominated by President Trump for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Enclosed is a copy of the  
financial disclosure report filed by  
Colleen Kiko, who has been nominated by  
President Trump for the position of  
Member, Federal Labor Relations Authority.

David J. Apol

Acting Director and General Counsel

Enclosures

**REDACTED**



September 6, 2017

Fred B. Jacob  
Solicitor and Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K St., NW  
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member, Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with the CM Group. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the CM Group is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign my position as a Member/Owner of Future With Hope Women, LLC and it will refund my capital, if any. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know Future With Hope Women, LLC is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will meet in person with you during the first week of my service in the position of Member in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Colleen Kiko', with a long, sweeping horizontal stroke extending to the right.

Colleen Kiko

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
<u>Member, Federal Labor Relations Authority</u>	

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Colleen	Duffy	Kiko	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 200 Constitution Avenue, N.W.,		
City: Arlington	State: VA	Zip: 22204	City: Washington	State: DC	Zip: 20210

<i>Other Names Used</i>								
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)		
Colleen	Margaret	Duffy		x	10/1950	Est <input type="checkbox"/>	8/1972	Est x
Colleen	Duffy	Raap			8/1972	Est x	1/1982	Est x



<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1950	Fargo, North Dakota

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input checked="" type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Philip	George	Kiko	

<i>Spouse's Other Names Used (current spouse only)</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
NONE					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Jamie	Lynn	Raap	
Sarah	Kiko	Leiby	
Philip	George	Kiko	Jr.
Michael	Ryan	Kiko	

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
North Dakota State University	State University	8/1968 <input checked="" type="checkbox"/> Est <input type="checkbox"/>	5/1972 <input checked="" type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	B.S.	5/1972
George Mason Antonin Scalia Law School	Law School	8/1983 <input type="checkbox"/> Est <input type="checkbox"/>	5/1986 <input checked="" type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	5/1986
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Federal Employment	Department of Labor, Employees' Compensation Appeals Board – Washington, D.C.	Judge	Wash., D.C.	3/2008 Est <input checked="" type="checkbox"/>	Present Est <input type="checkbox"/>
Federal Employment	Federal Labor Relations Authority, Office of General Counsel, Washington, D.C.	General Counsel	Wash., D.C.	10/2005 Est <input checked="" type="checkbox"/>	3/2008 Est <input checked="" type="checkbox"/>
Federal Employment	Department of Labor Employees' Compensation Appeals Board – Washington, D.C.	Judge	Wash., D.C.	2/2002 Est <input checked="" type="checkbox"/>	10/2005 Est <input checked="" type="checkbox"/>
Non-Governmental Law Firm	Ronald M. Cohen and Associates, P.C. Arlington, Va	Associate Attorney	Arlington, VA	11/1999 Est <input checked="" type="checkbox"/>	2/2002 Est <input checked="" type="checkbox"/>
Non-Governmental Law Firm	Law Offices of Colleen Duffy Kiko, P.C.	Sole Practitioner	McLean, VA	9/1996 Est <input checked="" type="checkbox"/>	11/1999 Est <input checked="" type="checkbox"/>

(Continued on Attachment 1).

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
NONE		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>

		Est □	Est □	Present □
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#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. NONE

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity. NONE

#### 5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement. NONE

#### 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Virginia State Bar	1986 - Present	Member
District of Columbia Bar	1986 - Present	Member
Arlington Cursillo	1979 - Present	Member
Arlington Cursillo	2008-2012	Weekend Committee Chairman



Future With Hope Women, LLC	2015 – Present	Partner
The CM Group (Scrapbooking Company)	2014 – Present	Scrapbook Sales Consultant
Federalist Society	Various years	Member
Reagan/Bush Alumni Association Bush/Quayle Alumni Association	1990 – Present 1994 – Present	Member Member
St. Charles Borromeo Catholic Church	1979 – Present	Parishioner
Arlington County Bar Association Fairfax County Bar Association	1996-2002 1996-2002	Member Member

### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?  
NO

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
N/A			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere. None

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
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N/A			
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(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

[illegible]

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### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
NONE		



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(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
NONE		

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
NONE		

#### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) NO
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? NO
- Have you been charged, convicted, or sentenced of a crime in any court? NO
- Have you been or are you currently on probation or parole? NO
- Are you currently on trial or awaiting a trial on criminal charges? NO
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? NO

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No

N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
NONE				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
2/8/1980	Alexandria, VA Circuit Court	Loren D. Raap Colleen Duffy Raap	Uncontested Divorce	Divorce




(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

#### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed. NO

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? NO

#### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

## APPENDIX

### U.S. SENATOR HEIDI HEITKAMP

**Event:** Hearing for the Federal Labor Relations Authority (FLRA) Nominations: Hon. Ernest W. DuBester, Hon. Colleen D. Kiko, and James T. Abbott to be Members

#### Opening Statement

Thank you, Chairman Lankford.

Over the past few months the President has nominated three new members to serve on the Federal Labor Relations Authority. As you know, the Authority is comprised of three presidentially nominated and Senate confirmed Members responsible for adjudicating unfair labor practice complaints, determining whether to grant exceptions to arbitrators' grievance-arbitration awards, resolving disputes over the negotiability of proposals and provisions made during collective bargaining, and reviewing representation decisions of Regional Directors in representation disputes over union elections and unit determinations.

Our first nominee is Colleen Kiko. This nominee has the distinguished honor of being a native of North Dakota, having been born in the town of Pembina, North Dakota, near the Canadian border. Her father, Lawrence Duffly, was a career federal employee, serving the Postal Service as a railway mail carrier and the Customs Service as a customs inspector. Ms. Kiko also earned a Bachelor of Science at North Dakota State University in 1972. With her stellar North Dakotan roots and education, it is no wonder that she has been so successful. Currently, Ms. Kiko is an Administrative Judge for the Employees' Compensation Appeals Board where she has been since 2008. Previously she served with the FLRA in 2005 when President George W. Bush appointed Judge Kiko to be the FLRA's General Counsel. If confirmed, Judge Kiko will serve as the Chair of the Authority.

Next, we have Ernest DuBester. Member DuBester is currently serving out his second term as a Member of the Federal Labor Relations Authority. He began his career at the National Labor Relations Board, serving as counsel to former Chairman and Member John Fanning. If confirmed, Mr. DuBester will continue to serve as a Member.

Lastly, we have James Abbott. James Abbott has served as Chief Counsel to the Federal Labor Relations Authority since 2007. He is currently serving with Acting Chairman Patrick Pizzella and previously served with Chairman Dale Cabaniss and Member Thomas Beck.

Prior to his appointment to the Authority, Mr. Abbott served as Deputy General Counsel for the Congressional Office of Compliance from 2004 to 2007.

I thank all the nominees for their willingness to serve the citizens of the United States and I look forward to your testimony.

I look forward to learning more about your qualifications and desire to serve.

Thank you.



Statement of Colleen Duffy Kiko  
Before The Committee on  
Homeland Security and Governmental Affairs  
United States Senate  
November 7, 2017

Thank you, Mr. Chairman.

Chairman Lankford, Senator Heitkamp, Members of the Committee, I would like to thank you and your staff for all the kindnesses that have been shown to me as I have prepared for this hearing.

I also deeply appreciate Congressman Sensenbrenner for taking the time away from his very booked schedule to introduce me today. I respect his dedicated service to the U.S. House of Representatives and am deeply honored to call him a friend.

I am here today with some of my family members – who represent the others. My son Philip and his wife Molly, who are expecting our 5<sup>th</sup> grandchild, my son Michael, my sister, Tama, and of course my best friend and husband, who currently serves as the Chief Administrative Officer of the House of Representatives – Phil Kiko. I appreciate their support and the support of all of those who are not here.

I would like to thank Mr. DuBester and Mr. Abbott for the genuine kindnesses that they have shown me. I look forward to working with both of them as we journey forward, should I be confirmed. I would also like to personally thank Fred Jacob, the Solicitor at the FLRA for helping me get through the ethics clearance process and Gina Grippando, Counsel for Regulatory and Public Affairs at FLRA, who has truly gone above and beyond to offer me any assistance I needed – even responding to my emails at midnight or early, early morning. She has been of invaluable assistance.

It is indeed an honor to have been nominated by President Trump to serve as a Member of the Federal Labor Relations Authority and, if confirmed, to be designated as Chairman of that agency.

My career with the Federal government began after I moved here from North Dakota in 1972. My first job was a GS-3 clerk typist in the Department of Treasury, Office of Personnel. My father, Lawrence Duffy, proudly spent over 49 years (almost ½ century) in the Federal service before he retired. He was a railway mail carrier for the U.S. Postal Service on the Soo Line Railroad that ran from Enderlin, North Dakota to Portal, North Dakota. He later became an inspector for the U.S. Customs Service at the North Dakota/Canada border. He always considered Federal service to be an honorable profession. His work ethic, extreme pride in his job, and impeccable character were examples for me and I hope I live up to his standards. My mother, Angie Duffy, was also an example to me as someone who always wanted to learn new things, to have different and varied experiences (she began oil painting in her 50s), and to broaden her horizons. In her quiet, loving way, she pushed all four of her children to be strong and independent.

Congressman Sensenbrenner was very kind to speak about my background. But I would like to point out a few areas of my career that I believe affirmatively qualify me for this position. Before FLRA became an agency, I was working in the Department of Labor, Labor Management Services Administration. The duties of that organization were transferred into the new agency in 1979 when it was created – so I was there when FLRA opened its doors. I was there celebrating with a cake on its first birthday party. It was a very important part of shaping me into a professional employee. It was a great place to work.

I have worked in almost every component of the FLRA. In the Regional office, I investigated unfair labor practice charges, chaired hearings on representational disputes, monitored federal union elections, and conducted training for both agencies and unions. In the Authority level, I reviewed representation disputes, Administrative Law Judge decisions and drafted decisions for the Authority Members. My last position was a supervisory labor relations specialist handling procedural motions before the Authority when I decided that I needed to broaden my career perspectives by attending law school.

I graduated with my law degree from George Mason Antonin Scalia Law School in 1986 and, who knew, that just 19 years later I would find myself back at the agency serving in the Senate-confirmed position of General Counsel in 2005. And now – another 10 years later and I have again been nominated to serve as a Member of the Agency. My career keeps taking me back to my roots.

Most recently, having served as the General Counsel of the FLRA provided me more specific experience in managing a diverse and geographically dispersed staff. I managed the seven regions of the FLRA which included all aspects of management from budgeting and budget management, instituting performance standards and evaluating performance, leading change, policy development, staff and customer training, etc.

In my current position as a Judge of the Employees' Compensation Appeals Board, where I have served for 12 years, I have polished the attributes necessary to render decisions on issues that would come before the FLRA. Those attributes include reviewing the facts presented, considering arguments provided by the parties, and applying the existing law to the particular facts of each case. Further, as a part of the management team, we managed a staff at that time of approximately 50 employees, which included updating performance standards, initiating mentor programs to assist staff in increasing the quality, quantity, and timeliness of the work, and developed an updated case tracking system to more readily track the time it takes for cases to work their way to issuance, to name a few of our initiatives. I believe this experience has prepared me well to become a Member of the FLRA.

I believe my 29 years in the Federal government should serve me well in this agency where we are commissioned to provide leadership in establishing policies and guidance relating to matters of Federal Service Labor-Management Relations Statute and by effectively administering the nine specific mandates of the statute. I greatly appreciate the opportunity to appear before you and am willing to answer any questions.

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



September 10, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Colleen Kiko, who has been nominated by President Trump for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

**DAVID APOL**

David J. Apol

Acting Director and General Counsel

Signature verified by OIG/DOJ/AFRC  
1009-10102, and U.S. Government Printing Office  
Government Printing Office/DOJ/AFRC  
2017-09-10 10:10:10 AM  
1009-10102, and U.S. Government Printing Office

Enclosures

**REDACTED**

September 6, 2017

Fred B. Jacob  
Solicitor and Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K St., NW  
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member, Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with the CM Group. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the CM Group is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign my position as a Member/Owner of Future With Hope Women, LLC and it will refund my capital, if any. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know Future With Hope Women, LLC is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will meet in person with you during the first week of my service in the position of Member in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colleen Kiko', with a stylized flourish at the end.

Colleen Kiko

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
<u>Member, Federal Labor Relations Authority</u>	

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Colleen	Duffy	Kiko	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 200 Constitution Avenue, N.W.,		
City: Arlington	State: VA	Zip: 22204	City: Washington	State: DC	Zip: 20210

<i>Other Names Used</i>								
First Name	Middle Name	Last Name	Suffix	Check if Middle Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)		
Colleen	Margaret	Duffy		x	10/1950	Est n	8/1972	Est x
Colleen	Duffy	Raap			8/1972	Est x	1/1982	Est x

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1950	Fargo, North Dakota

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Philip	George	Kiko	

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
NONE					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>



<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
Jamie	Lynn	Raap	
Sarah	Kiko	Leiby	
Philip	George	Kiko	Jr.
Michael	Ryan	Kiko	

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
North Dakota State University	State University	8/1968 <input checked="" type="checkbox"/> Est <input type="checkbox"/>	5/1972 <input checked="" type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	B.S.	5/1972
George Mason Antonin Scalia Law School	Law School	8/1983 <input type="checkbox"/> Est <input checked="" type="checkbox"/>	5/1986 <input checked="" type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	5/1986
		<input type="checkbox"/> Est <input checked="" type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input checked="" type="checkbox"/>		
		<input type="checkbox"/> Est <input checked="" type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input checked="" type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Federal Employment	Department of Labor, Employees' Compensation Appeals Board – Washington, D.C.	Judge	Wash., D.C.	3/2008 Est <input checked="" type="checkbox"/>	Present Est <input type="checkbox"/>
Federal Employment	Federal Labor Relations Authority, Office of General Counsel, Washington, D.C.	General Counsel	Wash., D.C.	10/2005 Est <input checked="" type="checkbox"/>	3/2008 Est <input checked="" type="checkbox"/>
Federal Employment	Department of Labor Employees' Compensation Appeals Board – Washington, D.C.	Judge	Wash., D.C.	2/2002 Est <input checked="" type="checkbox"/>	10/2005 Est <input checked="" type="checkbox"/>
Non-Governmental Law Firm	Ronald M. Cohen and Associates, P.C. Arlington, Va	Associate Attorney	Arlington, VA	11/1999 Est <input checked="" type="checkbox"/>	3/2002 Est <input checked="" type="checkbox"/>
Non-Governmental Law Firm	Law Offices of Colleen Duffy Kiko, P.C.	Sole Practitioner	McLean, VA	9/1996 Est <input checked="" type="checkbox"/>	11/1999 Est <input checked="" type="checkbox"/>

(Continued on Attachment 1).

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
NONE		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>

		Est □	Est Present □ □
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#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. NONE

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity. NONE

#### 5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement. NONE

#### 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Virginia State Bar	1986 - Present	Member
District of Columbia Bar	1986 - Present	Member
Arlington Cursillo	1979 - Present	Member
Arlington Cursillo	2008-2012	Weekend Committee Chairman

Future With Hope Women, LLC	2015 – Present	Partner
The CM Group (Scrapbooking Company)	2014 – Present	Scrapbook Sales Consultant
Federalist Society	Various years	Member
Reagan/Bush Alumni Association Bush/Quayle Alumni Association	1990 – Present 1994 – Present	Member Member
St. Charles Borromeo Catholic Church	1979 – Present	Parishioner
Arlington County Bar Association Fairfax County Bar Association	1996-2002 1996-2002	Member Member

### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?  
NO

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
N/A			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere. None

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
---	---------------------------------	-------------------------	-----------------------------

N/A			
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(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

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### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
NONE		

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(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
NONE		



(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
NONE		

#### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) NO
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? NO
- Have you been charged, convicted, or sentenced of a crime in any court? NO
- Have you been or are you currently on probation or parole? NO
- Are you currently on trial or awaiting a trial on criminal charges? NO
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? NO

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes / No

N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
NONE				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
2/8/1980	Alexandria, VA Circuit Court	Loren D. Raap Colleen Duffy Raap	Uncontested Divorce	Divorce


(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed. NO

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? NO

### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED**

### 13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State), NO

### 14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)


### 15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

### 16. Additional Financial Data



All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
\_\_\_\_\_

This 20<sup>th</sup> day of Sept, 2017

# Attachment 1

Attachment 1  
 Colleen Duffy Kiko  
 HSGAC Biographical Questions for Executive Nominees

Type of Employment	Name of Employer/Duty Station	Most Recent Position/Title	Location	Date Employment Began	Date Employment ended
Non-Governmental	St. Charles Catholic School, Arlington, VA	Finance Officer (part time)	Arlington, VA	8/1991 – est.	2/2002 - est
Not working	Stay at Home Mom		Arlington, VA	11/1989 - est	8/1991 - est
Federal/Congressional	Committee on the Judiciary, Civil and Constitutional Rights Subcommittee	Minority Counsel	Wash., D.C.	3/1989 – est	11/1989 - est
Federal Employment	Department of Justice, U.S. Attorney's Office, Alexandria, VA	Special Assistant United States Attorney (This position was a detail from my position in the Department of Justice)	Alexandria, VA	9/1988 – est	3/1989 - est
Federal Employment	Department of Justice, Civil Rights Division, Washington, D.C.	Attorney/Advisor	Wash., D.C.	12/1986- est	3/1989 - est
State Government	Fairfax County Attorney's Office, Fairfax, VA	Law Clerk (part time)	Fairfax, VA	11/1985 – est	2/1986 – est
Not working	Attended Law School/Had another child		Arlington, VA	8/1983 – est	12/1986 - est
Federal Employment	Federal Labor Relations Authority, Office of Executive Director, Washington, D.C.	Supervisory Labor Relations Specialist	Wash., D.C.	4/1981 – est	8/1983 – est
Federal Employment	Federal Labor Relations Authority, Office of Chief Counsel, Washington, D.C.	Labor Relations Specialist	Wash., D.C.	12/1979 – est.	4/1981- est.
Federal Employment	Federal Labor Relations Authority, Washington Regional Office, Washington, DC	Labor Relations Specialist	Wash., D.C.	1/1979	12/1979 – est

## 2 | Continued – Colleen Duffy Kiko

Federal Employment	Department of Labor, Labor Mgmt Services Administration, Washington Area Office, Wash., D.C.	Compliance Officer	Wash., D.C.	8/1976 – est.	1/1979
Federal Employment	Department of Treasury, U.S. Customs Service, Office of Personnel, Wash., D.C.	Employee Relations Specialist	Wash., D.C.	8/1975 – est	8/1976 – est
Federal Employment	Department of Treasury, U.S. Customs Service, Office of Personnel, Washington, DC	Labor and Employee Relations Specialist	Wash., D.C.	12/1974 – est	8/1975 – est
Federal Employment	Department of Treasury, U.S. Customs Service, Office of Personnel	Employee Relations Specialist	Wash., D.C.	12/1973 – est	12/1974 – est.
Federal Employment	Department of Treasury, Office of the Secretary, Washington, D.C.	Clerk	Wash., D.C.	3/1973 – est	12/1973 – est
Not working	Moved from North Dakota to Washington, DC			2/1973 – est	3/1973 – est
Non-Federal Employment	Souris River School District, Wawanesa, Manitoba, Canada	Teacher	Wawanesa, Manitoba, Canada	8/1972 – est	2/1973 – est
Non-Federal Employment	Dawson Hail Insurance, Fargo, N.D.	Policy Examiner (summer job)	Fargo, ND	5/1972 – est	8/1972 – est
Non-Federal Employment	North Dakota State University	Resident Assistant (Working on campus during school year)	Fargo, ND	8/1969 – est 8/1971 – est	5/1970 – est 5/1972 – est
Non-Federal Employment	Westhope Swimming Pool, Westhope, ND	Lifeguard (summer job)	Westhope, ND	5/1971 – est	8/1971 – est
Non-Federal Employment	Hall Allen Shoes, Moorhead, MN	Shoe Salesperson (summer job)	Moorhead, MN	5/1969 – est	8/1969 – est

U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Colleen Duffy Kiko to be a Member of the  
Federal Labor Relations Authority

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be a member of the Federal Labor Relations Authority (FLRA)? *No.*
2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain. *No.*
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member of the FLRA? If so, what are they, and to whom were the commitments made? *No.*
4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

*In connection with the nomination process, I consulted with the Office of Government Ethics and the FLRA's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement I signed with FLRA's designated agency ethics official and that has been provided to this Committee. I am unaware of any other potential conflicts of interest at this time.*

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be a member of the FLRA?

*The specific background and experience of my prior positions in the FLRA are most significant in qualifying me to become a Member of the FLRA. I understand and have worked in the organization; I understand and have worked on effectuating the mission of the agency; and I have studied and understand the various issues that come before the FLRA. Most recently, having served as the General Counsel of the FLRA provided me more specific experience in managing a diverse and geographically dispersed staff. My current position as a Judge of the Employees' Compensation Appeals Board, where I have served for 12 years, has polished the attributes necessary to render decisions on issues that would come before the FLRA. Those attributes include reviewing the facts presented, considering arguments provided by the parties,*

*and applying the existing law to the particular facts of each case. In addition, my prior service as a Special Assistant United States Attorney, as a practicing attorney, and as a counsel for the Subcommittee on Civil and Constitutional Rights in the U.S. House of Representatives provided me hands-on experience as a practitioner before various tribunals. I believe this specific background, this experience, and these attributes have prepared me well to become a member of the FLRA.*

6. Please describe:

a. Your leadership and management style.

*My leadership and management style is one of open communication, adherence to established policies, and engagement with staff. I like to see the big picture and find ways to energize and motivate people to lend their best selves to the mission. I like to recognize people for their successes, hold them accountable for shortcomings or failures while offering suggestions for improvement, and reconfigure when shortcomings or failures become a pattern.*

b. Your experience managing personnel.

*While serving as General Counsel of the FLRA, I managed approximately 60-70 employees in seven regions geographically dispersed all over the country. This included all aspects of management from budgeting and budget management, instituting performance standards and evaluating performance, leading change, policy development, staff and customer training, etc. I further have experience in managing personnel while serving for many years with the prior Chairman of the Employees' Compensation Appeals Board. As a part of the management team, we managed a staff at the time of approximately 50 employees. The primary focus was to deliver a quality legal decision within a reasonable and efficient time frame, which included updating Board-wide performance standards, initiating mentor programs to assist staff in increasing the quality, quantity, and timeliness of the work, and developing a state-of-the-art case tracking system to more readily track the time it takes for cases to work their way to issuance, to name a few of our initiatives. But my most important personnel management role was raising four children successfully to adulthood.*

c. What is the largest number of people that have worked under you?

*In my role as General Counsel of the FLRA I supervised approximately 60 to 70 employees.*

7. Please list any positions where you served as a political appointee (i.e. any federal employment position where you were appointed by the President, the Vice President, or agency head) including a position description and the appointing official.

*I was previously appointed by President George W. Bush and confirmed by the Senate to serve as General Counsel of the FLRA. The duties of that position are outlined in the Federal Labor Management Relations Statute, 5 U.S.C. §7014(f)(1), (2), and (3).*



*I was appointed by Secretary Elaine L. Chao to serve in the Department of Labor as a Judge of the Employees' Compensation Appeals Board. A position description is attached.*

### **III. Role of Member, FLRA**

8. Please describe your view of the agency's core mission and a member's role in achieving that mission.

*The core mission of the FLRA is to "provide leadership in establishing policies and guidance relating to matters under [the Federal Service Labor-Management Relations Statute (the Statute)], and, except as otherwise provided, [to] be responsible for carrying out the purposes of [the Statute]." 5 U.S.C. § 7105(a)(1). "It is the purpose of [the Statute] to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of [the Statute] should be interpreted in a manner consistent with the requirement of an effective and efficient Government." Id. § 7101(b).*

*The FLRA shall: (1) determine the appropriateness of units for labor organization representation under section 7112 of the Statute; (2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of the Statute relating to the according of exclusive recognition to labor organizations; (3) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of the Statute; (4) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of the Statute; (5) resolve issues relating to the duty to bargain in good faith under section 7117(c) of the Statute; (6) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of the Statute; (7) conduct hearings and resolve complaints of unfair labor practices under section 7118 of the Statute; (8) resolve exceptions to arbitrators' awards under section 7122 of the Statute; and (9) take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute. See id. § 7102(a)(2).*

*A Member of the FLRA must render decisions and take actions consistent with the statutory and regulatory requirements of the FLRA.*

9. Please describe how you anticipate, if confirmed, working with other FLRA members to promote the agency's core mission.

*I am looking forward to working with the other FLRA Members to efficiently and expeditiously rule on matters that come before the Authority. Justice delayed is justice denied. I intend to work collegially with the other two Members in an effort to most effectively fulfill the mission of the agency.*

- ii. Please describe prior work experience that demonstrates your capacity to work with FLRA members of a different party affiliation.

*My current position as a Judge of the Employees' Compensation Appeals Board has provided me significant experience demonstrating my capacity to work with individuals of a different party affiliation. Secretaries of Labor under George W. Bush and Barack H. Obama have variously appointed current Judges/Alternate Judges to the Board. My demonstrated ability to work with all of these appointees is reflected in the fact that, in panels of three, I have rendered over 10,000 decisions and orders. It is imperative to me to respect others' opinions, carefully weigh the facts of the case against the law, and work together on a resolution. I intend to bring that same collegial method of doing business to the FLRA.*

10. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

- a. During your career, how have you addressed whistleblower complaints?

*I have not, to my recollection, been responsible for handling any type of whistleblower complaint.*

- b. How do you plan to implement policies within the FLRA to encourage employees to bring constructive suggestions forward without the fear of reprisal?

*I think that will come from the top. Should I am confirmed and designated Chairman I would ensure there was an open avenue of communication for suggestions/comments/complaints and that policies would continue to be published regularly regarding the prohibition of retaliation for whistleblowers. But if I were approached by a whistleblower, I would ensure that the matter were investigated thoroughly in accordance with law and regulation, that the confidentiality of the complainant would be of paramount importance, and that there would be no retaliation against the complainant.*

- c. Do you commit without reservation to work to ensure that any whistleblower within FLRA does not face retaliation? *Yes*

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation? *Yes*

11. What are the most significant challenges facing FLRA as an institution? If confirmed, what steps will you take to address these challenges?

*It is difficult to answer this question as I have not been associated with the agency for a few years. However, agencies in general will be facing budgetary restraints while still being expected to handle cases expeditiously. If confirmed and designated Chairman, I would challenge the agency leadership and agency staff to look for ways to reengineer our business model to create efficiencies at all levels. In my early days of working in the Federal government,*

*the Suggestion Program was well known and well used and some of the best ideas came from that program. I believe this type of program currently exists in the FLRA and I would endeavor to expand that program to encourage recommendations from the leadership and staff to find novel, innovative ways to continue to meet our mission deliverables while conserving resources and working more efficiently. It is my belief that employees are eager to be part of the solution and are often not heard.*

#### **IV. Policy Questions**

12. What is your assessment of the current state of federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

*I believe labor-management relations in the federal sector are relatively stable at this time, with the exception of situations where new managers or newly elected employee representatives are unfamiliar with the rules. With a consistent offering of training for newcomers to the field and for experienced practitioners, FLRA is contributing to that stability by helping parties understand their rights and responsibilities, thereby reducing needless unfair labor practice charges.*

13. Given your previous experience as FLRA counsel, do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

*I have been away from this field for nine years. As such I would defer any specific recommendations on how the current statute is working. However, I respect the legislative process and would be happy to discuss with Congress any ideas or suggestions they may have to amend the statute. As a statute that is nearing its 40<sup>th</sup> anniversary, it would be prudent to review language to determine if it is consistent with how the federal government does business in the 21<sup>st</sup> century.*

14. The FLRA's 2017 Congressional Budget Justification states that the FLRA "had to overcome significant obstacles in meeting its mission requirements." The Justification notes that in addition to increased case filings in certain agency components, the FLRA experienced a wave of key employee retirements and departures starting in FY 2013 and continuing into FY 2015.

- a. Given your past experience as a counsel to the FLRA, what do you believe is driving the increased case filings at certain components?

*Without having been at the FLRA for the last nine years, I can only rely on statistics provided to me by the FLRA.*

*I have reviewed numbers of case intake for the last 5 years and, although the intake grew slightly in 2015 on the Authority side and grew slightly in 2016 in the OGC side, the intake has gone steadily down in all components of the FLRA. From 2013 to 2017:*

- intake for the Authority has gone down from 192 to 179 cases;*
- intake for the OALJ has gone down from 271 to 197 cases;*
- intake for the OGC (ULP cases) has gone down from 4659 to 3655 cases;*
- intake for the OGC (Rep cases) has gone down from 240 to 208 cases, and*
- intake for the FSIP has gone down from 194 to 98 cases.*

*The numbers as stated do not seem to reflect an increase in case filings in any component. This is a good problem to have when evaluating the state of labor-management relations in the federal workforce; but it will have to be realistically evaluated in terms of future staffing needs.*

*As for staffing,*

- In September of 2013, the onboard staff was 115 employees.*
- As of September of 2017, the onboard staff is 119 employees*

*There has been a fluctuation of onboard staff from the highest of 132 in December of 2014 to the lowest of 115 in 2013 but the staffing increases do not seem to correlate with the steady decline of case intake.*

- b. What issues and factors do you believe most frequently give rise to unfair labor practice complaints?

*I believe that new supervisors/managers or new employee representatives, changes in the methodology of work practices, shift changes, lack of adequate communication, etc., are some factors that can give rise to labor-management issues. But I believe major factors that can elevate those issues to unfair labor practice charges or complaints are misunderstandings, tempers, challenging personalities, insensitivities, lack of communication, and hard feelings. A key component for resolving these issues is training, not only on labor-management issues, but on managing, communicating, and interacting with others, as well.*

- c. As unfair labor practices are considered at the Office of General Counsel (OGC) level, do you believe agencies are afforded sufficient information concerning the complaint? Are agencies provided a sufficient opportunity to weigh-in with OGC concerning a given complaint?

*I believe both sides should have an opportunity to understand the charge and be provided an opportunity to respond. Only after a charge is found to be meritorious and the GC is willing to file a complaint, should settlement negotiations begin.*

- d. Are there other obstacles besides increased caseloads and staff departures that hamper the FLRA's ability to fulfill its mission? If so, what are they, and what do you believe should be done to address them?

*Please see my answer to Question # 14a regarding increased caseloads and staff departures.*

*I know that with only two Members of the three-member Authority, there is a growing number of cases awaiting action. That is a real obstacle and damaging to the parties. Once the full Authority's membership has been confirmed, these obstacles will be alleviated. As to what other current obstacles may exist which could hamper FLRA's ability to fulfill its mission, if confirmed and designated Chairman, I would hope to assess the agency and, together with the other Members, leadership, and staff, identify whether and what obstacles might exist and find collaborative methods to overcome them.*

15. Are there improvements to the FLRA's internal review process that you believe can be improved upon to ensure fewer cases ultimately are overturned by the courts, and that all evidence is properly considered in a given case?

*It will be important to carefully review the higher level court decisions over the last 10-15 years to see what trends are appearing. If the courts are overturning a significant number of cases, we will need to consider whether FLRA's approach has been the appropriate one. The courts generally defer to an agency's interpretation of its own regulations; so if we are being overturned we need to consider whether FLRA is overreaching or whether the facts and law are not being adequately conveyed. That is certainly something that I will evaluate should I be confirmed and designated Chairman.*

16. In the 2016 *Best Places to Work* rankings compiled by the Partnership for Public Service, and based on the data collected in the Federal Human Capital Survey, the FLRA ranked 5<sup>th</sup> out of 29 small federal agencies that submitted data. This is a significant improvement over 2009 when it ranked last. The FLRA's 2016 Index Score is down five points compared to 2015, however.

- a. What steps will you take, if confirmed, to maintain progress made by the FLRA in recent years, and to further improve upon employee morale?

*It is good to note that FLRA is still quite high in 2017. Having been an employee at almost all the levels of the FLRA, I have experienced disappointment and frustration when changes would be made without adequate explanation as to why the changes were taking place. I will do all in my power to maintain and hopefully improve the progress made by the FLRA in maintaining employee morale. All of FLRA leadership staff needs to find methods to engage employees and connect on a person-to-person basis to best carry out the mission of the agency. As previously stated, I believe employees are eager to make a difference!*

**V. Relations with Congress**

17. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed? *Yes*
18. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed? *Yes*

Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed? *Yes*

**VI. Assistance**

19. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

*Each answer is my own; however, I have consulted with FLRA staff to obtain helpful background information.*

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Colleen Duffy Kiko to be a Member of the  
Federal Labor Relations Authority  
Minority**

**I. Nomination Process and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement? *No*
2. Has the President or his staff asked you to pledge loyalty to the President or the Administration? *No*
3. During your tenure have you asked any federal employee or potential hire to pledge loyalty to the President, Administration or any other government official? *No*

**II. Background of Nominee**

4. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates? *Yes – see a. below.*

- a. Please give examples of times in your career when a subordinate disagreed with you and aggressively advocated their position.

*This happens on a fairly regular basis in my current position. As a Judge of the Employees' Compensation Appeals Board, we receive draft decisions from a staff attorney. After reviewing the case, I may disagree with the findings of the draft. If all of the three Judges (each decision is assigned to a three-Judge panel) determine that the draft needs work, we either send a rewrite memo to the Supervisory Attorney and the staff attorney to advise of our decision, and/or allow the staff attorney to request a conference where we can more fully discuss the case. Through this process, we may learn that the factual presentation was somewhat misleading and, when clarified, agree with the original finding in the draft. Other times, despite input from the staff attorney, we may still determine the draft should be revised to reflect the panel's direction. At all times, the staff attorney is treated respectfully, is provided the opportunity to make his or her argument, and the matter is handled strictly on a legal – not personal – basis. This is a healthy exchange of ideas and legal theories that can only ensure a more thoughtful and well-reasoned decision.*

5. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?



*I have a fairly strong personality and it would not be unusual for me to forcefully advocate my position on matters about which I felt strongly. No specific instances come immediately to mind.*

6. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

*Spending most of my career as a federal civil servant, I have not found myself faced with having to make politically difficult choices. In my current position and in my previous position as FLRA General Counsel, my decisions were focused solely on the law and its interpretation compared to the facts presented.*

7. What would you consider your greatest successes as a leader?

*I am very proud of the performance metrics that were created at the Employees' Compensations Appeals Board to evaluate the quality, quantity, and timeliness of legal decisions. They were very fair, easily understood and, if utilized properly, provided the staff attorney with immediate feedback on each and every decision submitted.*

*I am also very proud of the institution of the Office of the General Counsel training programs. These were devised to conserve resources and ensure predictability. Prior to these offerings, training was ad hoc and provided to agencies and labor unions as requested. It demanded a lot of time, preparation, and travel for our staff. The new courses on the Federal Service Labor-Management Relations Statute (beginner and advanced) were provided by OGC staff onsite at the FLRA regional offices or nearby agency space and were offered at each of the seven regional locations at various times throughout the year. We thought: "If we build it – they will come." And it has been well received for nearly a decade now. The training was current, managed without additional travel, and at no cost to attendees. I notice that those programs are still front and center on the FLRA website and I take great pride in that program.*

*And finally, I consider one of my greatest successes as a leader is to have successfully raised four wonderful children to adulthood.*

8. What would you consider your greatest failure as a leader? What lessons did you take away from that experience?

*Very early in my career when I first became a supervisor, I occasionally made decisions by relying on the advice of others without doing my own personal research to verify the accuracy of the advice. In one instance, I found out that the advice (which was attributed to me) was inaccurate. I was terribly embarrassed to have been responsible for providing an incorrect answer. Whether that was my greatest failure, I am not sure. But since then I have always been cautious about taking advice without doing my own research first. Trust but verify. Along that same line, it also caused me to dig deeper to find out reasons for things before rendering a judgment and to more fully recognize the implications and ramifications of decisions. Things*

*are not always as they seem. This has made me more thoughtful in assessing all circumstances and facts before rendering a judgment.*

### III. Policy Questions

9. During your tenure as FLRA General Counsel, you removed from the agency website all of the guides that that your predecessor created (case Law, 7114 requests, ULPs etc.) that were designed to help agencies and unions understand their respective rights and obligations under the Federal Service Labor Management Relations Statute. Why were these records removed?
- a. If these items were removed, was that decision consistent with federal records retention laws and other authorities? Please explain.

*These records were removed from the website because they were outdated, were not consistent with the policies of the Office of the General Counsel at the time, and were not necessarily consistent with FLRA case law at the time. It was misleading to our constituency and I believed the customers should have been steered to our published FLRA decisions for current law and guidance.*

- b. If these items were not removed, please indicate where they can be found on FLRA's public website.

*These items were removed from the website. To the best of my understanding, all of these documents should still be retained in the Office of the General Counsel's historical records. It is also my understanding that these documents have since been updated and now appear on the agency website.*

- c. If confirmed, what do you plan to do to ensure that the FLRA provides helpful guidance to its customers?

*The training courses were implemented to ensure that agencies and unions alike would have access to up-to-date training on current case law. If confirmed and designated as Chairman, I would ensure that these programs are maintained. The best guidance the FLRA can offer to its customers, however, is well reasoned, clear, understandable decisions. This will be my highest priority.*

10. During your tenure as the FLRA General Counsel, the FLRA was rated at or near the bottom in employee satisfaction and best places to work, based on the Federal Employee Viewpoint Survey (FEVS) and the Partnership for Public Service rankings. Now, the FLRA is rated as one of the top places to work among the small agencies. If confirmed, how do you plan to continue the excellent work done over the past decade to improve and preserve the FLRA as a leader in good personnel management?

*Open communication is one of the best methods of helping employees feel like they are part of the agency and as if they have a voice. If confirmed and designated Chairman, I will strive to maintain that posture and will work toward continuing the progress in maintaining FLRA as a great place to work.*

11. In October 2017, FLRA summarized what they consider to be the most serious management and performance challenges facing the FLRA in FY 2018. These management challenges include: (1) Information Technology Security; and (2) Proper Handling of Records.

- a. If confirmed, how will you ensure that FLRA is vigilant in establishing an environment to monitor potential Information Technology (IT) risks, threats, and vulnerabilities?

*This is a critical, top priority concern. If I am confirmed and designated Chairman, I would immediately assess potential IT risks, threats, and vulnerabilities and, if found, devise and implement mitigation strategies. In FLRA documents I reviewed in response to this question, I noted that just recently the FLRA closed recommendations dating back to 2009, 2011, and 2014 relating to IT and privacy. I am concerned that it has taken so long to close out these recommendations made by the IG. I am aware there are old recommendations that are still pending.*

- b. If confirmed, how will you promote and ensure proper handling of records (hard copy and electronic) by staff, and verify that various authorities and capabilities are properly assigned, documented, managed and monitored?

*Agency documents indicate that there are open recommendations from the Inspector General on the proper handling of and access to agency records. FLRA has a multi-year plan for compliance with OMB requirements that is to be completed in 2019. If confirmed and designated as Chairman, I will review and assess agency efforts to determine whether this compliance can be expedited. I would ensure that FLRA maintains and manages all records in accordance with Federal law and regulations.*

12. Former FLRA member Pizzella, in his dissents and concurrences, frequently criticized union parties to a dispute for pursuing positions or remedies that he viewed as wasting government resources, costing too much, being ill-motivated, or at odds with common sense—factors not grounded in the law.

- a. What is your view on deciding cases based on the facts as established in the record, and the law (the statute and precedent)—as opposed to independent views of right and wrong, how the government ought to work, and/or the role of unions?

*In my review of each case before me, I will do as I always have done - consider the facts, apply the law, and render a decision consistent with the statutory and regulatory provisions for which I am held responsible. The Federal Service Labor-Management Relations Statute does provide,*

however, that: "The provisions of [the Statute] should be interpreted in a manner consistent with the requirement of an effective and efficient government." 5 U.S.C. § 7101(b).

- b. If government efficiency and effectiveness are legitimate considerations in assessing the merits of a dispute, what role do you believe conduct plays in an agency's collective bargaining, grievance procedure, and efficiency?

*As I have said previously, I believe many disputes begin with conduct – hurt feelings, insensitive comments, lack of communication, etc., and can be the genesis of larger issues between the parties (labor and management).*

- 13. The Collaboration and Alternative Dispute Resolution Office (CARDOR) at FLRA provides intervention and dispute resolution services, which frequently helps parties resolve disputes short of a formal decision, thereby saving the parties' and FLRA's resources (government resources) that would otherwise be devoted to litigating and deciding the dispute. Do you plan to continue supporting CARDOR and offering the parties assistance in establishing/maintaining constructive relationships?

*I believe dispute resolution services have been an integral component of the work of the Authority, and I support it. However, if I am confirmed and designated Chairman, I will be in a better position to understand how the program works at FLRA and assess the advantages and disadvantages how the services are offered.*

- 14. Please describe what impact proposed federal budget cuts, if implemented, will have to FLRA's ability to provide training to federal agencies and unions in understanding their rights and responsibilities under the Civil Service Reform Act and other relevant authorities?

*As I mentioned earlier, I was very proud of the free training courses that I instituted in the Office of the General Counsel for federal agencies and unions to better understand their rights and responsibilities under the Statute. I am pleased to see they are still very active. If confirmed as a Member and designated Chairman I would work to ensure that online training courses, both in the OGC and in the FLRA headquarters, be maintained, regularly updated, and retained online to reduce travel costs and any other costs associated with providing this training live, while still making them equally available to both unions and federal agencies. I would also look for ways to leverage video-teleconferencing capabilities in order to convey training to a wider audience with less expense to the Government.*

- 15. Please describe what impact proposed federal budget cuts, if implemented, will have to federal agencies' ability to train managers and employees regarding their rights and responsibilities under the Civil Service Reform Act and other relevant authorities?

*I would refer you to answer #14 above. Our courses, if available online, should be equally accessible to unions and federal agencies for training managers and employees of their rights and responsibilities under the Statute and other relevant authorities.*

16. Please describe any previous experience—in the public or private sector—with handling whistleblower complaints, and what steps you took to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

*I do not recall any circumstances where I had to handle any type of whistleblower complaint. I would ensure that the matter would be investigated thoroughly, in accordance with law and regulation, that the confidentiality of the complainant would be of paramount importance, and that there would be no retaliation for the complainant.*

17. If confirmed, how will you ensure that whistleblower complaints are properly investigated?

*See my answer to #16 above.*

#### IV. Accountability

18. During your career as a federal employee, have you ever used a personal email account or device to conduct official government business? *No.*

- a. If so, please describe your general practice for doing so, and what specific steps you have taken to ensure that federal records created using personal devices and accounts were preserved.

19. During your career, has your conduct as a federal employee ever been subject to an Investigation or Audit by an Inspector General? If so, please describe.

*I am quite sure that I have never been the subject of an investigation or audit by an Inspector General focused on my conduct as a Federal employee. However, during my short tenure as General Counsel of the FLRA, there were Inspector General matters not related to my conduct that would come to my attention. I always treated the matters with priority and responded specifically to each and every one.*

20. During your career, has your conduct as a federal employee ever been subject to an investigation by the Office of Special Counsel? If so, please describe. *No.*

21. During your career as a federal employee, have you ever declined to implement recommendations made by the Office of Inspector General, the Office of Government Ethics, the Office of Special Counsel or the Government Accountability Office? If so, please describe.

*I always took any recommendations seriously and, to the best of my knowledge, implemented any recommendations.*

22. If confirmed, do you pledge to implement recommendations made by the Office of Inspector General, the Office of Government Ethics, the Office of Special Counsel and the Government Accountability Office?

*Yes, I will take seriously and make every effort to implement every such recommendation provided they are within the purview of my authority, within the budgetary authority of the agency, and are not inconsistent with statutory, regulatory or other agency policy which would warrant otherwise.*

#### V. Relations with Congress and the Public

23. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

*I will make it my priority.*

24. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress? *Yes*

25. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress? *Yes*

26. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information? *Yes*

27. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress? *Yes*

28. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Office of Inspector General, Office of Government Ethics, the Office of Special Counsel, the Government Accountability Office (GAO) and the Congressional Research Service? *Yes*

29. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving [agency's] operations and effectiveness? *Yes*

30. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

*Yes, in accordance with the parameters of the Freedom of Information Act.*

31. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

*Yes, I will ensure the agency follows the parameters of the Freedom of Information Act.*

**VI. Assistance**

32. Are these answers your own? Have you consulted with GSA or any other interested parties? If so, please indicate which entities.

*Each answer is my own; however, I have consulted with FLRA staff to obtain helpful background information.*

I, Colleen Duffy Kiko, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



(Signature)

This 27<sup>th</sup> day of October, 2017



**Member**  
**Employees' Compensation Appeals Board**

**I. Nature and Purpose of Work**

**A. Introduction:**

Incumbent serves as a Member of the Employees' Compensation Appeals Board (the Board). The Board was created to decide appeals from final decisions of the Director, Office of Workers' Compensation Programs (the Office) in cases arising under the Federal Employees' Compensation Act. The Chairman and the two Members are appointed by the Secretary of Labor, pursuant to Section 8149 of the Federal Employees' Compensation Act, which provides that "[t]he rules and regulations shall provide for an Employees' Compensation Appeals Board of three individuals designated or appointed by the Secretary with authority to hear and, subject to applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees." This Act covers all Federal employees and certain other categories of employees, such as local law enforcement Officers who are injured or killed while enforcing Federal law. Appeals may be taken to the Board on all questions of law and fact and on the exercise or failure to exercise discretion.

The Board performs a quasi-judicial function in deciding appealed cases. Decisions of the Board are contained in decisions and orders affirming or modifying the action of the Office, remanding cases for further development or reversing the Office action. The Board does not receive or review new evidence, but decides the case on the basis of the record as it existed when the Office rendered its decision. Decisions of the Board are final and not subject to either administrative or court review. In this respect, the Board is unique among all jurisdictions in the United States.

**B. Duties:**

As a Member of the Board, incumbent serves as Assistant to the Chairman in all matters of the Board as assigned, including policy decisions, technology proposals, personnel and disciplinary matters, union matters and all other management duties of the Chairman. Incumbent participates in rendering decisions of the Board. Each decision of the Board is set forth in a written opinion which sets forth the basis for the decision. The appeals are assigned by the Chairman to a three-Member panel consisting of no less than one Member (who serves as Chairman of the Panel) and up to two Alternate Members.

The Board is assisted by legal staff. In every case assigned by the Chairman, the incumbent reviews the case record, the pleadings of the parties and the draft decision and order submitted by the staff attorney. The incumbent analyzes and evaluates the legal and factual aspects of each case and conducts or has conducted necessary research. Research includes examination of the law, regulations and procedures, prior Board decisions and workers' compensation cases decided under other jurisdictions or general statutory or common law.

Incumbent participates with the Chairman, Members and Alternate Members at oral argument presented by counsel for the Office and appellants or their authorized representatives. The Chairman designates which Board Member will preside over the oral argument. Incumbent may interrogate those appearing for the purpose of clarifying aspects of the case which need further explanation.

Incumbent participates with the Chairman, Members and Alternate Members in reaching a decision on cases before the Board. Each opinion sets forth salient issues, facts, jurisdiction, legal precedent and analysis.

Board decisions are comprehensive and constitute exclusive precedent to guide the Office in adjudication of claims and serve as reference to injured workers' representatives, workers' compensation specialists, and other individuals. Opinions are published in volume form. Volume sets are maintained by the Workers' Compensation Commission of each State, by university and law libraries, by various government agencies, by employee organizations and by attorneys and other interested in workers' compensation interpretations.

Any petitions for reconsideration are returned to the original panel for review and determination as to whether the original decision should be reopened.

All fees for legal services performed in connection with the appeals require approval of the Board. The Chairman and the Board Members approve such fees based upon what is regarded as fair and reasonable under the circumstances. Incumbent joins with the Chairman and the other Board Member in ruling on all procedural motions, such as motions to dismiss appeals due to lack of jurisdiction, motions to remand for further development by the Office.

Incumbent is instrumental in working with the Chairman and the other Member of the Board in establishing policies to be adopted by the Board. Incumbent advises the Chairman on administrative or procedural rules and methods.

## II Scope and Effect of Work

The jurisdiction of the Board includes all civilian employees of the Federal Government, Federal Corporations, such as the Tennessee Valley Authority and the Federal Deposit Insurance Corporation, U.S. Postal Service as well as local law enforcement officers injured or killed in the enforcement of Federal law. Board decisions represent the majority opinion of the Panel.

The work of the Board is crucial because of the number of employees covered, the amount of compensation involved and the complexity and difficulty of the issues involved. Board decisions, which are final and not subject to review either administratively or judicially, have great impact upon a program which involves every

Federal agency, millions of employees and several billions of dollars in benefits. They serve as precedent setting decisions in the field of Federal Employees' Compensation just as decisions of the Courts serve as legal precedents under State workers' compensation programs. Because of the numbers of employees covered by the Federal Government, decisions of the Board have an important precedent effect upon the administration of State workers' compensation laws.

### III. Supervision and Guidance Received:

As a member of a quasi-judicial body, incumbent Board Member exercises completely independent judgment in discharging duties and responsibilities, subject to the applicable law and the rules and regulations of the Secretary of Labor, including any dissenting opinion deemed necessary or desirable. The Chairman of the Board is the administrative supervisor for all other matters, such as leave approval, time and attendance, assignment of work, payroll and all other management issues.

### IV. Mental Demands

The position requires ability to appraise, evaluate, and adjudge exceptionally difficult issues presented for judgment, ability to grasp the fundamentals of complex technical subject matter, and to exercise good judgment, judicial temperament, and humane approach. Demonstrated ability and experience in the field of workers' compensation and in-depth professional legal background are required.

### V. Personal Work Contacts

It is essential, at Board oral arguments and in arriving at decisions with the Chairman, Board Members and other Alternate Board Members, that the highest standards of judiciousness, objectivity and equanimity be exercised.

**Senator Heidi Heitkamp**  
**Post-Hearing Questions for the Record**  
**Submitted to Hon. Colleen D. Kiko**

**Nominations of Hon. Ernest W. DuBester, Hon. Colleen D. Kiko, and James T. Abbott to  
be Members, Federal Labor Relations Authority  
Tuesday, November 7, 2017**

1. In your questionnaire, you seemed to focus on communication challenges as one of the chief challenges that cause unfair labor practice complaints.
  - What role can the FLRA play in improving communication between labor and management?

I believe that the best role the FLRA can play in improving communication between the parties is to speak directly from our decisions and present clear, consistent legal precedent.

We can also play a significant role in improving communication between the parties by offering parties up-to-date, current training presenting the precedent in the FLRA decisions.

- Also, improving communication is a tricky goal since every person has a different definition of what improved communication means. What do you think helps improve communication the most?

I believe that communication can best be improved through respecting each other, appreciating and understanding each other's opinions, and listening to different viewpoints.

2. There is an enormous backlog of cases at FLRA. Please explain what steps you will take to address this and what will you do to foster collaboration among all components of the agency?

Personally, I am unaware of any enormous backlog at the FLRA. FLRA staff has recently advised me that the Authority has a backlog of less than 50 cases. I am also unaware of any backlog pending with the General Counsel. However, when I arrive at the FLRA, I will assess that situation, review current case processing procedures and, together with the other Members and the General Counsel, as appropriate, collaborate on the best practices necessary to move cases and eliminate any backlog. In my current agency, we instituted performance standards that measured quality, quantity, and timeliness of output. That is a difficult feat with legal decisions, but we were successful in improving all three parts of that equation. I will make it a priority to raise the issue of performance standards and metrics for all agency positions with both management and employees to elicit their comments on how to deal with any case backlogs and/or to increase general efficiencies.

- What do you consider the role of the FLRA CG Regions to be in the process?

The Office of the General Counsel is a separate entity from the Authority, with respect to case processing. However, any backlog that exists at the GC level could

ultimately affect the Authority component – as many of their actions continue through the pipeline to the Authority for decision. I would include the General Counsel in the performance/efficiency discussions, to determine the best method to ensure that quality, quantity, and timeliness were aspects of the performance plans.

- How important is it to use these offices to interact with the public?

I will presume that the term “these offices” refers to the Regional Offices of the GC. In that regard, I believe that the staff members in the Regional Offices represent the face of the GC. They have more interaction with our constituents than the Authority and I would consider the interaction of these offices as crucial in interfacing with the public.

- Is it your opinion that the number of regional offices should increase or decrease? Please feel free to explain your answer.

I have been away from the General Counsel’s office for nine years, so it would be presumptive of me to have an opinion on whether the number of regional offices should increase or decrease. As the Chairman of the agency, however, it would be my responsibility to manage the funds appropriated to the agency. With that in mind, the General Counsel would be the point person to provide the information necessary to determine whether the number of regional offices was right-sized based on the workload and staffing patterns and the costs of maintaining seven regional offices. These discussions are on my priority list.

3. Would you seek appropriate funding for the FLRA to perform its duties as required under the law and to vigorously enforce federal labor law?

Yes, as Chairman of the agency, I will vigilantly monitor the funding levels of the FLRA in conjunction with the mission that we have been provided in an effort to ensure that the FLRA can vigorously enforce the Federal Labor-Management Relations Statute.

4. Will you please describe the situation that lead to your prior departure from the FLRA in March 2008?

I was offered an opportunity to return to the Employees’ Compensation Appeals Board.

- Was there a succession plan created prior to your departure?

Yes. I discussed my employment opportunity with the White House and, shortly after we set my departure date of March 2008, on April 2, 2008 President George W. Bush nominated Brandon Chad Bungard for the FLRA General Counsel position.

5. What are your views are on transparency and communication with the public?

I believe that my role as Chairman of the FLRA is to ensure that the FLRA follows the mandates of the Statute. Our decisions speak for themselves in precedent and legal policy. That is the best way to be transparent and to communicate with the interested public, the parties, and the shareholders (taxpayers). Also, through training courses offered to the parties, we should be helping the parties best understand the guidance that is provided through our decisions.

OPENING STATEMENT OF HON. ERNIE DUBESTER OF VIRGINIA TO BE A MEMBER  
OF THE FEDERAL LABOR RELATIONS AUTHORITY  
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
NOVEMBER 7, 2017

Mr. Chairman and Members of the Committee:

I greatly appreciate the opportunity to come before this Committee again for its consideration of my nomination to be a Member of the Federal Labor Relations Authority (FLRA). I also would like to thank the Committee's staff for their work and assistance in reviewing my nomination and scheduling this hearing.

Before making a brief opening statement, I would like to introduce my wife, Karen Kremer. In a few months, we will celebrate our 30<sup>th</sup> Anniversary. When I first met Karen, she was working for Senator Howell Heflin on the Senate Judiciary Committee. So this Body will always hold a special, personal meaning in my life.

I also want to recognize the presence here this morning of my colleagues from the FLRA, including those of my personal staff. These dedicated public servants, as well as many FLRA staff who are not present, are the key to the FLRA's many successes in recent years.

I am also pleased to appear with Colleen and James who, hopefully, should the Senate confirm us, will soon be my new colleagues.

Mr. Chairman, this is the fifth time I have had the privilege to come before the Senate after being nominated by a President for a position of public trust. During the nineties, I was nominated twice to serve as Chairman, and Member, of another independent agency, the National Mediation Board. And, this is the third time that I have had the honor to come before this Committee after being re-nominated by President Trump to continue serving as a Member of the FLRA.

I have served as a Member for over eight years. And I served as Chairman for most of 2013.

The last eight years reflect many accomplishments at the FLRA. Exercising our statutory responsibility to provide leadership in labor-management relations, we have engaged in numerous outreach, facilitation and training activities which include the delivery of a variety of training sessions to tens of thousands of labor and management representatives in the Federal Sector community. During this period, we have also made timely issuance of decisions a major priority.



In addition, with an agency focus on human capital initiatives, such as training and development, performance management, and work-life balance, employee morale has improved dramatically. For the last two years, we have ranked in the top 5 overall in the Partnership for Public Service rankings for "Best Places to Work in the Federal Government." And in 2015 and 2016, we received #1 rankings in the specific categories of teamwork and effective leadership.

Mr. Chairman, with over 40 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator, and academic, over 25 of those years are in the Federal sector. I remain strongly committed to the FLRA's mission and to the importance of stable, constructive labor-management relations in the Federal sector. And, if confirmed, I will continue to work tirelessly so that the FLRA is recognized by the Federal sector's labor-management community as one of the most effective and efficient agencies in the Federal government.

Again, I appreciate the opportunity to appear before you and I would be pleased to answer any questions that you have.

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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October 12, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ernest W. DuBester, who has been nominated by President Trump for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

**DAVID APOL**

David J. Apol  
OF: (202) 376-5000  
OFFICE OF  
GOVERNMENT ETHICS  
1201 NEW YORK AVE NW  
WASHINGTON DC 20005  
(Tel: 202 376-5000)

David J. Apol

Acting Director and General Counsel

Enclosures **REDACTED**

October 4, 2017

Fred B. Jacob  
Solicitor and Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K St., NW  
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member, Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

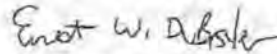
I will meet in person with you during the first week of my service in the position of Member in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in cursive script that reads "Ernest W. DuBester".

Ernest W. DuBester

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Member, Federal Labor Relations Authority (FLRA)	October 3, 2017

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Ernest	William	DuBester	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 1400 K Street, NW, Suite 323		
City: Arlington	State: VA	Zip: 22207	City: Washington	State: DC	Zip: 20005

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Ernie					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1950	Passaic, NJ

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Karen	Marie	Kramer	

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Multiple Names	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix

## 2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Boston College	College	August/1968 <input type="checkbox"/> Est <input type="checkbox"/>	May/1972 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	A.B.	May, 1972
Columbus School of Law, Catholic Univ. of America	University	August/1972 <input type="checkbox"/> Est <input type="checkbox"/>	May/1975 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	May 1975
Georgetown Univ. Law Center	University	Sept./1978 <input type="checkbox"/> Est <input type="checkbox"/>	May 1980 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	L.L.M. (Labor Law)	May 1980
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		



### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Other federal employment	Federal Labor Relations Authority (FLRA)	Member	DC	August 2009 <input type="checkbox"/> Est <input type="checkbox"/>	Present <input type="checkbox"/>
Other federal employment	FLRA	Chairman	DC	January 2017	January 2017
Other federal employment	FLRA	Chairman	DC	Jan. 2013 <input type="checkbox"/> Est <input type="checkbox"/>	Nov. 2013 <input type="checkbox"/>
Other federal employment	National Mediation Board (NMB)	Mediator	DC	July 2005 <input type="checkbox"/> Est <input type="checkbox"/>	August 2009 <input type="checkbox"/>
Non-Government Employment	George Mason University School of Law (GMUSL) (now Antonin Scalia Law School)	Distinguished Professor of Law (and Chair of Dispute Resolution Program)	Arl., VA	August 1991 <input type="checkbox"/> Est <input type="checkbox"/>	July 2005 <input type="checkbox"/>
Self-employment	While at GMUSL	Arbitrator & Mediator	Arl., VA	Aug. 2001 <input type="checkbox"/> Est <input type="checkbox"/>	July 2005 <input type="checkbox"/>
Other Federal employment	National Mediation Board	Chairman (and Member)	Wash. DC	Nov. 1993	Aug. 2001
Non-Federal employment	Catholic Univ. School of Law	Adjunct faculty	Wash. DC	1997	2001
Non-Federal employment	AFL-CIO	Legislative counsel	Wash. DC	1984	1993

Non-Federal employment	Law firm of Highsaw & Mahoney	Associate	Wash. DC	1981	1984
Other Federal employment	National Labor Relations Board	Counsel to Chairman (and Member)	Wash. DC	1975	1981
		Field attorney	Los Angeles Regional Office	1978	1978
		Legal Assistant to Board Member	Wash. DC	Summer of 1974 & part-time Fall of 1974	Spring of 1975

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
Taiwan Ministry of Labor & Taipei Economic & Cultural Representatives Office in U.S.	Head of American Delegation (along with 8 State Labor Commissioners)	November 2014 <input type="checkbox"/> Est <input type="checkbox"/>	November 2014 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>
International Labor Org.	Chairman, Tripartite Conference on "Consequences for Mgmt. & Personnel of Restructuring of Railways"	April 1994 <input type="checkbox"/> Est <input type="checkbox"/>	April 1994 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent,

that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics officer to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with the FLRA's designated agency ethics officer and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

I have engaged in no such activity.

#### 5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

While at the NLRB, I received Distinguished Service and Sustained Superior Performance Awards in 1978, 1979, & 1980.

#### 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
U.S. Supreme Court	8/1/80 – Present	Attorney & Counsellor (Member)
District of Columbia Bar Ass'n	Since 1980	Member

New Jersey State Bar Ass'n	Since 1976	Member (now inactive)
Florida State Bar Ass'n	Since 1976	Member (now inactive)
Northern Virginia Mediation Services	2003-2008	Board of Directors
Labor & Employment Relations Ass'n (D.C. Chapter)	On & Off Since 1994	Currently, Member of Executive Advisory Board
American Bar Ass'n	On & Off since 1976 (currently not a member)	Member
Ass'n of Conflict Resolution	2002-2009	Member
Society of Federal Labor & Employee Relations Professionals	2003-Present	Member
Boston College Alumni Club of Metropolitan Washington, DC	Since 1976	Member (and President 1984-92)
Virginia Supreme Court, Richmond, VA	2002-Oct. 2008	Certified Mediator

### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

NO

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>

--	--	--	--

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Presidential Campaign of Barack Obama	Worked as a volunteer in Virginia. Services rendered included phone banks, canvassing, & literature distribution.		2008

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Presidential Campaign of Barack Obama	\$600 (\$300 twice)	2012


### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
In the magazine "Perspectives on Work", published article entitled: "Collective Bargaining: A Critical Value of a Democracy." (article attached)	Labor & Employment Relations Ass'n	Summer 2011/Winter 2012 issue


(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Town Hall Meeting with the Federal Labor Relations Authority (FLRA)	Annual Federal Dispute Resolution (FDR) Training Conference, San Francisco, CA	August 9, 2017
Town Hall Meeting with the Federal Labor Relations Authority (FLRA)	Annual FDR Conference, New Orleans, LA	August 3, 2016
Keynote address-Reprised theme from article cited in my response to 8 (A)	Arlington, VA, to 40 <sup>th</sup> Annual Symposium of the Society of Federal Labor & Employment Relations Professionals	April 18, 2013




(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
People-Relationships-Effective Communication. Consistent with Conference's Theme "Back to the Basics", Fundamental Considerations Can Help Make You a Better Practitioner in all Aspects of Labor-Management relations	Office of Personnel Management, Washington, DC. Employee Relations Policy Series.	5/21/13
FLRA Update	American Bar Ass'n, Washington DC. Federal Sector Committee of Labor & Employment Law Section	4/10/13
Why Use of Alternative Dispute Resolution Is So Effective at the FLRA	DC Chapter of Labor & Employment Relations Ass'n	1/23/13
Use of ITEV (Internet, Telephonic & Electronic Voting) in Representation Matters	NYU School of Law. Technology in Practice & Workplace Committee of Labor & Employment Law Sec. of ABA	4/25/12

FLRA Update	Federal Sector Committee, ABA Labor & Employment Law Sec., Chicago, Ill.	11/4/10
FLRA Update	Federal Sector Committee, ABA Labor & Employment Law Sec., Washington, DC	4/15/10

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?  
(Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)  
No
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?  
No
- Have you been charged, convicted, or sentenced of a crime in any court?  
No
- Have you been or are you currently on probation or parole?  
No
- Are you currently on trial or awaiting a trial on criminal charges?  
No
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?  
No

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation,

where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle prosequi," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense? Yes /  
No

N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.  
N/A

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
Sept. 2004	Arlington County Circuit Court (VA)	Myself (Plaintiff) and Nicole Arshan (Defendant). My attorney was Patrick Regan, with the firm Regan Zambri &	In January 2002, I was involved in a serious automobile accident. I sued the person responsible for causing the accident to compensate for injuries sustained and related	Matter was settled pre-trial in Feb. of 2005.

		Long, 1919 M St., NW, Ste. 350, Wash., DC 20036; 202-463-3030, Ext. 222.	consequences.	
5/3/13	EEOC, Wash. DC	Robin Davis and Ernie DuBester, Chairman, Federal Labor Relations Agency (FLRA) and FLRA	Appeal to EEOC of Final Agency Action.  I am named only in my capacity as Chairman of the FLRA.	Matter settled (closed by EEOC 8/13)

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

#### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No

<u>Name of Agency/Association/ Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>
National Mediation Board (NMB)	November 2001	In May of 2001, when I left the NMB and was hired by George Mason University (GMU) Law School, there was an interdisciplinary Academic Center for Dispute Resolution between the Law School & GMU's Institute for Conflict Analysis & Resolution (ICAR). Apparently, questions were raised about the	I was found not to have been involved and, as to me, the matter was dropped (not referred). I continued to teach at GMU for the next four years. And, in 2005, I was rehired by the NMB, the investigative entity, where I worked until August 2009.

		solicitation of funding for the Center which led to an ethics inquiry.	

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No

#### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**



**REDACTED****13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). No

**14. Outside Positions**

√ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)
DC LERA	Washington, DC	Non-profit	Executive Advisory Committee	2015	Present
Virginia Mediation Network	Richmond, VA	Non-profit	Board of Directors	2005	2008
Northern Virginia Mediation Services	Fairfax, VA	Non-profit	Board of Directors	2003	2008

--	--	--	--	--	--

### 15. Agreements or Arrangements

√ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Not applicable

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Not applicable

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

### 16. Additional Financial Data

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing

on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

REDACTED

## SIGNATURE AND DATE

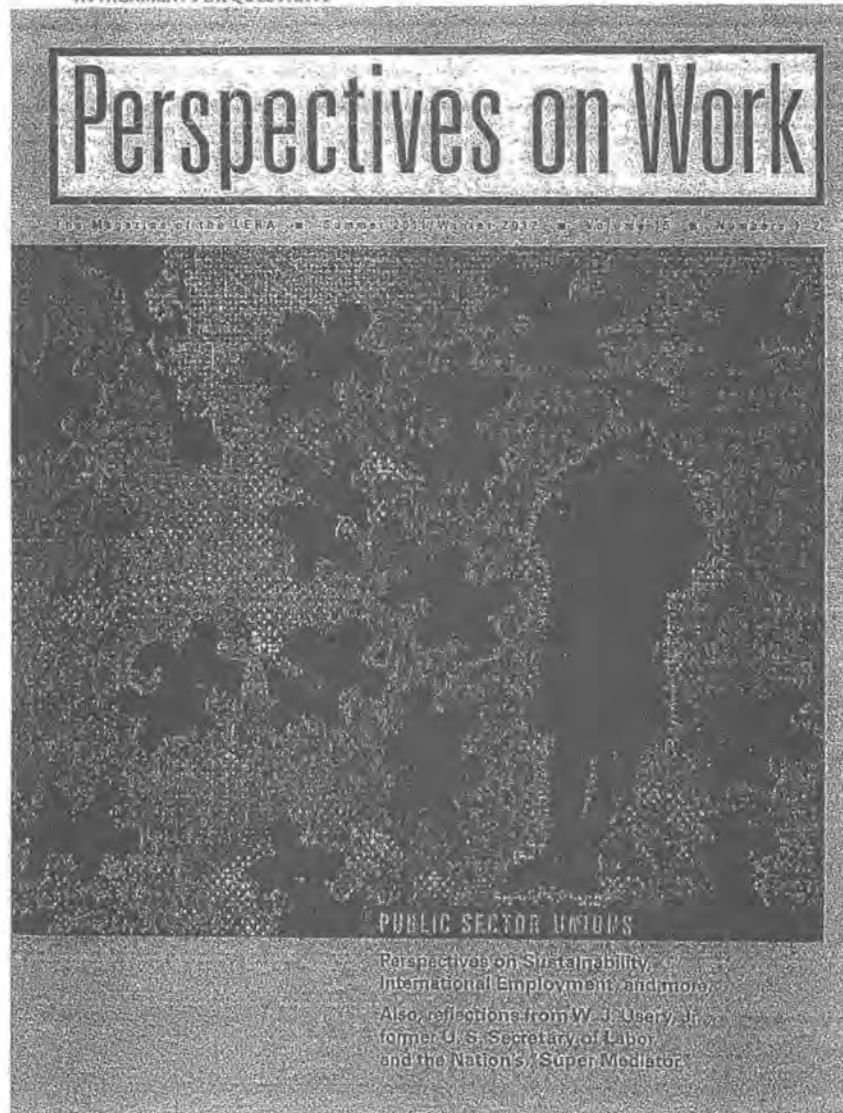
I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Ernest W. DubenakThis 12<sup>th</sup> day of Oct, 2017

DISTRICT OF COLUMBIA: SS  
SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 12<sup>th</sup> DAY OF Oct, 2017  
[Signature]  
NOTARY PUBLIC  
My Commission Expires Nov 30, 2020  
27



ATTACHMENT FOR QUESTION 8



*Perspectives on Work* is a biannual publication of the Labor and Employment Relations Association and is published by the University of Illinois Press in Champaign, IL. Comments, letters, or suggestions for articles may be sent to Susan C. Carr, editor, at [scarr@uii.edu](mailto:scarr@uii.edu).

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**LERA**  
SHAPE THE  
WORKPLACE OF  
OUR FUTURE

# Perspectives on Work

From the Editor  
Susan C. Carr..... 2

## POLICY FORUM: THE FUTURE OF PUBLIC SECTOR UNIONS

Public Sector Labor Relations: A System Struggling to Adjust to the Financial Crisis  
Robert McKersie..... 3

Fiscal Crisis and the Future of Public Unions  
Barry Bluestone..... 6

Not Just about Pensions  
Dave Low..... 9

Collective Bargaining: A Critical Value of a Democracy  
Ernest DuBester..... 12

## POLICY FORUM: SUSTAINABILITY AND CORPORATE SOCIAL RESPONSIBILITY

Labor Management Partnerships: Working Toward a Sustainable Economy  
Nikki Daruwalla..... 13

Business Social Sustainability: Joint Gains for Employers AND Employees  
Tom Strong, Mark Popovich, and Barbara Dyer..... 19

## THE CHANGING NATURE OF WORK: INTERNATIONAL EMPLOYMENT

Ensuring Core Labor Standards through International Framework Agreements?  
Michael Fichter, Markus Helfen, and Jörg Sydow..... 23

Privatization of Public Services and Impacts on Employment and Working Conditions—European Experiences  
Christoph Herrmann and Jörg Fiedler..... 26

The Institutions of Inclusion? The Dynamics of Low-Wage Work in Wealthy Countries  
Jérôme Gauthé..... 29

The Globalization of Service Work: Comparative Institutional Perspectives on Call Centers  
Rosemary Batt..... 32

Coercion without Convergence: European Models of Capitalism on the Eve of the Crisis  
Stefen Lehndorff..... 35

## FEATURES

Protecting Workers in Fixed Workplaces  
David Weil..... 38

# COLLECTIVE BARGAINING: A Critical Value of a Democracy

ERNEST HUBERTIN

I have thirty-six years of experience in labor-management relations. All involve, in some way, the institution of collective bargaining. As a practitioner, I negotiated collective agreements and took grievances to arbitration. Working as a mediator, I resolved hundreds of collective bargaining disputes. And, as an arbitrator, I resolved dozens of grievances and a few interest disputes. Based on my experience, I am an advocate for the institution of collective bargaining.

Public service now constitutes more than one-half of my professional life. I have worked for all three federal government agencies that administer our federal collective bargaining laws. Out of law school, I worked for the National Labor Relations Board, probably the best known of the three, with jurisdiction over the private sector. During President Clinton's administration, I served as Chairman (and Member) of the National Mediation Board, the oldest of the three, which oversees labor relations in the airline and railroad industries. Now, during President Obama's administration, I serve as a Member of the Federal Labor Relations Authority (FLRA). Established in 1978 and the newest of the three, the FLRA oversees labor relations in the federal sector, with jurisdiction over nearly two million employees nationwide.

The Federal Service Labor-Management

Relations Statute is modeled on the National Labor Relations Act. Its "Findings and purpose" section states in pertinent part that Congress finds that "experience in both private and public employment indicates that . . . labor organizations and collective bargaining in the civil service are in the public interest."<sup>1</sup>

"Collective bargaining" evokes thoughts about the workplace and the relationship among workers, unions, and employers. But collective bargaining has another aspect, namely, its broader and critical role as a reflection of values fundamental to democratic societies.

Barbara Fick, Associate Professor at Notre Dame Law School, writes that trade unions are the "quintessential civil society organization." In this role, Fick states, trade union influence extends beyond the confines of the workplace and affects society as a whole, making a major contribution to creating, maintaining, and rebuilding democratic societies.<sup>2</sup> Hannah Arendt, author of the classic *Origins of Totalitarianism*, had a similar thought.

As I recall, Arendt opined that the two institutions that are most reflective of a democratic society are a free press and free trade unions.

"Collective bargaining" evokes thoughts about the workplace and the relationship among workers, unions and employers. But collective bargaining has another aspect, namely, its broader and critical role as a reflection of values fundamental to democratic societies.

Illustrative of this principle is the situation that existed in post-World War II Japan. General Douglas MacArthur was in charge of reforming Japan's government and its constitution. Around that time, many of the most conservative elements in our country were encouraging him to seek the Republican presidential nomination. In Japan, MacArthur was intent on ensuring that Japan would not remain an autocratic form of government and on fending off communism. Toward those objectives, he encouraged the unionization of workers and sweeping constitutional reforms that included provision of collective bargaining rights. He succeeded.<sup>3</sup>

But were those different times, a different era?

Following World War II, our country became embroiled in the Cold War. In 1960, John F. Kennedy called Labor the "key to the Nation's struggle against



Communism," Kennedy stated further that "those who cripple collective bargaining or prevent organization of the unorganized do a disservice to the cause of democracy."<sup>4</sup>

*But were those also different times, a different era?*

Flash forward about twenty years to President Reagan's administration. In some circles, Reagan is best known for two reasons. One is his firing of air traffic controllers during the PATCO strike. The other is his comment that government is the problem.

Less known, in 1982, President Reagan addressed a joint session of the British Parliament at Westminster Palace. He predicted the demise of communism, well before the collapse of the Berlin Wall, and he described a "democratic revolution" gathering force around the globe. Going forward, Reagan said, the United States would seek to promote an "infrastructure of democracy," including a free press, independent unions, representative political parties, and universities, which "allows a people to choose their own way, develop their own cultures, and reconcile differences through peaceful means."<sup>5</sup>

A year later, President Reagan's words were a catalyst for Congressional passage of the National Endowment for Democracy (NED), which is dedicated to fostering the growth of a wide range of democratic institutions abroad, including trade unions. The website for NED states that "from its beginning NED has remained steadfastly bipartisan. Created jointly by Republicans and Democrats, NED enjoys Congressional support across the political spectrum."<sup>6</sup>

To acknowledge the centennial celebration of Presi-

dent Reagan's birthday earlier this year, two of NED's Board of Directors, former Democratic Congressman Martin Frost (Texas) and former Republican Congressman Vin Weber (Minnesota), wrote an article in *Politico* acknowledging Reagan's role in NED's creation. Their letter suggested further that, at a time when we need a bridge across the divide between the two parties and between the labor-management community, NED can serve as a "model" to find common ground regarding values so important to our democracy.<sup>7</sup>

*But did NED's creation during the Reagan administration reflect different times, a different era?*

Flash forward again to events of recent months both here and abroad.

In Egypt, tens of thousands of Egyptian workers joined student protesters in the street and jointly brought down an authoritarian regime. This echoes similar events that have occurred elsewhere, such as Poland, East Germany, and the Philippines.

Throughout the 1980s in Poland, worker protests and strikes led by the Polish trade union Solidarity, defying

state-controlled unions, culminated in free, democratic elections and helped precipitate the downfall of Soviet Communism.

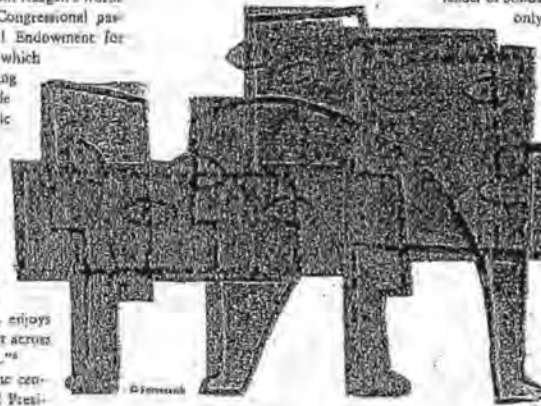
In Egypt, worker protest beginning in late 2006 led to the creation of two independent unions, defying the officially recognized state-union, and have now culminated in the toppling of its regime. The American Chamber of Commerce in Egypt publishes a *Business Monthly*. Its February 2011 cover story entitled "Workers' Discontent" provides an interesting account of the last four years. That article also states: "While the instinctive reaction of government and employers is to view such developments as a threat, labor leaders might represent an opportunity for dialogue at a time of increased frustration among both workers and the unemployed."<sup>8</sup>

Many Americans—across the political and ideological spectrum—have expressed admiration and support for foreign workers' bravery in protesting and undermining Egypt's authoritarian regime. Recall that, in November 1989, during this administration of President George H. W. Bush, Lech Walasa, the leader of Solidarity in the 1980s, became

only the third foreign dignitary in history (after Marquis de Lafayette and Winston Churchill) to address a joint session of the US Congress.

Meanwhile, here at home, workers' collective bargaining rights are under attack on several fronts, most notably Ohio and Wisconsin.

It is ironic that our government has received many communiques from Egyptian groups—and from Solidarity in Poland—expressing



support for American workers in their fight for democracy. As Gerald Beyer (Associate Professor of Christian Social Ethics at St. Joseph's University in Philadelphia), writing in *Politics Daily* argues, there are parallels between the Solidarity Movement in Communist Poland and the efforts of public workers in Wisconsin and other states to resist efforts to curtail their collective bargaining rights.<sup>3</sup>

*So, what is going on?*

Well, there are certainly serious budget crises in most states. However, it must also be mentioned that many states that do not have collective bargaining rights also face budget crises.

And, it is certainly appropriate to challenge responsible union leaders to help solve the serious problems created by pension and health care obligations. This, apparently, has occurred in Wisconsin.

But, as many observers have recognized, in Wisconsin, the real struggle is over power.

*This is regrettable.*

Understandably, labor and management will often differ at the workplace and over certain policy issues. However, as the prior discussion illustrates, freedom of association and other democratic values that underlie the institution of collective bargaining, need not be partisan.

But, do we have a double standard as to the democratic values that we promote abroad as opposed to here at home?

Professor Pick observes: "Advocates for democracy have cause for concern in the absence of a vibrant, and independent, domestic trade union movement."<sup>4</sup>

So, I hope that our struggles over budget deficits, both in the states and within the federal government, won't destroy the conditions necessary to support the institution of collective bargaining. In the long term, that would greatly harm our democratic values.

Based essentially on the First Amendment right to freedom of association, the institution of collective bargaining has served as part of our legal framework for nearly a century. It affords workers the opportunity for engagement and a meaningful voice to address work-related concerns. It has provided an impetus toward development of a true middle class at a time when the disparity between richer and poorer Americans is becoming even more pronounced. And, for the most part, through the processes of negotiation and arbitration, it has enabled workers, unions, and employers, alike—as President Reagan suggested nearly thirty years ago—to "reconcile differences through peaceful means." In this sense, on balance, it redounds to the benefit of society as a whole.

Given these considerations, do we really want to eliminate, or even curtail, collective bargaining at this time? And, if so, what does that say about the kind of country that we are willing to become?

*What can we do?*

Well, people who share my concerns need to speak out. It is particularly important to address our young citizens.

Young people need to learn of the role of collective bargaining in creating a system of justice for the workplace.

But, perhaps even more important, young people need to appreciate the institution of collective bargaining as a reflection of freedom and democratic ideals, not only for democracies abroad, but also for ours here at home.

#### NOTES

This article is adapted from a speech given in Dallas on March 4, 2011, to the National Academy of Arbitrators, SW Region.

1. 5 U.S.C. § 7101(a) (2006).

2. B. J. Pick, "Not Just Collective Bargaining: The Role of Trade Unions in Creating and Maintaining a Democratic

Society," *WorkingUSA: The Journal of Labor and Society* 12, no. 2 (June 2009), 249.

3. A good account of MacArthur's role in post-World War II Japan is contained in William Manchester's book *American Caesar* (New York: Dell, 1978).

4. J. F. Kennedy, quoted in P. Kibus, "Labor Called Key to Nation's Race with Communism," *New York Times*, September 3, 1960, pp. A-1, A-6.

5. R. Reagan, "Address to Members of the British Parliament, June 8, 1982," [http://www.reaganlibrary.org/html/roagan06\\_02\\_02.html](http://www.reaganlibrary.org/html/roagan06_02_02.html) (accessed February 25, 2011).

6. <http://www.ned.org/ABOUT> (accessed Feb. 23, 2011).

7. M. Freire and V. Weber, "Reagan's Racial Democratic Legacy," *Politics*, February 7, 2011, <http://www.politics.com/news/stories/0211/48946.html> (accessed February 28, 2011).

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#### Ernest Dufresne

Ernest Dufresne has served as a Member of the Federal Labor Relations Authority since August 2006, after being nominated by President Obama and unanimously confirmed by the U.S. Senate. He also served as Chairman, First Member of the National Labor Relations Board (2001-2006) and as Assistant Secretary of Labor.

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Ernest DuBester to be a Member of the  
Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be a member of the Federal Labor Relations Authority (FLRA)?

No.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member of the FLRA? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

No.

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be a member of the FLRA?

Since August 2009, I have served as a FLRA Member. This includes service as Chairman for most of 2013, a challenging year in which sequestration was in effect. During these last eight years, consistent with Section 7105(a)(1) of the Federal Service Labor-Management Relations Statute (Federal Statute), I have helped to "provide leadership in establishing policies and guidance" that would promote an effective and efficient labor-management relations program. And, consistent with Section 7105(a)(2) of the Federal Statute, I have participated in the issuance of over 1500 decisions. Including this service at the FLRA, I now have over 40 years of experience in labor-management relations, working as a public servant, advocate, mediator, arbitrator,

and academic. Moreover, I have experience with all of the basic federal labor laws, including several years with the National Labor Relations Board (NLRB), and several years working with the Railway Labor Act, including almost eight years as Chairman (and Member) of the National Mediation Board (NMB). I have also earned a Masters of Law in Labor Law from Georgetown University Law Center.

For over 25 years, I have worked for the federal government. From 1993-2001, I managed another independent federal agency when I served as Chairman (and Member) of the NMB. During that time, I was responsible for implementing a goal shared by the Federal Statute, namely, to promote the "efficient accomplishment of the operations of the government."

The FLRA, as the Committee knows, adjudicates disputes arising under the Federal Statute, deciding cases regarding the negotiability of collective-bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance-arbitration awards. And, even before my FLRA experience, I had experience in each of these areas.

I began my career at the NLRB. There, one of my responsibilities was to draft unfair labor practice decisions that applied and interpreted the National Labor Relations Act – the law on which the Federal Statute is modeled. During both my time at the NLRB, as well as during my tenure at the NMB, I drafted and issued representation decisions, similar to the responsibilities of the FLRA.

Regarding negotiability and impasses, I have 20 years of direct collective-bargaining experience working as a mediator and advocate. In addition, I have taught collective-bargaining and negotiation for many years at two area law schools.

With respect to arbitration awards, I worked for several years as an arbitrator. Moreover, I taught arbitration for several years at a law school.

Finally, I have worked with the Leadership, Committee Chairs, and Members – on a bipartisan basis – of both bodies of Congress. While Chair (and Member) of the NMB, moreover, I worked closely with the White House as well as working collegially with certain Cabinet-level agencies.

6. Please describe:

a. Your leadership and management style.

In my view, successful leadership and successful management require effective communication, collaboration, transparency, and, ultimately, accountability.

When serving in a leadership position, it is important to me that managers and employees alike know that their voices and input are valued. The sharing of information, and at the earliest possible time, is important. In my experience, this kind of work

environment translates into high morale which, in turn, translates into high performance. This is one of the best ways to achieve the Federal Statute's objectives of an effective and efficient government.

It is noteworthy, moreover, that when I served as Chairman in 2013, and when I served as NMB Chairman in the nineties, I dealt with my colleagues who were part of the leadership team in a similar way, striving always to make decisions based on consensus.

Ultimately, though, whether from a leadership or manager's perspective, I am always prepared to take responsibility, and be held accountable, for all of my decisions.

b. Your experience managing personnel.

I have had the rewarding privilege of serving in a leadership capacity at two independent agencies for over 16 years. At both the NMB, and now the FLRA, my responsibilities have included budget development and implementation, information technology, strategic planning, case management, and human resources matters.

In managing the personnel at these agencies, I have always focused on improving and maximizing performance by sustaining high levels of employee engagement and job satisfaction. One way to achieve this objective is by providing personnel with opportunities for professional development and skills enhancement. For example, at the FLRA, we have provided a variety of training opportunities, including legal writing and conflict resolution classes. We provide employees with regular case-law updates. We have provided cross-office and cross-component details to develop research, writing, and ADR skills. And, we have conducted regular meetings of the staffs of the respective Members (decision-makers within the Authority component) to discuss case processing innovations and other matters relating to job satisfaction.

For the managers, we have made available several training opportunities to improve performance management responsibilities and to improve strategic thinking. This is critical for preparation of future agency leaders and to address the important challenge of succession planning.

c. What is the largest number of people that have worked under you?

About 140.

### **III. Role of Member, FLRA**

- 7- Please describe your view of the agency's core mission and a member's role in achieving that mission.

As suggested by the Federal Statute's first section (Section 7101), titled "Findings and purpose," the FLRA's mission is to promote stable, constructive labor-management relations by harmonizing collective-bargaining rights with "the requirement of an effective and efficient Government." How the FLRA best achieves this mission is informed by Section 7105 of the Federal Statute, titled, "Powers and duties of the Authority."

Section 7105(a)(1)

Section 7105's first paragraph requires that the FLRA "provide leadership in establishing policies and guidance" for the administration of the federal government's labor-management relations program. This section serves notice of the importance that all federal agency stakeholders have confidence that the FLRA is performing its mission effectively.

Through its casework, as discussed below, the FLRA has developed expertise in the Federal Statute and those processes that best resolve labor-management disputes. For the last eight years, the FLRA's shared policies and guidance have mostly been in the form of various outreach, facilitation, and training activities, including the extensive offering of Alternative Dispute-Resolution (ADR) services.

(a) Training and Education

Over the last eight years, the FLRA has provided various trainings, including web-based training, to tens of thousands of agency representatives, union representatives, and neutrals, in the Federal Sector labor-management community. This includes training on basic statutory rights and responsibilities.

In recent years, moreover, the FLRA launched initiatives to review the processing of both arbitration and negotiability cases. As part of this initiative, arbitration and negotiability training programs were developed. When offered, these training programs are always filled. And, the Authority also developed a Guide to Arbitration under the Statute and a Guide to Negotiability under the Statute, both of which are posted on the FLRA website.

Over the last eight years, the FLRA has also presented several training sessions at events such as the annual Society for Labor and Employment Relations Professionals (SFLERP) symposium and the Federal Dispute Resolution (FDR) training conference. Both are always well-attended by representatives of the Federal Sector's labor-management relations community.

(b) ADR

In recent years, the FLRA has increasingly recognized the many benefits associated with using ADR to resolve workplace disputes. Accordingly, ADR techniques have become integrated into virtually all aspects of case processing.

The FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO) is a primary deliverer of ADR services. Not only has CADRO helped to resolve or narrow disputes in many cases pending before the Authority, but CADRO has also offered "prevention" services which teach the parties techniques for effectively resolving labor-management issues on their own.

It is noteworthy that successful, voluntary ADR efforts can result in significant savings of staff and budgetary resources for the parties using such services. In this sense, the question is not just about the FLRA from an operational standpoint. Rather, the FLRA's provision of effective ADR services can have a beneficial rippling effect throughout the federal government.

Partly in recognition of this, when the FLRA developed its Strategic Plan for 2015-2018, it reaffirmed ADR's important role in its mission performance. In developing the plan, FLRA undertook a comprehensive process that involved internal input from leaders, managers, and employees. And, in addition, the FLRA sought and received significant feedback from external stakeholders. Among other things, twelve federal agencies and seven federal employee unions participated in a series of focus groups which provided input on FLRA services and performance. A consistent message was that ADR helped the parties to develop constructive workplace relationships that promote better mission performance and quality of work life.

Consistent with this message, the FLRA identified "three strategic goals, which support the agency's ability to fulfill its mission." Goal 2 states: "We will promote stability in the federal labor-management community by providing leadership and guidance through [ADR] and education."

In recent weeks, however, questions have arisen as to whether the FLRA will maintain this view going forward. Changes have already occurred in the extent to which, and, the way in which, CADRO will offer ADR services.

This is regrettable in my view. Based on my experience, including many years of experience before my FLRA tenure, support for ADR is, and should be, a nonpartisan, indeed, bipartisan notion.

#### Section 7105(a)(2)

Section 7105's second paragraph essentially sets forth the Authority's duty to adjudicate four kinds of disputes: cases regarding the negotiability of collective-bargaining agreement proposals, appeals concerning unfair labor practices, appeals concerning representation matters, and exceptions to grievance-arbitration awards. And, it is the FLRA's mission, not only to decide these cases, but to do so in a timely, impartial manner. The FLRA's primary case-adjudication responsibilities, along with



its responsibility to "provide leadership in establishing policies and guidance" related to the federal sector labor-management relations program, constitute the FLRA's core mission.

#### Member's Role

Each Member of the three-member Authority has the adjudicative responsibility discussed above. During my eight-year tenure as a FLRA Member (and Chair), I have participated in the issuance of over 1500 decisions.

In addition, while the Chairman serves as "chief executive and administrative officer of the Authority" (5 U.S.C. Section 7104 (b) ), each member of the Authority shares responsibility for appointment of an Executive Director, regional directors, and administrative law judges (ALJ's) as deemed necessary (5 U.S.C. Section 7105 (d) ). While a Member of the FLRA, I have collegially participated in the selection of several executive directors, regional directors, and ALJ's.

Consistent with our statutory directive to "provide leadership...and guidance," while a Member, I have collaborated with my colleagues in supporting the outreach, facilitation, and training activities discussed above. This includes collaborating with my colleagues on the leadership team, as well as with FLRA career employees, in developing our most recent Strategic Plan.

I have spoken many times while a Member to various conferences attended by representatives of the federal sector labor-management community. Particularly at the arbitration and negotiability trainings, I often speak and afford the attendees the opportunity to ask questions. And, given my background and strong interest in our arbitration initiative, as well as my strong relationships with the arbitral community, I have appeared three times at annual meetings of the National Academy of Arbitrators, to actually train those experienced arbitrators on what I characterize as the "unique attributes of federal sector labor-management arbitration."

8. Please describe how you anticipate, if confirmed, working with other FLRA members to promote the agency's core mission.

For the last eight years, all Members and all Presidentials (including General Counsel and FSIP Chair) have had regular meetings. The regular Presidentials meetings are good opportunities to discuss matters that fall within the agency's responsibility to "provide leadership and guidance," as discussed in my response to question 7. The Members' meetings are a good opportunity to discuss matters that are the Members' responsibility relative to case handling and processing, also as discussed briefly in my response to question 7. Hopefully, those meetings will continue.

It is my instinct and style to work collaboratively with all my colleagues. If given the opportunity to do so, which means being given prior notice of intentions, being asked

for my opinion and then afforded the opportunity for discussion, then I will always act collaboratively.

- a. Please describe prior work experience that demonstrates your capacity to work with FLRA members of a different party affiliation.

My eight-year tenure with the FLRA, and also my prior eight-year tenure as Chairman (and Member) of the NMB, demonstrate my capacity to work with members of a different party affiliation.

During my FLRA tenure, I have served with two Republican Members. Throughout that entire period, we have always held the Presidentials and Members meetings mentioned above. I had a friendly, collegial relationship with my prior Republican colleague, who previously had served as FLRA Chair. On a couple significant decisions, our offices worked together to achieve similar positions, on which my Democratic colleague had a dissenting view. Also, during the initial days of the Arbitration Initiative, discussed in my response to question 7, my Republican colleague and I attended a meeting together at the National Academy of Arbitrators to seek their input and to discuss our intentions. When he left the FLRA, we were friendly and remain friendly.

My current Republican colleague is serving as Acting Chair. And, the President has nominated him to be Deputy Secretary of Labor. As a gesture of collegial support, I attended his confirmation hearing. While we have disagreements, we, too, are friendly. In recent weeks, moreover, we collaboratively hired a new Executive Director and a new Chief Administrative Law Judge, per my response regarding Member's Role in question 7.

Also noteworthy is my NMB experience. Per statute, the Chair rotates every year. So all Members, Republican and Democratic alike, serve as Chair every third year. As intended, this facilitates a collaborative and collegial working environment. In addition, many of the matters that we handled involved high-profile disputes in the transportation sector with the potential for a large impact on the public. While each Member usually assumed responsibility for a particular case, we always discussed the case with our colleagues before making important decisions. During my NMB tenure, I served with two Republican colleagues. When our respective tenures ended, we were friendly and remain friendly.

Finally, also worth mentioning is my trip to Taiwan in November 2014. I was the only federal official and the head of the delegation. The delegation consisted of eight Labor Secretaries from various states. Four, from the states of Oklahoma, Texas, New Jersey and Utah, were appointed by Republican Governors. While we may have had certain political differences, and some differing policy views, during our trip, which included meetings with many high-ranking officials, we were collegial and friendly.

Both during and after the trip, I had friendly conversations with the entire delegation, Republicans and Democrats alike.

9. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

It is my personal view to encourage employees to bring constructive suggestions forward without fear of reprisal, even aside from the legal "Whistleblower Retaliation" prohibitions contained in 5 U.S.C. Section 2302 (b)(8). However, during my career, I have never personally had to address any whistleblower complaints.

b. How do you plan to implement policies within the FLRA to encourage employees to bring constructive suggestions forward without the fear of reprisal?

On all public bulletin boards within the Agency, we have "Whistleblower Retaliation" notices posted which, among other things, advise employees how to disclose concerns or allegations confidentially to the Office of Special Counsel. In addition, on the FLRA's "internal" website, we have a place for employees to post anonymous comments – The Comments/Questions Message Board. This Board is monitored only by the agency's EEO officer.

c. Do you commit without reservation to work to ensure that any whistleblower within FLRA does not face retaliation?

Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

10. What are the most significant challenges facing FLRA as an institution? If confirmed, what steps will you take to address these challenges?

In my view, the most significant challenges facing FLRA as an institution have both an "internal" and "external" dimension.

Internally, discussed in question 15 below, in recent years the FLRA has scored very well in Best Places to Work rankings. The FLRA has ranked in the Top 5 or higher overall and has even ranked #1 in several categories including employee engagement

and leadership. Going forward, a most significant challenge is how to keep employee morale, employee engagement, and employee performance, on this positive arc.

How best to address this challenge requires adhering to certain policies, many of which are suggested in my responses to Questions 5, 6, and 7. First, employees should feel that their work is important and appreciated and that FLRA leadership is committed to the agency's mission. Second, employees should feel that they have a "voice" and meaningful opportunity to weigh in on matters affecting the FLRA workplace. Third, FLRA's leadership team (and managers) should continue to show concern for employees' professional development by, among other things, providing meaningful training opportunities. And, FLRA's leadership team should also continue to ensure that managers are equipped to handle their supervisory responsibilities, particularly regarding the performance-management system. This includes training in the skill of artfully giving and receiving feedback.

The "external" dimension concerns FLRA stakeholders, particularly representatives from the Federal Sector labor-management community. How best to address this dimension is also fairly basic and also largely addressed in my response to questions 5 and 7. Stakeholders should know that the FLRA continues to support its mission of facilitating stable, constructive labor-management relations which, in turn, enables other agencies to more effectively deal with their own mission-related needs. First, FLRA's leadership team should continue outreach activities, such as appearing at conferences. With such appearances, the "state" of the FLRA, including new directions or policies, can be discussed. Second, the FLRA should continue to post on its website information and resources that help practitioners perform their jobs better. Third, the FLRA should continue to offer training, which can both help stakeholders to perform their jobs better and to improve the quality of labor-management relations within their agencies. And, the FLRA should continue to offer meaningful ADR services, and, in a meaningful way. Affording labor and management representatives the opportunity to resolve more of their disputes voluntarily is one of the best ways to improve the quality of labor-management relations.

#### **IV. Policy Questions**

11. What is your assessment of the current state of federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

At any moment in time, I am quite sure that the relationships among various agencies and federal sector unions vary. Even the state of labor-management relations within an agency may not be uniform.

Based on my experience, what I know more certainly is that, when discussing labor-management relations, the key, often overlooked, word is relations. I am a strong

advocate for any mechanisms that place an emphasis on the importance of the relationship, particularly through more effective communication and dialogue.

My extensive experience as a mediator informs and supports this view. Working as a mediator, I have helped to resolve hundreds of collective-bargaining disputes. It was not unusual that, at my initial meeting with the parties, the employer's negotiating committee would tell me something like: "the Union does not care what we have to say. They never listen. So, we don't talk." And, then I would meet with the Union's committee and, what would they tell me? Essentially, the same thing. So, my mediatory role would certainly entail the facilitation of effective communication.

My FLRA experience provides similar lessons. This is reflected by the Best Places to Work Rankings and, particularly by agencies, like the FLRA, that were previously ranked very low and then became ranked very high. It is also reflected by the "best practices" stories that came from the National Council on Labor-Management Relations over the last eight years. Agency and union representatives would come together to tell the story of dramatically improved performance. Almost always, the simple message was: "We didn't talk. And now we do."

For the FLRA, one of the best ways to promote effective communication and dialogue is through the provision of its ADR services.

12. Given your experience as a counsel at the FLRA, do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

As a Member (and former Chair), I have always worked to the best of my ability within the existing statutory framework. In my view, it is within the purview of Congress and the Administration to determine what changes, if any, should be made to the Federal Statute. If asked by Congress for my view regarding a possible reform, I would be responsive.

13. The FLRA's 2017 Congressional Budget Justification states that the FLRA "had to overcome significant obstacles in meeting its mission requirements." The Justification notes that in addition to increased case filings in certain agency components, the FLRA experienced a wave of key employee retirements and departures starting in FY 2013 and continuing into FY 2015.
  - a. Given your experience as a counsel to the FLRA, what do you believe is driving the increased case filings at certain components?

In the last couple of FY's, I believe that case filings have slightly declined or leveled off. As I recall, the reference to FY 2015 reflected the agency's targeted efforts to reduce a backlog within the Office of the Administrative Law Judges through details and other temporary staff assignments. This was reflected by an

increase in ULP cases decided by the Authority. But again, this was driven by resolving an OALJ backlog and not by a dramatic change in ULP filings by the parties.

- b. What issues and factors do you believe most frequently give rise to unfair labor practice complaints?

Of course, various issues and factors give rise to ULPs. Certainly, allegations of “failing to bargain” is a frequent subject of ULP complaints. And, where this occurs, often it can be explained by a poor labor-management relationship. As discussed in prior responses, including question 11, effective communication and dialogue is the best antidote.

- c. As unfair labor practices are considered at the Office of General Counsel (OGC) level, do you believe agencies are afforded sufficient information concerning the complaint? Are agencies provided a sufficient opportunity to weigh-in with OGC concerning a given complaint?

Given that the OGC’s investigative and prosecutorial roles are distinct from the Authority’s quasi-judicial role, there is a necessary operational wall between the two components. This question is a matter for the OGC and better asked of the General Counsel.

- d. Are there other obstacles besides increased caseloads and staff departures that hamper the FLRA’s ability to fulfil its mission? If so, please identify them and explain what you believe should be done to address them.

There may be various obstacles at a particular moment in time. Even in an environment of “doing more with less,” having adequate resources through the budget and appropriations process is always a concern. I like to say that, while we are a small agency, we have a large mission. Our work can have positive, rippling effects throughout the federal government.

14. Are there improvements to the FLRA’s internal review process that you believe can be improved upon to ensure fewer cases ultimately are overturned by the courts, and that all evidence is properly considered in a given case?

For context, over time the FLRA is upheld by the courts in about three-fourths of cases that are appealed. Given the FLRA’s keen interest in being upheld, a thorough internal review is always performed. In an attempt to improve this percentage, perhaps a more formalized internal review, to ensure that all applicable court precedent is considered, may be in order.

15. In the 2016 *Best Places to Work* rankings compiled by the Partnership for Public Service, and based on the data collected in the Federal Human Capital Survey, the FLRA

ranked 5<sup>th</sup> out of 29 small federal agencies that submitted data. This is a significant improvement over 2009 when it ranked last. The FLRA's 2016 Index Score is down five points compared to 2015, however.

- a. What steps will you take, if confirmed, to maintain progress made by the FLRA in recent years, and to further improve upon employee morale?

As the question suggests, in my first full-year at the FLRA, we went from last to most improved in the Best Places to Work Rankings and have experienced continued success since then. For the last three years, (2014-2016), the FLRA has ranked in the top 5 overall, and the top 3 in the categories of effective leadership and teamwork, ranking #1 in Leadership and Teamwork in 2015 and 2016.

This success story began in 2009 when a new leadership team committed to focusing on employee morale. The leadership team recognized that meeting human capital objectives has a direct relationship to organizational performance. As many of my prior responses suggest, addressing employee needs involves fairly basic activities, such as investing in our employees through training, including leadership training, and collaborating with our employees in developing new initiatives that improve our performance and better serve our customers. And, it requires a commitment of leadership to manage the agency with transparency, accountability, and employee engagement as core values.

In my view, if our new leadership team is to maintain progress and continue to improve employee morale, then it will need to embrace these values.

#### V. Relations with Congress

16. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

17. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes, assuming such subordinate official or employee are under my supervision.

18. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.



**VI. Assistance**

19. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

Yes. These answers are my own.

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Ernest Dubester to be a Member of the  
Federal Labor Relations Authority  
Minority**

**I. Nomination Process and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.

3. During your tenure have you asked any federal employee or potential hire to pledge loyalty to the President, Administration or any other government official?

No.

**II. Background of Nominee**

4. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

Yes. Throughout my entire career I have always encouraged and actively sought to create an environment in which subordinates could freely express their views. A simple but effective way to encourage constructive dialogue with subordinates is to practice the art of "active listening." If you want subordinates to listen to you, and even follow you, then listen to them first. Ask subordinates, or even peers, what do you think? People really appreciate it when they are asked their views. And, it is regrettable that leaders, or managers, do not seek the input of subordinates more frequently.

- a. Please give examples of times in your career when a subordinate disagreed with you and aggressively advocated their position.

In my current position as a FLRA Member, I have personal staff which includes a Chief Counsel and a Deputy Chief Counsel (my staff's management team). Both of them frequently offer advice on cases and, occasionally on policy-related matters. Sometimes their advice is contrary to my inclinations and they may disagree between themselves. And, sometimes they change my mind. In any event, they are both comfortable in knowing that they can freely express their opinions at least until the point I make it clear that I have reached a final decision.

Another example comes from my prior experience as NMB Chairman (and Member). I often intervened and took responsibility for particular collective-bargaining disputes. It was customary that a staff mediator, a subordinate, would work with me. Staff mediators from time to time expressed views disagreeing with my thoughts on how best to proceed. The mediators understood that I welcomed their input and often accepted their advice. But, once I decided on a course of action, it was understood that their role was to assist me in effectuating the plan.

5. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

There are certainly times in my career when I disagreed with my supervisors. Perhaps the best examples again come from my experiences as NMB Chairman (and Member). During my NMB tenure, I was involved in many high profile collective-bargaining disputes. Some had a potential national impact, or at least the potential to affect a significant portion of the country. Under the federal labor law that applies to the airline and railroad industries, the NMB has statutory discretion to control when, if ever, the parties can resort to economic weapons (strike, lockout, unilateral implementation). Moreover, if certain conditions are met, the NMB can request that the President create an Emergency Board (PEB) to investigate and make recommendations. During the existence of a PEB, the status quo remains in effect. During these disputes, I was in regular contact with the White House. Such contacts included my report and recommendations as to how best to proceed. The White House often followed my advice; but, not always.

6. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

I have made many difficult choices during my career. And, that would certainly apply to the 16-plus years in which I have held leadership positions. But, I would not characterize those difficult choices as "political." Perhaps the situations described in response to question 5 would apply.

7. What would you consider your greatest successes as a leader?

I would like to think that I have had many successes as a leader. When serving in a leadership capacity, my highest priority is to engage and motivate employees. Considering the question in that context, I would have to say that being part of a FLRA leadership team that was ranked #1 in Leadership in 2015 and 2016 in the Best Places to Work rankings is certainly one of the most gratifying successes.

8. What would you consider your greatest failure as a leader? What lessons did you take away from that experience?

Given your authority as a leader, there are often occasions when you feel it necessary to act quickly. During my years serving in a leadership capacity, I know there were a few occasions in which I made decisions to implement new policies or standards without seeking the prior input of employees. Almost always, the lesson learned from that experience is that it is usually worth taking the extra time to seek employee input. First, investing employees in a decision, even if you do not follow their input or advice, is good for morale, which translates into better performance and productivity. Second, involving employees in a collaborative decision-making process enhances the likelihood that the new decision will be accepted and enduring, without much pushback or conflict.

### III. Policy Questions

9. In October 2017, FLRA summarized what they consider to be the most serious management and performance challenges facing the FLRA in FY 2018. These management challenges include: (1) Information Technology Security; and (2) Proper Handling of Records.

a. If confirmed, how will you ensure that FLRA is vigilant in establishing an environment to monitor potential Information Technology (IT) risks, threats, and vulnerabilities?

Over the past three years, our IT staff has taken huge strides in implementing our monitoring program and has become much more pro-active regarding IT security. If confirmed, I will advocate that adequate budgetary resources be committed to the IT department to deal with this important concern.

b. If confirmed, how will you promote and ensure proper handling of records (hard copy and electronic) by staff, and verify that various authorities and capabilities are properly assigned, documented, managed and monitored?

Our records need to be fully electronic by 2019. We are in the process of updating our records management policy which, regrettably, was last updated in 1986. As part of that update, we are reviewing our records schedule (how long to keep various records). And, we are reviewing our records by groups, rather than individually. This is likely to improve accuracy and efficiency.

10. Former FLRA member Pizzella, in his dissents and concurrences, frequently criticized union parties to a dispute for pursuing positions or remedies that he viewed as wasting government resources, costing too much, being ill-motivated, or at odds with common sense—factors not grounded in the law.

- a. What is your view on deciding cases based on the facts as established in the record, and the law (the statute and precedent)—as opposed to independent views of right and wrong, how the government ought to work, and/or the role of unions?

During my eight-year tenure at the FLRA, I have participated in over 1500 decisions. In making these decisions, I apply pertinent principles of law to the particular facts of each case.

- b. If government efficiency and effectiveness are legitimate considerations in assessing the merits of a dispute, what role do you believe conduct plays in an agency's collective-bargaining, grievance procedure, and efficiency?

To the extent that conduct implicates particular principles of law, then it should be considered.

11. Please describe what impact proposed federal budget cuts, if implemented, will have to FLRA's ability to provide training to federal agencies and unions in understanding their rights and responsibilities under the Civil Service Reform Act and other relevant authorities?

Budgetary matters, and certainly budget cuts, involve priorities and choices. In my view, outreach and training is a very important way in which the FLRA promotes and maintains stakeholder confidence in mission performance. When I was Chairman in 2013, the first year of sequestration, the possibility of having to cut training was certainly on the table. At the time, the FLRA had several unfilled vacancies. In collaboration with our leadership team, I decided that training was so important that we would not make cuts. We were able to avoid such cuts by delaying, and then staggering, the schedule for filling those vacancies.

12. Please describe what impact proposed federal budget cuts, if implemented, will have to federal agencies' ability to train managers and employees regarding their rights and responsibilities under the Civil Service Reform Act and other relevant authorities?

It is noteworthy that the FLRA's various training programs (basic statutory rights, arbitration training, negotiability training, and training in problem – solving techniques) are free for federal government employees. So, this is a good example of the FLRA being a small agency with a large mission and impact. If budget cuts force the FLRA to cut back on external trainings, there will be adverse rippling effects throughout the federal government. The quality of other agencies' labor-management relations will be impaired.

13. Please describe any previous experience—in the public or private sector—with handling whistleblower complaints, and what steps you took to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

Please see my response to the Majority's question 9 above.

14. If confirmed, how will you ensure that whistleblower complaints are properly investigated?

Please see my response to the Majority's question 9 above.

#### IV. Accountability

15. During your career as a federal employee, have you ever used a personal email account or device to conduct official government business?

No.

- a. If so, please describe your general practice for doing so, and what specific steps you have taken to ensure that federal records created using personal devices and accounts were preserved.

16. During your career, has your conduct as a federal employee ever been subject to an Investigation or Audit by an Inspector General? If so, please describe.

No.

17. During your career, has your conduct as a federal employee ever been subject to an investigation by the Office of Special Counsel? If so, please describe.

No.

18. During your career as a federal employee, have you ever declined to implement recommendations made by the Office of Inspector General, the Office of Government Ethics, the Office of Special Counsel or the Government Accountability Office? If so, please describe.

No.

19. If confirmed, do you pledge to implement recommendations made by the Office of Inspector General, the Office of Government Ethics, the Office of Special Counsel and the Government Accountability Office?

Yes.

**V. Relations with Congress and the Public**

20. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

By responding immediately.

21. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

22. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes.

23. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes.

24. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

25. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Office of Inspector General, Office of Government Ethics, the Office of Special Counsel, the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

26. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving [agency's] operations and effectiveness?

If confirmed, I agree to work with representatives from this committee and the GAO to promptly evaluate, and then implement, recommendations that would improve operations and effectiveness.

27. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

28. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Yes.

**VI. Assistance**

29. Are these answers your own? Have you consulted with GSA or any other interested parties? If so, please indicate which entities.

These answers are my own.



I, Ernest DuBester, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Ernest DuBester  
(Signature)

This 27<sup>th</sup> day of October, 2017



DISTRICT OF COLUMBIA: SS  
SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 27<sup>th</sup> DAY OF Oct, 2017  
[Signature]  
NOTARY PUBLIC  
My Commission Expires 2020

Senator Heidi Heitkamp  
Post-Hearing Questions for the Record  
Submitted to Hon. Ernest W. DuBester

Nominations of Hon. Ernest W. DuBester, Hon. Colleen D. Kiko, and James T. Abbott to  
be Members, Federal Labor Relations Authority  
Tuesday, November 7, 2017

1. There is an enormous backlog of cases at FLRA. Please explain what steps you will take to address this and what will you do to foster collaboration among all components of the agency?

- What do you consider the role of the FLRA CG Regions to be in the process?

At the hearing, there appeared to be confusion regarding the nature and extent of the current backlog of cases at the FLRA. There also appeared to be a misunderstanding about the difference between a backlog of cases pending before the three-member decisional component, called the Authority, and a backlog of pending charges that arise within the Office of General Counsel. These charges are filed with our various Regional Offices. And, the General Counsel's role is to decide whether a charge warrants the issuance of a complaint.

I do not think it is accurate to say that the current backlog of cases is "enormous." Within the Authority component, there are currently about 45 cases awaiting decision. Because the Authority currently lacks the full complement of three Members, when there is a split between the two sitting Members, those cases go into abeyance. In all of these pending cases, recommendations have been drafted. So, as soon as there is a full complement of Members, deliberation can begin immediately. I am confident that this rather small backlog can be eliminated within a few months.

Within the OGC, there is currently no backlog. We have had an Acting General Counsel who is disposing of all charges filed. It is noteworthy, however, that the Acting GC's statutory authority ends on November 16, absent a GC nominee. So, hopefully, there will be a GC nominee soon.

The current situation stands in stark contrast to that which existed in August of 2009, when I began my tenure as a Member, and, on the same day, as a new GC. At that time, there was an "enormous" backlog of over 400 cases. With the implementation of a multi-year corrective action plan, that backlog was eliminated by the end of FY 2012. It is noteworthy, moreover, that at the end of FY 2012, not only had we eliminated the huge backlog of old cases, we also did not have any overage cases among the "new" cases filed after August 2009. The GC had also eliminated the backlog of a comparable number of pending charges even before the end of FY 2012.

At the beginning of 2013, the Authority again lost its quorum. My Republican colleague left the FLRA. And, my Democratic colleague's term expired. As Chairman, but sole Member, I was unable to issue decisions and a backlog of about 150 cases developed by the end of FY 2013. This backlog was eliminated by the end of FY 2015.

2. Throughout your interviews you have made mention of the importance of training and education. You have also made mention of Alternative Dispute Resolution (ADR) and its use in the labor relations context.
  - Do you feel that alternative methods of resolution should become required actions attempted prior to bringing a claim before FLRA? Please explain in your answer how the efficiency of the Authority will be affected.

At yesterday's hearing, at the prior Staff interview, and in responses to my questionnaire, I have stressed the importance of offering, and using where appropriate, ADR services to help the Federal Sector's labor-management community improve their labor relations programs. As mentioned, this is consistent with the FLRA's responsibility under Section 7105(a)(1), to "provide leadership and guidance." And, as also mentioned, in the FLRA's most recent Strategic Plan, which is supposed to be in effect from 2015-2018, the FLRA reaffirmed the importance of ADR to the FLRA's mission by stating in Strategic Goal Two (of only three goals): "We will promote stability in the Federal labor-management community by providing leadership and guidance through [ADR] and education."

As I mentioned in my response to Question 7 (of the Committee's questionnaire), "successful, voluntary ADR efforts can result in significant savings of staff and budgetary resources" for those in the labor-management community who use such services. That is one reason why "FLRA's provision of effective ADR services can have a beneficial rippling effect throughout the Federal government." And, this includes training in matters such as effective use of problem-solving techniques, building teamwork, and best practices for improving relationships. Not only do these subjects have a bearing on the FLRA's mission, they are central to its responsibility of helping the labor-management community to improve its labor-management relations program (emphasis added).

That is why it is regrettable, in my view, that in recent months, the work of our Collaboration and ADR Office (CADRO) has been cut back. Outreach and training have almost been eliminated. And, the nature and extent to which CADRO is allowed to intervene in existing disputes, has been significantly curtailed. Based on my prior experience, I would find it hard to believe that a majority of this Committee, both Republicans and Democrats alike, would approve of these cutbacks.

Notwithstanding the foregoing, I would tend to oppose that ADR becomes "required" before allowing matters to be brought before the FLRA. Such a requirement undermines the important "volitional" nature of ADR in the labor relations context. With collective bargaining, for example, I think it is important that the representatives from the labor-

management community truly feel that they are the “decision-makers” even with the assistance of an intervening mediator. If agreements reached are to be enduring, it is important that the parties with the collective-bargaining relationship feel truly invested in the outcome and not feel that they were “compelled” to reach such an outcome.

By the same token, that is why the FLRA’s outreach and training is so important. For those in the labor-management community who do not have experience with ADR, the natural, if not automatic, inclination is to “dispute” through litigation and adjudication.

Before I conclude, I think it is worthwhile to share that there are examples in the labor relations context where ADR-type activity is required before the exercise of certain rights.

For example, under the Railway Labor Act, the oldest of our three Federal labor-management relations laws with jurisdiction over the airline and railroad industries, the parties are required to engage in “mandatory mediation,” often protracted in nature, before an impasse is declared. And, even under Section 7119 of our Federal Statute, “agencies and exclusive representatives” are required to use the services of the Federal Mediation and Conciliation Service before bringing a collective bargaining dispute to the FLRA’s Federal Services Impasses Panel (FSIP). And, even then, the FSIP may use a ADR process, such as the FSIP from 2009-2016 which used exclusively the ADR “med-arb” process, to resolve collective bargaining disputes in the Federal sector. In this sense, Section 7119 allows for a “double dose” of ADR before disputes are resolved.

OPENING STATEMENT OF JAMES T. ABBOTT OF VIRGINIA  
 TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY  
 BEFORE THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 UNITED STATES SENATE  
 NOVEMBER 7, 2017

Good morning. Mr. Chairman, Members of the Committee, Senator Lankford and Senator Heitkamp. I want to thank you for conducting this hearing at a time when so many other pressing issues are competing for your time and attention. I would also like to thank your Committee staff for the outstanding support which they provided to me as I prepared for this hearing. I appreciate your warm reception.

I am honored and humbled to have been nominated by President Trump to become a Member of the Federal Labor Relations Authority. If confirmed, it will be, for me, the highest privilege of my professional life.

With me today are my husband of 21 years, Daniel Gri, and our sons, Caleb and Alfred who are the pride of my life. That Daniel is able to join me today is nothing short of a miracle. Just four months ago, he was on life support following a serious automobile accident. This is his first public outing since that accident and is testament to his indomitable spirit. I rely upon that spirit every day. My sister and brother-in-law, Linda and Don Walde, and my niece, Heather Legore, are here as well.

My professional career has spanned 34 years, 33 devoted to public service. I learned about service and hard work from my parents and grandparents. Grandfather Whipple worked as a farmhand in Kansas in the 1910s, until he saved enough money to buy his own land. His farm survived the Great Depression through hard work and determination. He continued to farm well into his 80s. Grandfather Abbott singlehandedly operated a grist mill. He hired helpers only when, in his words, "I could pay a fair wage for a fair day of work." My mother, a nurse, and my father, a minister, served as missionaries in Congo where they built churches, to serve not just as centers of worship but to also serve as local medical clinics and schools. But, for me, the ultimate example of public service was my brother, Denis Abbott, who gave his life in service to his country in Pleiku, Vietnam.

My 18 years as a labor and employment attorney with Department of Defense activities throughout the country, my four years as Deputy General Counsel for the Office of Compliance, and my ten years as Chief Counsel to three Members (and Chairmen) of the FLRA have prepared me to immediately assume all of the responsibilities of this important position.

Before joining the FLRA as Chief Counsel, I sat at dozens of bargaining tables negotiating local and nationwide collective-bargaining agreements. Through those experiences, I learned firsthand how differences can be constructively resolved but also how they can end up in dispute. I have represented agencies before each regional office of the FLRA's Office of General Counsel, and I have litigated cases before the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and Federal Court. I have witnessed the dynamics of labor relations at work between first-line supervisors

and hard-working union stewards in a variety of settings, such as work floors where artillery equipment and attack helicopters are serviced and repaired. I have met with employees and union stewards at sites where the working conditions were difficult, even dangerous. I have had to tell first-line supervisors and generals that they were wrong and what they must do to comply with the Statute. Therefore, I understand why the protections of our Statute are so important to Federal employees.

I believe that we can all agree that the Federal workforce in 2017 looks very different than it did in 1978 when our Statute was enacted. For example, advances in technology have dramatically changed how Federal agencies carry out their day-to-day business. In 1978, computers were rare; email did not exist; and enemies of the United States did not have the means to instantaneously compromise entire swaths of records. In this changed environment, the Authority must clearly define what matters "affect working conditions" and those which constitute negotiable "conditions of employment."

The Statute mandates that the Authority provide leadership to the labor-management relations community. But the Authority has been reluctant to address these important questions. In the past two years, the Authority's majority has dismissed part or all of the arguments raised by parties in 52% of its published decisions and those dismissals have impacted the outcome in one-fourth of those cases. It is difficult for the Authority to remain relevant and to provide leadership when it goes out of its way to avoid addressing difficult questions.

In other areas, though, the Authority has gone too far. Five times since 2010, the Court of Appeals for the District of Columbia Circuit has reversed the Authority for going beyond the parameters of our Statute to interpret other statutes that do not fall within our area of expertise or power. In one notable example, the Court scolded the majority when it took upon itself to determine how much discretion Title 10 of the United States Code gave to the Secretary of the Air Force, a statute that concerns military preparedness. To remain relevant, the Authority must heed the cautions of Federal Courts.

To that end, I pledge that, if I am confirmed, I will adjudicate all matters fairly and impartially, enforce the Statute as it is written, and respect judicial precedent. I look forward to working with my colleagues to ensure that the FLRA remains relevant and to drafting decisions that can be understood by laypersons as well as attorneys.

It is my privilege to appear before you today. I am happy to answer any questions. Thank you.

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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September 8, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by James T. Abbott, who has been nominated by President Trump for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID APOL  
DN: cn=DAVID APOL, o=U.S. Government, ou=Department of  
Homeland Security, email=DAVID.APOL@ice.dhs.gov,  
c=US

David J. Apol

Acting Director and General Counsel

Enclosures **REDACTED**



September 6, 2017

Fred B. Jacob  
Solicitor and Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K St., NW  
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member, Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

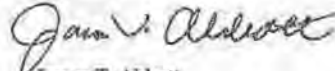
I will meet in person with you during the first week of my service in the position of Member in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,



James T. Abbott

REDACTED

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Member, Federal Labor Relations Authority	

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
James	Thomas	Abbott	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 1400 K Street, NW		
City: Oakton	State: VA	Zip: 22124	City: Washington	State: DC	Zip: 22124

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Multiple Names	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1958	Phillipsburg, Pennsylvania

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Daniel	William	Gri	

<i>Spouse's Other Names Used (current spouse only)</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Multiple Names</u>	<u>Name Used From (Month/Year) (Check box if estimate)</u>	<u>Name Used To (Month/Year) (Check box if estimate)</u>
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Caleb	Nathaniel	Gri-Abbott	

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Temple University Beasley School of Law	School of Law	08/1980    Est <input type="checkbox"/>	05/1983    Est <input type="checkbox"/> Present <input type="checkbox"/>	JD	05/1983
Malone College (now University)	College/University	09/1976    Est <input type="checkbox"/>	05/1980    Est <input type="checkbox"/> Present <input type="checkbox"/>	BA	05/1980
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>		
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	<u>Name of Your Employer/ Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Other Federal	Federal Labor Relations Authority	Chief Counsel to the Chairman	Washingt on, DC	9/2007	Present
Other Federal	Congressional Office of Compliance	Deputy General Counsel	Washingt on, DC	10/04	9/07
Other Federal	Defense Contract Management Agency	Senior Associate District Counsel, Personnel and Ethics	Carson, CA	8/96	10/04
Other Federal	Corpus Christi Army Depot	Chief Counsel	Corpus Christi, TX	1/00	8/96
Other Federal	U.S. Army Depot Systems Command	Labor and Ethics Counsel	Chamber sburg, PA	8/96	1/00
Non-Govt Employment	Nitterhouse Corporation	Staff Attorney	Chamber sburg, PA	3/85	5/86
County Government	39 <sup>th</sup> Judicial District Court of Common Pleas	Judicial Law Clerk to the President Judge	Chamber sburg, PA	8/83	3/85

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
N/A		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

#### 5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Commander's Award for Civilian Service – Department of the Army (8/96)

Meritorious Civilian Service Award – U.S. Defense Contract Management Agency (8/2002)



### 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Church of the Holy Comforter, Vienna, Virginia	7/2016 – Present	Stewardship Committee, Lay Liturgist
Senior Executives Association	8/2010 – Present	Member; Mentor in SEA's mentoring program with Young Government Leaders Association
M3 for Veterans	5/2017	December 2017 Event Planning Committee
Log Cabin Republicans, DC	2005 – Present	Member; Board of Directors (2014-16)
Log Cabin Republicans, Northern Virginia	2005 – Present	Member; Board of Directors (@2009-10)
LGBT Bar Association of DC	(@2012 – Present)	Member
Federal GLOBE	(2004-Present)	Member; Board of Directors (2008-Present)
Foundry United Methodist Church, Washington, DC	(2004-2015)	Member; Governance Board (@2012-15)
Society of Federal Labor & Employee Professionals	(2007-Present)	Member
Dulles Triangles	(2005-2015)	Member
D.C. Partners	(@2007-11)	Member

### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

None.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Donald J. Trump	\$100.00	10/2016
Donald J. Trump	\$100.00	10/2016
Donald J. Trump	\$250.00	10/2016
Donald J. Trump	\$250.00	9/2016
Donald J. Trump	\$250.00	9/2016
Barbara Comstock for Congress	\$100.00	9/2016
Donald J. Trump	\$100	8/2016
Donald J. Trump	\$150.00	8/2016
Donald J. Trump	\$150.00	8/2016
Donald J. Trump	\$100.00	8/2016
Log Cabin Republicans	\$224.00	8/2016
Donald J. Trump	\$250.00	8/2016
Donald J. Trump	\$250.00	8/2016
Donald J. Trump	\$150.00	8/2016

Log Cabin Republicans	\$220.00	7/2016
Donald J. Trump	\$200.00	7/2016
Trump for President	\$100.00	5/2016
Randy Forbes for Congress	\$50.00	5/2016
Log Cabin Republicans	\$10.00	5/2016
Trump for President	\$50.00	5/2016
Randy Forbes for Congress	\$50.00	4/2016
Cruz for President	\$50.00	3/2016
Trump for President	\$50.00	2/2106
Rubio for President	\$25.00	2/2016
Cruz for President	\$25.00	1/2016
Carly Fiorina for President	\$25.00	1/2016
Cruz for President	\$25.00	12/2015
Carly Fiorina for President	\$25.00	12/2015
Cruz for President	\$25.00	11/2015
Carly Fiorina for President	\$25.00	11/2015
Carly Fiorina for President	\$50.00	9/2015

Cruz for President	\$100.00	4/2016
Friends of Scott Walker	\$100.00	1/2016
Friends of Scott Walker	\$100.00	12/2015
Friends of Scott Walker	\$100.00	11/2015
Friends of Scott Walker	\$100.00	10/2015
Friends of Scott Walker	\$100.00	9/2015
Friends of Scott Walker	\$100.00	8/2015
Friends of Scott Walker	\$100.00	7/2015
Friends of Scott Walker	\$100.00	6/2015
Friends of Scott Walker	\$100.00	5/2015
Friends of Scott Walker	\$100.00	4/2015
Friends of Scott Walker	\$100.00	3/2015
Fairfax County Republican Committee	\$85.00	2/2013
Defend our Nation PAC	\$250.00	12/2015
Jeannemarie Devolites Davis for Lieutenant Governor	\$100.00	2/2013
GOP Proud	\$100.00	1/2013
Log Cabin Republicans	\$50.00	1/2013

Log Cabin Republicans	\$100.00	11/2012
Log Cabin Republicans	\$100.00	10/2012
Log Cabin Republicans	\$700.00	9/2012
Log Cabin Republicans	\$100.00	8/2012
Log Cabin Republicans	\$100.00	7/2012
Log Cabin Republicans	\$100.00	6/2012
Romney for President	\$2000.00	8/2012

#### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

None.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>


(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

None.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>




(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

None.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>


### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

No.

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) No.
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? No.
- Have you been charged, convicted, or sentenced of a crime in any court? No.
- Have you been or are you currently on probation or parole? No.
- Are you currently on trial or awaiting a trial on criminal charges? No.
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? No.

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

N/A.

- A) Date of offense:
- a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
  - 2) Firearms or explosives: Yes / No
  - 3) Alcohol or drugs: Yes / No
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
  - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
  - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
  - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: Yes / No
- H) Provide a description of the sentence:
- I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No
- J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes /  
No

N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
@7-8/98	MSPB	Sheila Gray/Anthony Carr/Defense Contract Management Agency	To the best of my recollection (on or around July – August 1998), a former direct report made various assertions about me when she challenged her removal from the Federal service for poor performance before the Merit Systems Protection Board (Sheila Gray v. DOD, #SP-0432-98-0614-1-1). As I recall, the deciding official in the removal action was my supervisor (Anthony Carr, General Counsel). I was the proposing official after Gray failed to improve her performance during a performance improvement period (PIP). As I recall, she alleged in her appeal to the MSPB that Carr's removal action was in retaliation for an earlier (I believe Office of Special Counsel) complaint she had previously filed against Carr. As I mentioned above, I believe she made some various assertions that Carr permitted other Agency officials, including a military JAG officer and me, to "harass" her. To the best of my knowledge, the case was never adjudicated. As I recall, the agency negotiated a nuisance lump-sum settlement in exchange for Gray's resignation and an agreement that she would never apply for future Federal employment.	Settlement Agreement


(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

### 11. Breach of Professional Ethics

- (A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No.

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

- (C) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED



REDACTED

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

**14. Outside Positions**

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

**15. Agreements or Arrangements**

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

**16. Additional Financial Data**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

James E. Aldrett

This 24<sup>th</sup> day of Aug., 2017

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of James Thomas Abbott to be a Member of the  
Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be a member of the Federal Labor Relations Authority (FLRA)?

No.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member of the FLRA? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

No. I have completed the Executive Branch Public Financial Disclosure Form. The form was reviewed, and approved, by the Solicitor of the Federal Labor Relations Authority (Designated Agency Ethics Official) and the Office of Government Ethics.

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be a member of the FLRA?

Since 2007, I have served as Chief Counsel to three Members/Chairmen of the FLRA. During my time in these key leadership positions, I have championed the FLRA's strategic goals to promote efficient case processing, employee engagement, and outreach to the Federal labor-management community.

But, from my perspective, the most valuable experience that I bring to the position of Member is the breadth, depth, and scope of twenty-one (21) years of experience (preceding the FLRA)

during which I engaged in collective bargaining and labor-management relations at industrial military worksites, major-subordinate commands, and headquarters complexes. Throughout those experiences, I have sat at the bargaining table to negotiate local and nationwide collective bargaining agreements and have litigated every category of case which comes to the FLRA for resolution and before every regional office of the FLRA as well as before our sister agencies, the MSPB and EEOC. I began my Federal attorney career as a personnel and labor attorney working with first-line supervisors and union stewards in industrial settings such as Letterkenny Army Depot and as Chief Counsel at Corpus Christi Army Depot (often meeting on the work floor in coveralls or climbing into an airplane fuselage in protective gear amidst hazardous materials and working conditions to evaluate the merits of a pending grievance or unfair labor practice charge) to creatively resolve workplace disputes before they became grievances. Later, in senior positions with the Defense Logistics Agency and Defense Contract Management Agency, I engaged with agency heads and national union leaders to achieve consensus on some of the most significant labor issues of the time including implementation of the Department of Defense National Security Personnel System.

The opportunities to serve in locales as diverse as Central Pennsylvania, South Texas, Los Angeles, California, and then in Washington, DC also gave me a unique perspective on how legislation and policies established in the nation's capital affect, foster, or impede positive working relationships in real work environments and impact the day-to-day working life of employees and supervisors. For me, the impact and effect of the law and Authority decisions are not simply abstract concepts or legal issues to be debated but are realities that are lived out every day by federal employees in their workplaces.

6. Please describe:

a. Your leadership and management style.

Managing least is managing best. In my experience and in practice, an effective manager establishes priorities and direction but creates an environment in which their employees are afforded wide latitude and discretion to do their job. For me, as a leader, this environment fosters creativity among those who serve on my team and leads to effective and productive results and decisions which are far better than I could have reached on my own.

b. Your experience managing personnel.

Chief Counsel, Corpus Christi Army Depot – 5 employees

Senior Associate District Counsel, Personnel and Ethics, Defense Contract Management Agency West – directly supervised military and civilian staff of Immediate Office of DCMAW and managed the Personnel/Labor and Ethics Program – 35 attorneys at field activities west of Mississippi River

Deputy General Counsel, Office of Compliance – 5 employees, 8 contractors

Chief Counsel to the Member, Federal Labor Relations Authority – 6 employees

- As Chief Counsel to the Acting Chairman (2017) – additional duties include supervising staffs of Vacant Member, Case Intake and Publication, and Collaboration and Alternative Dispute Resolution Office – 12 employees
- As Chief Counsel to the Chairman (2007-08) – supervised a consolidated staff of attorneys and Case Intake and Publication – 21 employees

c. What is the largest number of people that have worked under you?

35

### **III. Role of Member, FLRA**

7. Please describe your view of the agency's core mission and a member's role in achieving that mission.

The FLRA's core mission is clearly defined by Statute (5 U.S.C. §§ 7101-7135)). Under the construct of our Statute, the FLRA is to promote stable and constructive labor relations in the Federal Government because positive relationships between labor organizations and Federal agencies contribute to an effective and efficient Government.

A Member's role is similarly defined by the Statute. Collectively, the three Members serve as a quasi-judicial panel which makes final determinations on the appropriateness of bargaining units and adjudicates unfair labor practices (ULPs), exceptions (appeals) from arbitration awards, and matters concerning the negotiability of various matters.

8. Please describe how you anticipate, if confirmed, working with other FLRA members to promote the agency's core mission.

Members carry the responsibility to carefully and independently consider the entire record and positions of the parties, to apply the Statute, and arrive at a fair and impartial decision on any matter that is brought before the FLRA. In order to carry out this responsibility, effectively and efficiently, it is imperative that Members work together on strategies to promptly adjudicate cases and to ensure that his/her staff complies with the timeliness goals established by, and in conjunction with, the Chairperson. I have known, and collegially worked with, Member DuBester since 2009 and previously worked with Member/Chair-designee Kiko when she served as General Counsel of the FLRA. Therefore, I have every confidence that immediately we will be able to work constructively together to tackle the existing backlog of cases.

a. Please describe prior work experience that demonstrates your capacity to work with FLRA members of a different party affiliation.

As Chief Counsel to three Members of the FLRA, I routinely discussed positions, alternatives, and approaches in cases of first impression and those with potentially broad Governmental



impact with my colleague Chief Counsels in order to find areas of agreement, consensus, and common ground. During two extended periods when my Member office was vacant (without a confirmed Member), I reported to and prepared decisions in accordance with the priorities and perspectives of the sitting Chairperson. In both instances, the Chairpersons, to whom I reported, were of different political affiliation than the Member I had previously served.

9. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

I have not had the opportunity to address whistleblower complaints.

b. How do you plan to implement policies within the FLRA to encourage employees to bring constructive suggestions forward without the fear of reprisal?

The Authority is in full compliance with the annual notification requirements set forth in 5 U.S.C. § 2302(c). An annual notice (most recently issued on January 12, 2017) reminds employees of their rights under the Civil Service Reform Act, the Whistleblower Protection Act, and the Whistleblower Protection and Enhancement Act and informs how employees may address or raise such matters. I will continue to ensure that our policies and practices comply with all statutory and regulatory protections.

c. Do you commit without reservation to work to ensure that any whistleblower within FLRA does not face retaliation?

Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

10. What are the most significant challenges facing FLRA as an institution? If confirmed, what steps will you take to address these challenges?

The most significant internal challenge is to ensure that the FLRA's most important resource – its employees – are appropriately classified and that staffing is appropriately distributed. As of this date, in the Authority component of the FLRA, 41.6% of staffed positions are classified as supervisors and 12.5% as SES (agency-wide 30.8% and 11.6% respectively). The leadership of the Authority needs to reassess and ensure that staffing decisions are prioritized, that the most critical positions are filled, that positions are appropriately classified, and that the organizational structure contributes to effective operations and the timely issuance of impartial, clear, and quality decisions.

S. Hrg. 116–69

**NOMINATIONS OF ANN C. FISHER,  
ASHLEY E. POLING, CATHERINE BIRD,  
RAINEY R. BRANDT, AND SHANA FROST MATINI**

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**HEARING**

BEFORE THE

**COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED SIXTEENTH CONGRESS**

FIRST SESSION

NOMINATIONS OF ANN C. FISHER TO BE A COMMISSIONER, POSTAL  
REGULATORY COMMISSION, ASHLEY E. POLING TO BE A  
COMMISSIONER, POSTAL REGULATORY COMMISSION, CATHERINE BIRD  
TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY,  
RAINEY R. BRANDT TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT  
OF THE DISTRICT OF COLUMBIA AND SHANA FROST MATINI TO BE AN  
ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

JULY 16, 2019

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## CONTENTS

Opening statements:	Page
Senator Lankford .....	1
Senator Peters .....	2
Senator Sinema .....	3
Senator Johnson .....	17
Prepared statements:	
Senator Lankford .....	27
Senator Peters .....	29
Senator Sinema .....	32
Hon. Eleanor Holmes Norton .....	35

### WITNESSES

TUESDAY, JULY 16, 2019

Hon. Mark Meadows, A Representative in Congress from the State of North Carolina .....	
Testimony .....	3
Prepared statement .....	34
Hon. Thomas R. Carper, A United States Senator from the State of Delaware .....	
Testimony .....	5
Prepared statement .....	30
Ann C. Fisher to be a Commissioner, Postal Regulatory Commission .....	
Testimony .....	6
Prepared statement .....	37
Biographical and financial information .....	39
Letter from the Office of Government Ethics .....	58
Responses to pre-hearing questions .....	61
Responses to post-hearing questions .....	81
Letter of Support .....	84
Ashley E. Poling to be a Commissioner, Postal Regulatory Commission .....	
Testimony .....	8
Prepared statement .....	86
Biographical and financial information .....	89
Letter from the Office of Government Ethics .....	112
Responses to pre-hearing questions .....	115
Responses to post-hearing questions .....	141
Letter of Support .....	144
Catherine Bird to be General Counsel, Federal Labor Relations Authority .....	
Testimony .....	10
Prepared statement .....	145
Biographical and financial information .....	147
Letter from the Office of Government Ethics .....	166
Responses to pre-hearing questions .....	169
Responses to post-hearing questions .....	193
Rainey R. Brandt to be an Associate Judge, Superior Court of the District of Columbia .....	
Testimony .....	11
Prepared statement .....	205
Biographical and financial information .....	206
Responses to post-hearing questions .....	227
Letters of Support .....	229
Shana Frost Matini to be an Associate Judge, Superior Court of the District of Columbia .....	
Testimony .....	12
Prepared statement .....	235

IV

Shana Frost Matini to be an Associate Judge, Superior Court of the District of Columbia—Continued	Page
Biographical and financial information .....	236
Responses to post-hearing questions .....	262
Letters of Support .....	264

APPENDIX

Letters for the Record:	
American Federation of Government Employees .....	283
National Treasury Employees Union .....	285

**NOMINATIONS OF ANN C. FISHER,  
ASHLEY E. POLING, CATHERINE BIRD,  
RAINEY R. BRANDT, AND SHANA FROST  
MATINI**

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**TUESDAY, JULY 16, 2019**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in room 342, Dirksen Senate Office Building, Hon. James Lankford presiding.

Present: Senators Johnson, Lankford, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

**OPENING STATEMENT OF SENATOR LANKFORD<sup>1</sup>**

Senator LANKFORD. Good morning, everyone. Today we are considering five nominations—and I apologize for starting 3 minutes late to do it, but we will make up the time—Ann Fisher and Ashley Poling to be Commissioners of the Postal Regulatory Commission (PRC), Catherine Bird to be General Counsel (GC), Federal Labor Relations Authority (FLRA); Rainey Brandt and Shana Matini to be Associates Judges, Superior Court of the District of Columbia.

Ms. Ann Fisher currently serves as the Director of Public Affairs and Government Relations at the Postal Regulatory Commission. She previously served in several senior staff positions in the U.S. Senate, including Deputy Staff Director of this Committee, under Chairman Collins.

Ms. Ashley Poling currently serves Ranking Member Gary Peters as Director of Governmental Affairs and Senior Counsel on the Committee, and I have heard you have very strong statements in opposition today. [Laughter.]

She previously served as the Counsel to Senator Jon Tester, which was a lapse in judgment for you, and Senior Counsel to Heidi Heitkamp, which made up for your lapse in judgment for Jon Tester, on the Subcommittee on Regulatory Affairs and Federal Management (RAFM).

Ms. Catherine Bird currently serves as the Principal Deputy Assistant Secretary for Administration at the Department of Health and Human Services (HHS). She previously served as Legislative Director for California Senator John Moorlach, and is a Legislative Aide for California State Senator Ted Gaines.

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<sup>1</sup> The prepared statement of Senator Lankford appears in the Appendix on page 27.

Magistrate Judge Rainey Brandt currently serves as Magistrate Judge in the D.C. Superior Court. She is also an Adjunct Associate Professor at American University's Department of Justice, Law, and Criminology.

Magistrate Judge Shana Frost Matini currently serves as Magistrate Judge on the D.C. Superior Court. She previously served as a trial attorney in the Office of the Attorney General of D.C.

The Committee takes all of these nominations extremely seriously, as you have noticed, based on all the background work and the staff conversations and the endless numbers of forms and questions that you have all received. We are pleased to have these nominees before us right now.

The Committee staff reached out to many of the colleagues and affiliates of the nominees. They spoke highly of their professional abilities and your fitness to potentially serve in the roles to which you have been nominated. Staff interviewed the nominees on an array of issues, and each has thoughtfully and competently answered each question.

I look forward to speaking with each of you more today on your experience and accomplishments, how you intend to bring them to bear for the Federal Government and the District of Columbia.

I will now recognize the Ranking Member Sinema, who is going to defer to Senator Peters, and so we are going to skip over my deferment to deferment. How about that? So we can go from there.

#### **OPENING STATEMENT OF SENATOR PETERS<sup>1</sup>**

Senator PETERS. That sounds good. So, thank you, Chairman Lankford, and I know Senator Sinema will be here shortly and she will be—

Senator LANKFORD. She is probably running eight miles somewhere.

Senator PETERS [continuing]. She is on her way here and will have a more formal opening. But I wanted to have an opportunity to thank all of the nominees here.

But I would like to add a few words about one nominee, and that is Ashley Poling, who I am very fortunate to have on my committee staff, as Director of Governmental Affairs and as Senior Counsel.

Over the past year, Ashley has been a valued advisor and she has been instrumental in much of this Committee's work since she started working for Senator Tester 6 years ago. Ashley went on to serve as a key advisor on postal issues for Senator Heitkamp before joining my team.

And, Mr. Chairman, Senator Heitkamp has submitted a formal letter of—I can only characterize this as one say, and that is enthusiastic support for her nomination, and I would like to have the letter entered into the record.<sup>2</sup>

Senator LANKFORD. Without objection.

Senator PETERS. Staff and members who have worked with Ashley over the years are likely familiar with her unique ability to work through complex policy issues to find bipartisan paths forward. I am confident that she will bring this skill to the Postal

<sup>1</sup> The prepared statement of Senator Peters appear in the Appendix on page 29.

<sup>2</sup> The letter of Senator Heitkamp appears in the Appendix on page 144.



Regulatory Commission. I also appreciate Ashley's commitment to mentoring staff on her team as well as the enthusiasm and depth of policy knowledge she has brought to this Committee.

So, Ashley, on behalf of myself and the Homeland Security and Governmental Affairs Committee (HSGAC) Members past and present, we all thank you, and I look forward to your testimony as well as the testimony of others before us today.

Thank you, Mr. Chairman.

Senator LANKFORD. Thank you. I recognize Senator Sinema.

#### **OPENING STATEMENT OF SENATOR SINEMA**

Senator SINEMA. Well, thank you, Mr. Chairman, and thank you to today's nominees for their willingness to serve. Our nation needs the best possible people to serve inside our Federal Government, and I am glad that so many of the nominees' families could be here with us today.

I have a longer opening statement that I will ask the Chairman to add to the record.<sup>1</sup>

Senator LANKFORD. Without objection.

Senator SINEMA. Thank you. I wish all of our nominees the best and I look forward to our conversation.

That is it.

Senator LANKFORD. Alright. I will take the shorter statement publicly and take the longer statement by record. That is terrific.

I do want to recognize—we have couple of special guests that are here with us today as well. Congressman Meadows wanted to do a special introduction today of Ashley Poling, and we would be pleased to be able to receive your opening statement right now.

#### **OPENING STATEMENT OF MARK MEADOWS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. MEADOWS. Thank you, Mr. Chairman, and Chairman Johnson, Ranking Member Sinema, Ranking Member Peters, and Members of the Committee. Thank you so much for giving me this honor.

In DC there are a lot of heavy lifts. This is not one of those. I can tell you that when I came to Congress postal reform was last—no, if there was a number below last in terms of my priority it would be postal reform, and yet I have had the opportunity to meet with Ann and Ashley. And what I wanted to do is share, for this Committee's consideration—you have a Republican Member of Congress introducing a Democrat nominee, and that does not happen very often in this town, and it only happens because of the exceptional talent of Ashley Poling.

I want to just, Mr. Chairman, and for the Committee, to raise the awareness of this public servant. I can tell you that in this town, all of you know—this is not your first rodeo—you understand the partisan politics that happen each and every day, on every piece of legislation. And yet when we were working in the House, Ashley, not once, not twice, not three times, but multiple times continued to reach out to advocate for her State, and at that time for

<sup>1</sup> The prepared statement of Senator Sinema appears in the Appendix on page 32.

Senator Heitkamp, for the service standards that rural America needs to make sure that is put in place.

And I can tell you, Senator Sinema, we actually went to Arizona, to your home State. We visited a processing center in Tucson, Arizona, that you are very well aware of. And one of the big things that Ms. Poling was pushing for is making sure that we do not close down processing centers that ultimately makes mail a 1-week or 2-week delivery system, when, candidly, it is such a central part of who we are as a Nation. I know, in the mountains of western North Carolina, there are more stories and more living that takes place at the U.S. Postal Service (USPS) and those centers than anyplace else.

You go to the post office and you share the stories, but it is not just that. We have come to rely on this system, and it is in a crisis mode. Quite frankly, as a business guy, I do not know how we solve this. I look at the financial stability of where our postal system is and from a business perspective it is bankrupt, and so any consideration that this Committee can make to move these two individuals through very quickly to make sure that the Postal Regulatory Commission is fully staffed very quickly. Every day we have a \$145 billion deficit—that is billions with a B—that if we do not address immediately, all of us, whether we are Democrat or Republican, will see the results of that back home.

And, last, I would close with this. It is not about Ashley. She is here today because she has actually done the hard work, as Senator Peters so eloquently put in his opening remarks. But she did the hard work behind the scenes, each and every day, not caring who got the credit. And in a town where it is all about who gets the credit, I can say that not only my unqualified endorsement of Ashley Poling is something that truly impressed me, but she knows more about postal than anybody on Capitol Hill.

And so I would strongly encourage your consideration, your expedient consideration of her nomination. I consider her a friend, but I also consider her an expert. And for her parents who are here in the audience, you can be extremely proud of the daughter that you have and the way that she carries herself in such a professional manner.

And so with that I thank this esteemed body for allowing me the opportunity to introduce Ashley Poling for your consideration.

I yield back.

Senator LANKFORD. Mark, thank you so much for your recommendation on this. You have thoroughly ruined your reputation now as a Republican Member of Congress.

Mr. MEADOWS. Well, that was the danger. I got that.

Senator LANKFORD. Let me also bring some additional letters of recommendation. Mark, thank you really for being here. I appreciate very much that.

I want to acknowledge some letters of support that have been submitted to the Committee in favor of the nominees, including a letter from our colleague, Senator Susan Collins of Maine, in support of Ann Fisher. She is a long-time staffer to Susan Collins and this Committee, and so we appreciate very much your leadership.

And so I am asking unanimous consent, without objection, for Senator Collins' letter to be included as well.<sup>1</sup>

I would call on Senator Carper to be able to make a statement as well, at this time, on one of our nominees, as well.

**OPENING STATEMENT OF THOMAS R. CARPER,<sup>2</sup> A UNITED STATES SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Thanks, Mr. Chairman. It is great to be on this side of the dais, actually sitting next to this woman.

Senator LANKFORD. We have a few questions for you while you are on that side, as well. [Laughter.]

Senator CARPER. Well, I have a few answers.

I am honored to sit here next to Ann Fisher. I have known Ann for, a dozen years or so, and walking over at the time, I would describe her—I am going to talk a bit about her credentials and then I will yield back—I would also describe her as mother of the year twice, arguably one of the luckiest guys around. You did a great job working for Susan in all other capacities, where I first got to know her.

But I think when she speaks she will introduce her husband, David, and daughters, I think Dagney—is it Dagney? Is that correct—Dagney and Regan—it is not Regan, is it?

Ms. FISHER. Regan.

Senator CARPER. Regan. I wanted to thank both Dagney and Regan for sharing their mom, and I want to thank David for sharing his wife with our country, very much.

And when we look at Ann's resume she can be summed up in a couple of quick bullet points, and one of those is senior government executive with over 20 years of experience on Postal Service-related issues, trusted government liaison to the U.S. Congress, thought leader on the U.S. Postal Service, and a key leader in the postal stakeholder community.

None of these quick snippets can really describe, though, Ann Fisher. I have had the real privilege of working with her and have grown to respect her over nearly two decades. Each bullet only describes a piece of Ann and who she is, but together these bullets show she is an unquestionably qualified person to be a PRC Commission.

The Postal Service is the linchpin, as we know, of a trillion-dollar mailing industry, and the role of the regulator is one that cannot be overestimated. You need someone who understands postal product pricing and someone who understands the intricacies of the postal marketplace. That is Ann Fisher.

For more than 20 years, Ann has been at the forefront of postal issues. When she was the former Republican Deputy Staff Director of this Committee, I had the pleasure of working with her on postal reform issues, over 12 years ago, and we have continued to work together since then in her roles in the PRC on numerous legislative policy reforms.

Party politics aside, Ann is, first and foremost, a professional. Any time you ask Ann a question, we are going to get an honest

<sup>1</sup> The letter submitted by Senator Collins appears in the Appendix on page 84.

<sup>2</sup> The prepared statement of Senator Carper appear in the Appendix on page 30.

and a thoughtful answer. She is woman of integrity and her long-standing relationships in the postal community, with all the stakeholders, and with the unions show that Ann is going to be an impartial leader for the PRC.

Her knowledge and her character are why she is prepared to a regulator for the largest employer in America, behind Walmart, and I look forward to the work that Ann will do as a commissioner on the PRC, and I rest easy knowing that she will be watching out for the health of this vital Federal agency.

I think, Mr. Chairman and colleagues, there is a certain irony that I hope is not lost. Mark Meadows was here to introduce Ashley—Mark, a Republican, Ashley, a Democrat—and I am here to introduce Ann Fisher. That is the way this place is supposed to work. That is the way this Committee works, and I think it is a special day for that reason.

Thank you.

Senator LANKFORD. Senator Carper, thank you very much.

It is the custom of this Committee to swear in all witnesses before you testify.

Senator CARPER. Do you want to swear me in too? [Laughter.]

Senator LANKFORD. You know what? We will allow you to not do public swearing today.

So I would ask each of you that are at the table to please rise, raise your right hand.

Do you swear the testimony that you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. FISHER. I do.

Ms. POLING. I do.

Ms. BIRD. I do.

Ms. BRANDT. I do.

Ms. MATINI. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect that the witnesses all answered in the affirmative.

I want to recognize Ms. Fisher for an opening statement, but I would hope for all of you, when you give your opening statement, that you will also introduce your families here and let everybody know who they are. They have come this journey with you and we think it is extremely important to be able to acknowledge those folks that are walking on this journey with you as well.

Ms. Fisher, you are recognized first.

#### **TESTIMONY OF ANN C. FISHER,<sup>1</sup> NOMINATED TO BE A COMMISSIONER, POSTAL REGULATORY COMMISSION**

Ms. FISHER. Chairman Lankford, Chairman Johnson, and Ranking Member Sinema, Members of the Committee, thank you for the opportunity to appear before you today, and for your consideration of my qualifications to be a commissioner of the Postal Regulatory Commission. I would also like to thank President Trump for nominating me. I am deeply honored.

I am grateful to have with me today my husband, David Fisher, my two daughters, Dagny and Regan Fisher, and my nephew Au-

<sup>1</sup>The prepared statement of Ms. Fisher appears in the Appendix on page 37.

gust Veerman of Sioux Falls, South Dakota. While my parents, Paul and Cathryn Reh fuss, are not able to be here today, I know they will be proudly watching from their home in Yankton, South Dakota. Both were long-time public servants for the State of South Dakota, and have instilled in me the value of a career dedicated to public service.

This past May, I marked my 26th year of Federal service with all but two of those years devoted to postal issues. In the Senate, I benefited from working for three different senators representing very different States: South Dakota, Mississippi, and Maine. Naturally, part of my time was spent assisting the members' constituents with a myriad of postal issues. I noticed that post office closures consistently generated the most passion. I learned how much people across America care about their local post office, especially in highly rural areas.

As a government relations manager at Postal Service headquarters here in Washington, I developed an appreciation for the vast scope of the postal network and the complexity involved in moving a single piece of mail from the post office or a blue box to someone's mailbox across town or across the country. I also spent a good deal of time traveling to midwestern States, meeting with local postal officials and congressional staff, helping to ensure transparency of postal operations and resolve community concerns.

Starting at the Postal Regulatory Commission in 2007, I worked as chief of staff to former Chairman Dan Blair, then later became the director of public affairs and government relations, where I have worked the past 11 years. Our mission is to ensure the transparency and accountability of the Postal Service. The Commission prides itself on providing timely and rigorous analyses, while optimizing stakeholder engagement. With a major review of the system for setting market dominant rates well underway, the qualifications, fairness, and impartiality of the commissioners is paramount.

My background at the Commission provides me a wide variety of experiences necessary to meaningfully contribute as a commissioner and maintain this high level of transparency and accountability.

To date, the most challenging yet rewarding part of my career was my time spent as deputy staff director to the former Chairman of this Committee, Susan Collins, as she, together with then-Ranking Member Carper, crafted a Senate companion to the House of Representatives postal reform bill.

Updating postal laws that had been in place since 1970 was incredibly difficult, for the U.S. Postal Service is the centerpiece of a \$1.4 trillion mailing industry that employs more than 7.5 million people. After years of effort and a multitude of obstacles, The Postal Accountability and Enhancement Act (PAEA) was signed into law by President Bush in 2006. Unfortunately, shortly thereafter, the Great Recession coupled with accelerated electronic diversion dramatically reduced mail volume. Today, the Postal Service has lost money 12 years in a row and has an outstanding debt of \$11 billion.

I took great interest in the December 2018 report issued by Treasury Secretary Mnuchin's Task Force on the United States

Postal System. While opinions of the recommendations made within the report may be varied, I think most can agree with the task force goal of identifying a path for the U.S. Postal Service to operate a sustainable business model, provide necessary mail services to citizens and businesses, and compete fairly in commercial markets.

Difficult decisions lie ahead for Congress and the Commission with respect to potential postal reform. I believe my experience working within the U.S. Senate, at the U.S. Postal Service, and at the Postal Regulatory Commission have given me a clear understanding of the challenges faced by today's Postal Service, as well as viable options for the future.

Mr. Chairman, if confirmed, I will dedicate myself to working with Congress, the Administration, and the Postal Service to ensure that users of the postal system have a vibrant and efficient mail system for many years to come. Thank you.

Chairman JOHNSON. Ms. Poling.

**TESTIMONY OF ASHLEY E. POLING,<sup>1</sup> NOMINATED TO BE A COMMISSIONER, POSTAL REGULATORY COMMISSION**

Ms. POLING. Good morning Chairman Lankford, Ranking Member Sinema, and Members of the Committee. Thank you for inviting me to testify today regarding my nomination to the Postal Regulatory Commission.

I am thankful for the family, mentors, friends, and colleagues who could all be here today. It means the world to me. I would also like to take a moment to introduce and thank my wonderful parents, Barclay and Lindy Poling, who are sitting right over there. Their unwavering guidance, love, and support over the years has been nothing short of extraordinary, and they have truly shown me what it means to be a public servant. They have also had to hear far more about postal issues over the years than any parents ever should, and for that I will be forever grateful.

I would also like to thank Congressman Mark Meadows for introducing me today and Senator Heidi Heitkamp for her letter of support for the hearing record, as well as Ranking Member Peters for his kind words.

I have spent significant time working on postal policy in the U.S. Senate, and I have been uniquely fortunate to work for three past and present Members of this Committee: Ranking Member Gary Peters of Michigan, Senator Heidi Heitkamp of North Dakota, and Senator Jon Tester of Montana. In over 5 years of working on the Homeland Security and Governmental Affairs Committee, I have gained a strong appreciation for the vital role that the Postal Service plays in the lives of postal customers across our Nation.

In my work for the States of Montana and North Dakota, I have personally seen how post offices represent the heart of the communities they serve and why the Postal Service is a lifeline to the individuals and small businesses in rural America. It became clear to me that in order to protect and improve the speed of mail delivery for rural communities, it was essential to improve service performance across the country by ensuring that strong service provi-

<sup>1</sup> The prepared statement of Ms. Poling appears in the Appendix on page 86.



sions were included in any comprehensive postal reform bill. Because service provisions were not considered to be an essential part of reform legislation at the beginning of this multi-year effort, we worked to develop a broader national service protection strategy that ultimately benefited the postal customer on the local level and would ensure the Postal Service's accountability to its customers.

Relationship-building is crucial to the success of any legislative efforts on the Hill, and it was a key part of our educational efforts on service in both the House and the Senate and on both sides of the aisle. Key among those relationships was a strong, bipartisan postal alliance between Senator Heitkamp and the Chairman of the Subcommittee with jurisdiction over postal on the House Oversight and Reform Committee, Congressman Mark Meadows of North Carolina. The Senator and the Congressman became aligned on the issue of service after realizing how much they had in common in regards to rural communities in their respective States of North Dakota and North Carolina. Their advocacy in respect to this issue is one of the primary reasons why service provisions are now an important part of any comprehensive postal reform discussion.

In addition to this specific work on service, I have played an integral role negotiating four separate postal reform bills over the years and have become intimately familiar with the various components that make up comprehensive postal legislation. Throughout this time, I have continued to build, preserve, and advance trusted and strong interpersonal relationships over multiple Congresses with the entire postal community. This includes stakeholders from a large coalition of mailers, all four of the major postal unions, postmasters, postal supervisors, the Postal Service, the Postal Regulatory Commission, the Postal Service Office of Inspector General (OIG), and offices in the House and the Senate, on both sides of the aisle.

The United States Postal Service is at a critical crossroads in our Nation's history. It faces significant financial challenges that pose a very real threat to its long-term viability. The fiscal path that the Postal Service is on is not a sustainable one, but it also has the very real potential for revitalization through needed legislative reforms in Congress. By working collaboratively across the postal community on these challenges, I believe we can preserve, revitalize, and modernize a vital lifeline of communication that has existed for over 200 years.

If confirmed as a Postal Regulatory Commissioner, I would welcome the opportunity to actively work with all of our stakeholders, this Committee, the entire Congress, my fellow commissioners, and the Postal Service to find common-sense, lasting solutions to the challenges faced by this agency so that the best results can be delivered to postal customers across our country.

Thank you for considering my nomination and I look forward to answering your questions.

Chairman JOHNSON. Thank you. Ms. Bird.



**TESTIMONY OF CATHERINE BIRD,<sup>1</sup> NOMINATED TO BE GENERAL COUNSEL, FEDERAL LABOR RELATIONS AUTHORITY**

Ms. BIRD. Chairman Lankford, Ranking Member Sinema, Members of the Committee, thank you for the opportunity to discuss my nomination to become General Counsel of the Federal Labor Relations Authority. I would like to thank the Committee on Homeland Security and Governmental Affairs and its staff for all the courtesies they have shown me as I have prepared for this hearing. Additionally, I would like to thank the staff at the FLRA who have provided assistance during this process.

To start, I would like to acknowledge my parents, Gary and Linda Hoyer, who are with me today. My mother, who has been a teacher for over 40 years, and my father, who works as a computer programmer at Dallas Theological Seminary in Texas, helped mold me to who I am today. I am extremely grateful for their constant support and guidance in my life.

It is an honor and privilege to be nominated by President Trump to serve as the General Counsel of the FLRA.

I grew up in a household which values service to others. As I evaluated various career paths to utilize my law degree, I quickly chose to use it in service to the American people. Our Federal Government serves many critical roles, from providing national security to preserving our majestic National Parks, and to caring for our wounded warriors or those suffering from the devastating effects of the opioid crisis. I have the utmost respect for the work of our Federal Government and for the dedicated public servants performing that work.

If confirmed, I can assure you of my commitment to ensure that all Federal employees are treated fairly and their rights are respected. In particular, I will uphold the rights of employees to form, join, or assist any labor organization, or to refrain from any such activity, and their right to engage in collective bargaining.

I also believe, as stated in the President's Management Agenda, that those in public service must be accountable for mission-driven results and that agencies must have the necessary tools and resources to deliver those results. If confirmed, I would be guided by the need to maintain the smooth functioning of our government, to provide excellent service to the public, and to be effective stewards of taxpayer dollars on behalf of the American people.

I truly value the incredibly diverse, complex, and challenging work our government does, and I consider the FLRA's mission to administer the Federal Service Labor-Management Relations Statute as integral to achieving a well-functioning government. If confirmed as General Counsel of the FLRA, I would be honored to be a part of the FLRA's leadership in promoting stable, constructive labor relations that contribute to a more effective and efficient government.

My career has provided me with the skill set and experience needed to excel in the position for which I am being considered. During my time at the Department of Health and Human Services, I have worked on three specific issues that would benefit me if I were confirmed to this position.

<sup>1</sup> The prepared statement of Ms. Bird appears in the Appendix on page 145.

First, I participated in term-bargaining negotiations on behalf of HHS management in discussion with the National Treasury Employees Union (NTEU). This experience taught me the importance of an objective and impartial Federal Labor Relations Authority in ensuring that labor negotiations proceed efficiently and effectively. This first-hand experience of the collective bargaining process has given me a keen understanding of the dynamics of the process and the ability to understand the process in a practical and not only theoretical manner. If confirmed as General Counsel, I will strongly support the need for good faith negotiations as envisioned in the Statute and case law, and I will apply the law independently and impartially.

Second, in my role as Principal Deputy Assistant Secretary for Administration, I oversaw a highly successful Federal Employee Viewpoint Survey (FEVS) program, centered on employee engagement. If confirmed, I vow to take employee engagement seriously and do everything within my authority to improve employee morale in the Office of the General Counsel (OGC).

Third, in my role at HHS, and in other positions, I have been entrusted by employees to investigate complaints and address issues they have raised to my attention. These situations have required me to critically look at the facts of a case, apply applicable rules and regulations, and come to a fair and impartial decision. I would apply a similar approach in evaluating charges of unfair labor practices. My decisions would be grounded in the Statute, regulations, and case law, using my best, independent judgment in each case.

I believe that my experience and passion will provide value to not only the FLRA, but by embracing a customer service approach will also benefit the many Federal agencies, labor organizations, and employees who rely on the work that FLRA does.

Thank you for considering my nomination. I look forward to answering any questions you may have.

Chairman JOHNSON. Thank you. Ms. Brandt.

**TESTIMONY OF RAINEY R. BRANDT, TO BE AN ASSOCIATE JUDGE,<sup>1</sup> SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. BRANDT. Mr. Chairman and Members of the Committee, thank you for this opportunity to appear today as you consider my nomination to serve as an Associate Judge of the Superior Court of the District of Columbia. The Committee Members and their staff have been very welcoming and I appreciate the hard work and careful consideration of my nomination. I would like to thank the D.C. Judicial Nomination Committee and its chair, Judge Emmett Sullivan, for recommending me to the White House, and the President for nominating me.

It is an honor to be seated here today with my colleague and friend, Judge Shana Matini. Our friendship began over 20 years ago when we clerked together at Superior Court. I am fortunate to have the support and guidance from many friends and colleagues, some of whom are here today. I thank you all for helping me get to this point.

<sup>1</sup> The prepared statement of Ms. Brandt appears in the Appendix on page 205.

Five of them in particular who are present, I would like to recognize at this time: Chief Judge Robert Morin, as well as former Chief Judge Lee Satterfield, both of whom have been with me every step along my judicial journey. Deputy Director of Interpol, Michael Hughes, whose friendship is a source of support and guidance. Judge Michael Rankin and Judge Stephanie Duncan Peters, for whom I clerked, and learned so much about how to be a good judge.

I would like to observe that my mom, Eloise, who died 3 years ago, is in my heart and I know she is proud of what both her daughters have accomplished. My sister, Cricket, who is seated behind me, a dedicated D.C. public school teacher, is here today to offer her support.

Last but certainly not least, I would like to thank my husband, Chief Robert Brandt of the United States Marshals Service. His unconditional love and support enable me to give 110 percent to District of Columbia.

I have lived in the District of Columbia for over 30 years. Much of my legal career has been at Superior Court, first as a student practicing attorney, then judicial law clerk to Judges Michael Rankin and Stephanie Duncan-Peters, then as a special counsel to three chief judges, and now as a magistrate judge. In addition to my work as a lawyer and judicial officer, I teach at American University and have done so for over 25 years. All of these experiences have given me the opportunity to be a good public servant, and prepared me to become an associate judge.

Since 2012, I have been a magistrate judge at D.C. Superior Court. During my tenure, I have been assigned to the criminal, civil, and domestic violence divisions. I am well prepared to assume the additional responsibilities of an associate judge. In addition to my caseload responsibilities, I serve on a variety of court committees and have taken on the leadership role of currently being the Deputy Presiding Magistrate Judge.

Each day I see people from all walks of life, with varied degrees of temperament and vulnerability. I work diligently to ensure that all litigants who appear before me feel they are heard and each case handled fairly, all while preserving the rule of law.

It is an honor to serve the citizens of the District of Columbia as I maintain the court's mission of being open to all, trusted by all, providing justice to all.

Thank you again for your consideration, and I look forward to answering your questions.

Chairman JOHNSON. Thank you. Ms. Matini.

**TESTIMONY OF SHANA FROST MATINI,<sup>1</sup> NOMINATED TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. MATINI. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today, and thank you for considering my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I want to thank the Judicial Nomination Commission, and in particular the Com-

<sup>1</sup>The prepared statement of Ms. Matini appears in the Appendix on page 235.

mission's Chair, the Honorable Emmet G. Sullivan, for recommending me to the White House, and the President for nominating me. I also wish to recognize and thank Chief Judge Robert E. Morin, as far as Chief Judge Lee Satterfield, both of whom are present today, for their support and leadership, and to thank the Committee staff for their hard work in preparing for this hearing.

I am so pleased to be joined today by members of my family. My father, Robert, resides in California so he is unable to be here today, but he is watching online, along with other members of my family, with I am sure a great deal of pride. My mother, Lynda, traveled from her home in Florida to support me today, as she has every day of my life. My husband, Ali, and our daughter, Sofia, are also present. Their love and encouragement means the world to me and I am thankful to have them in my life. I am also joined by a number of friends and colleagues, and I am grateful to each of them for their friendship.

It is a great honor to be considered to be an Associate Judge on the Court where my legal career began when the Honorable Richard A. Levie hired me to serve as his law clerk. I am forever indebted to Judge Levie, who is here today, for his guidance and his unwavering support throughout my career. My clerkship also provided an opportunity to form long-term relationships with my fellow law clerks, including my friend and colleague Judge Rainey Brandt, who clerked the same year that I did.

Upon graduation from law school in the District and after my clerkship, I worked in both the private and non-profit sectors before joining the District of Columbia Office of the Attorney General, where I served the District and its citizens as a trial attorney in the Civil Litigation and Equity Divisions.

As a litigation attorney for the Office of the Attorney General, I practiced regularly in the Superior Court, and always found the judges before whom I appeared to be thoughtful, fair, and dedicated. Not only did I learn so much as a practitioner in Superior Court, but when I was appointed to serve as a magistrate judge, I was provided invaluable guidance from my Superior Court colleagues.

Since my appointment as a magistrate judge, I have served the Court in the Civil, Criminal, and Family Divisions, and thoroughly enjoyed the challenges that each assignment presented and the ability to serve my community. I am humbled by this nomination and, if I am fortunate enough to be confirmed, the opportunity to continue serving the District of Columbia as an Associate Judge of the very Court where I started as a young lawyer and have learned so much.

Thank you, and I look forward to answering any questions the Committee has.

Senator LANKFORD. Thank you. I appreciate very much all of your statements there.

There is a mandatory set of questions that we need to be able to ask all of you, and so what I am going to ask is—I am going to down the row and I am going to ask the question and then each of you, I want you to be able to answer verbally to me. Is everybody OK with that? So there are three questions I am going to ask, and I am going to ask each of you to answer verbally with me.

The first question, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. Fisher.

Ms. FISHER. No.

Senator LANKFORD. Ms. Poling.

Ms. POLING. No.

Senator LANKFORD. Ms. Bird.

Ms. BIRD. No.

Senator LANKFORD. Ms. Brandt.

Ms. BRANDT. No.

Senator LANKFORD. Ms. Matini.

Ms. MATINI. No.

Senator LANKFORD. The second question. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. Fisher.

Ms. FISHER. No.

Senator LANKFORD. Ms. Poling.

Ms. POLING. No.

Senator LANKFORD. Ms. Bird.

Ms. BIRD. No.

Senator LANKFORD. Ms. Brandt.

Ms. BRANDT. No.

Senator LANKFORD. Ms. Matini.

Ms. MATINI. No.

Senator LANKFORD. Thank you.

Third question. Do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Ms. Fisher.

Ms. FISHER. Yes.

Senator LANKFORD. Ms. Poling.

Ms. POLING. Yes.

Senator LANKFORD. Ms. Bird.

Ms. BIRD. Yes.

Senator LANKFORD. Ms. Brandt.

Ms. BRANDT. Yes.

Senator LANKFORD. Ms. Matini.

Ms. MATINI. Yes.

Senator LANKFORD. Thank you very much.

I am going to defer my questions to the very end and move to Senator Sinema.

Senator SINEMA. Thank you, Mr. Chairman. My first question is for Ms. Fisher.

One of the chief concerns that Arizona has regarding the U.S. Postal Service is inconsistency in service performance. Given your many years of experience within the PRC in various roles, and the critical role the PRC plays in the oversight of service, how can the PRC help the Postal Service improve its service performance?

Ms. FISHER. Thank you, Senator. The Commission, by law, is required to consult with the Postal Service on their service goals as they set them each year or make modifications to them, and we

also collect all of the data related to their service performance annually and report on the extent to which they meet their performance through our Annual Compliance Determination, which is issued each year in March.

I also, in my position, oversee the constituent relations aspect, and we receive letters from approximately 7,000 consumers across America a month, and their number one issue is service, and, in particular, it is delayed mail. So we are well aware of the issue and will consistently work with the Postal Service to encourage them to meet those performance goals. We know how important it is across the board.

Senator SINEMA. Thank you. My next question is for Ms. Poling.

Given the recent reports of the Postal Service's new business plan and the cuts to service infrastructure contained in the plan, it is critical that leaders of postal oversight bodies understand the importance of consistent postal service to customers and the impacts that misguided service cuts could have on local economies.

If confirmed to this role, how would you use the PRC's existing authority to make sure that any proposed Postal Service infrastructure changes, including the consolidation of processing plants, are closely examined to ensure they make sense from a financial and consumer service standpoint?

Ms. POLING. Thank you, Senator. I think first I would say, I think it is wonderful that the PRC already does a lot of monitoring of the service performance of the Postal Service. With that said, I do think that probably one of the things I would really like to examine and explore is, is there more that can be done, in terms of holding the Postal Service accountable, to make sure they are meeting those service performance targets.

That is something I have explored quite a bit on the congressional staffer side, through legislation, in terms of, what can be done to make sure that the PRC really is holding the Postal Service in complete compliance. That is something I would like to examine further, as a commissioner, if confirmed, but I also do think that probably Congress has a role to play there as well.

Second, I would say I think it is really important to make sure we are getting accurate data. There was an Operational Window Change Report that came out in the fall of 2018, that actually found that the Postal Service only saved about 5.6 percent of the projected savings that they said they would for changing the overnight service standard. We no longer have an overnight service standard anymore. First-Class Mail takes 2 to 3 days to be delivered.

I think it is incredibly important to make sure that the PRC is getting the most accurate data possible, and I think it is important that Congress is getting the most accurate data possible from the Postal Service.

So if confirmed I would do everything I could to make sure that we are getting that accurate data so that we can make sure that we are serving the American postal customers as effectively as possible. Thank you.

Senator SINEMA. My next questions are for Ms. Bird.

The general counsel at the FLRA is the key decisionmaker regarding when unfair labor practice charges move forward. Experi-



ence with Federal labor law and its practice is an essential qualification for the position.

Before your positions with HHS that started in 2017, what was your experience with Federal labor law and its adjudication, and have you ever supervised the work product of other lawyers working in Federal labor law?

Ms. BIRD. I have not. I did not have specific experience with Federal labor law. However, I did deal with labor unions often as stakeholders in legislation that was coming before members that I worked with in the California State Senate.

Senator SINEMA. Thank you. Since joining HHS in 2017, I know you have played a key role in representing the agency's interest in the realm of labor management negotiations, specifically in the effort to reach a new collective bargaining agreement, and you have also advised management in a separate labor negotiation at the Department of Veterans Affairs (VA).

The unions representing employees in these disputes, the National Treasury Employees Union and the American Federation of Government Employees (AFGE), have provided letters opposing your nomination. I do want to submit both letters for the record,<sup>1</sup> with the Chairman's approval, and ask a few questions that allow you to respond to the claims in these letters.

Senator LANKFORD. Without objections.

Senator SINEMA. Thank you.

In a letter opposing your nomination, the NTEU said that HHS moved to declare an impasse in collective bargaining negotiations after 1 day of negotiations. Could you tell me how your perception of 1 day of bargaining for only a couple of identified issues led to an impasse and what your perception of good-faith bargaining was in that situation?

Ms. BIRD. I do not agree with that characterization. The collective bargaining had begun on that contract back in, I believe, 2016, and there had been multiple instances of negotiations with the parties. As far as when we moved to impasse we had multiple days of negotiations. HHS management team felt that it was important early on, because of some of the contentiousness of the negotiations prior, to bring in an independent body, the Federal Mediation and Conciliation Service (FMCS), to help oversee those negotiations, and in an effort to reach an agreement. At the direction of the FMCS, the parties found themselves to be at impasse quickly, and that went to the Impasses Panel, which then made the determination.

Senator SINEMA. Thank you. My next question is also about your role advising HHS on collective bargaining negotiations. In April of this year, the Federal Service Impasse Panel issued a decision on many of the disputed issues from that negotiation with NTEU. In your policy questionnaire, and at your recent staff interview, you answered several questions by stating you would be guided by statute, regulations, and relevant case law, but in the April decision the Impasse Panel found multiple places where the HHS management position did not follow Federal labor relations statute, regulations, and applicable case law. I am wondering if you could help

<sup>1</sup> The letters referenced by Senator Sinema appears in the Appendix on page 283.



square those statements about strict adherence to precedence with the recent findings of the Impasse Panel.

Ms. BIRD. My role in the HHS management negotiations, and really my duty, was to represent management to the best of my ability at that negotiations table, which is what I did. My role and my duty as general counsel of the FLRA would be to be an impartial decisionmaker, and I can commit to look at the facts of each case, apply the applicable rules and regulations to the individual facts in that case, and come to an impartial and a fair decision.

Senator SINEMA. Thank you, Ms. Bird. Mr. Chairman, my time has expired.

Senator LANKFORD. Thank you. I want to recognize the Chairman of the full Committee, Senator Johnson.

#### OPENING STATEMENT OF SENATOR JOHNSON

Chairman JOHNSON. Thank you, Mr. Chairman. I want to first welcome all the nominees and thank you for your past service and your willingness to serve in the new capacity, and wish you all well.

I do want to focus a little bit on postal reform because we have a unique opportunity with two nominees that are very well versed in the subject. So I am going to ask three questions and I want both of you to respond, and I will start with Ms. Fisher, because you were actually here during 2006 postal reform.

I just want to ask the basic question. What do you think was the best part of postal reform, what went right, what went wrong, and why are we still talking about fixing the postal system?

Ms. FISHER. I think the rate cap was tremendously helpful. The mailers, at that time, a priority concern of theirs was stability and consistency. Rates prior to that had been set to increase every 2 to 3 years, and for large mailers that was a huge jump in what they would pay for postage fees. So the rate cap got that right.

We also, in working with the Postmaster General at the time, believe that setting it at Consumer Price Index (CPI) was also adequate. That was what the Postal Service had effectively operated under for the past 20 years. But we had absolutely no idea that shortly after the bill was passed the Great Recession would come about, and these seemed to be constraints that were just impossibly tight for the Postal Service to operate under and still be able to make these multi-billion-dollar Federal retiree health benefit payments that we had scheduled for them over the coming 40-some years.

So what I wish is—I do believe the rate cap system was right. I wish that we had given the Commission the opportunity to possibly revise that sooner than 10 years after enactment. I also wish that perhaps there had been language included that required more transparency on the end of the Postal Service when it comes to making changes in nationwide that impact Postal Service across the country.

We serve an advisory opinion role in that capacity, but the advice that we give to the Postal Service is often taken by the Postal Service but we do not know what happens with it once we have given it.

Chairman JOHNSON. OK. Ms. Poling, why didn't 2006 work? I mean, why are we still looking at fixing the postal system?

Ms. POLING. Thank you, Chairman. What I would say, I think, first, is that we are at an incredibly different time than we were in 2006. If memory serves me right, I think that is right before sort of the iPhone came out, before people, I think, began to rely even more on electronic mail. That was kind of the start on that.

In addition, I think as Ann said, we did have the recession of 2007 to 2009. In addition, we have had declining mail volumes. Again, that is coupled—

Chairman JOHNSON. And that really could not be predicted and was not anticipated—

Ms. POLING. Exactly.

Chairman JOHNSON [continuing]. In the 2006 reform. Because I do have limited time—

Ms. POLING. Yes.

Chairman JOHNSON [continuing]. What has been the primary impediment to getting something passed, or fixing the system over the intervening years? What has been the primary impediment?

Ms. POLING. I would say the primary impediment is getting stakeholders on the same page. I think that is something that is really tough in the postal community. You have a lot of wonderfully passionate people, but finding people—finding kind of that sweet spot where everyone can agree is a tough task. I have worked on, as I said, a number of postal bills. I have seen it year after year.

I do think, though—

Chairman JOHNSON. Getting on the page of what issue?

Ms. POLING. Well, I think—

Chairman JOHNSON. What has been the main problem—

Ms. POLING. Yes.

Chairman JOHNSON [continuing]. That we cannot get agreement on?

Ms. POLING. I think probably the main issue that we have to consider is the prefunding mandate for retiree health. Another issue that always comes up is rates. We have kind of tried to address that some through legislation. Obviously the PRC is sort of the primary rate-making body.

In addition, service, as I spoke about in my opening, is an issue that does come up, because that is something that really does impact, I think, communities all over this country. Finally, I would say ways to modernize the postal system is another area that always comes up. I would say there has been a lot of discussions on, I think, especially the retiree health mandate, how to fix that, has been a struggle.

I would actually like to comment on the Postal Task Force Report. There was an idea on there that actually talked about vested liability, using that as potentially as a way of reducing the prefunding burden. I will say I have not examined that in detail. That is from my reading of the report. But what that would essentially do is just look at those existing retirees of the Postal Service, as well as those who are about to retire, and would not go as far into the future as what we have right now.

So I think there are—and I would comment, I mentioned earlier, stakeholders, it is tough to get everyone on the same page. That

is actually one of the issues that I have heard more consensus on than I have many others, and I think it is worth really examining that, because I do kind of think that that has always been the toughest issue to get through.

Chairman JOHNSON. We do need accurate information, and there is all kinds of information I have been trying to obtain for years and I just simply cannot get it, in terms of—I will not get into that.

Ms. FISHER, I would like your perspective on kind of what has been holding things up.

Ms. FISHER. I do believe it is difficult, as Ashley, said, to get members on the same page. I felt hopeful when the White House Task Force issued their report, the extent to which it discussed the Universal Service Obligation (USO) and possible considerations that could be considered around that. This was something that the Commission looked at in 2008. We were mandated by the 2006 act to look at the universal service obligation and the two monopolies, the mailbox and delivery everywhere.

The White House Task Force asked Congress to consider looking at things that have the potential for big changes in revenue, such as possibly dropping down to 5-day-a-week delivery, franchising the mailbox. Those are some big-picture items that traditionally Congress has rejected.

What I would recommend is that a nationwide survey be undertaken, and perhaps this could be done by the Commission in conjunction with the Postal Service, to ask the American public what exactly do you want of your Postal Service today.

We found, through a smaller poll, done by George Mason Institute, whom we worked with on the 2008 report, that of around 1,000 people polled, the majority were comfortable with the idea of moving to 5-day delivery. A majority were not comfortable with the idea of opening up the mailbox, but if it were to be opened up to certain companies that they were familiar with, then they were very comfortable with the idea. I am not advocating for either of these changes, but they are worth considering, and I think it is time for an update.

Chairman JOHNSON. OK. If the Chairman would indulge me for just one final question. By the way, I think the President's Task Force on this did a pretty good job of laying out the problem. I just want to ask a question on that.

One of the recommendations was fix the postal system without a taxpayer bailout. Do you both agree with that position? Ms. Fisher.

Ms. FISHER. Absolutely. The Postal Service was intended to be self-funding and it should be.

Chairman JOHNSON. Ms. Poling.

Ms. POLING. Yes, I do.

Chairman JOHNSON. OK. Thank you very much. Thank you, Mr. Chairman.

Senator LANKFORD. Senator Carper.

Senator CARPER. Thank you, Mr. Chairman. Again, to each of our witnesses today, welcome, and congratulations on your nominations. And your parents, in some cases, and you families are here and friends are here. I have found in my life that when daughters

or sons turn out well it is usually, in part, because they picked the right parents. [Laughter.]

And for the folks in the audience who helped raise these women and molded and shaped them, we want to thank you as well.

I had a question for Ms. Fisher and Ms. Poling, both of you. I have a couple of questions I would like to ask you. The first one deals with rate review.

The Postal Regulatory Commission concluded, I think more than a year ago, that the postal rate system was not meeting the objectives that Congress set when we last enacted postal reform in 2006. In short, the commissioners found that the system does not allow the Postal Service to raise the revenues it needs to maintain its financial health or to meet the service standards that it has established. The Commission has not yet finalized the replacement for the existing system.

I would just ask if each of you could take a minute or two to talk about how important you believe it is for the Commission to take this next step, and how you plan to approach this project if you are confirmed.

Ann, would you go first?

Ms. FISHER. Yes. This is one of the most important undertakings that the Commission has experienced since my time there, in my opinion. The stakes are very high, considering the Postal Service's finances. This review has been far more complicated than I would have anticipated, and being done in accordance with all the rules of the Administrative Procedures Act (APA), it can be lengthy.

We were stalled for a bit, unfortunately, with four commissioners coming to reach a majority of consensus on certain issues related to the findings, but now since we have had a fifth commissioner join our ranks in December things are moving forward again.

I think it is very important that we finish this and get it out for public review and comment as soon as possible, and I am committed to doing that as soon as I arrive at the Commission.

Senator CARPER. Thank you. Ms. Poling, same question.

Ms. POLING. Yes. Thank you. Yes, so I would say, this is something obviously that was mandated under PAEA, and in that, in the proposed rule that the Commission did put out in December 2017, they did find that the rate-setting process had not been as efficient as they hoped. In addition, they also found that the high quality service standards had not been met.

I think that is a really key piece. Obviously, I know I have talked a little bit already today about service, but that I would be a piece that I would be particularly interested in examining, if I were confirmed to be a commission. But I would also be very interested to see all of the work that has gone into the analysis that got us to the point of the proposed rule, and to make sure that I thoroughly understand it, as well as the impact that it would have on the full postal community. I think that is really important.

One thing I would note, in particular, in the proposed rule, there was a proposal that the PRC put forward that would actually allow an additional point to be given to the Postal Service in the future, in the rate-making process, if they are able to meet or exceed service performance targets. I think that is really interesting and I think that we have to think of ways to make sure that they

are, really being held accountable in this area, based on how much it impacts every single person in this country but also, obviously, in Congress. Members are very familiar with this issue and hear about it the most from constituents.

So those are some areas I would be really interested in, and I would commit to examining this and working on it, and, working through the process as expeditiously as possible.

Senator CARPER. Alright. Thank you both for those responses.

One more question, if I could, with regards to evaluating the Postal Service. This is for each of you.

If confirmed, what steps would each of you take to evaluate the status of the Postal Service and the steps that need to be taken in the coming months to address both its short-term and its long-term financial challenges, and what will your main areas of interest be?

Ms. Poling, would you like to go first?

Ms. POLING. So I would say I think that we have really got to do a full-scale analysis of all the issues that the Postal Service has been facing. I have obviously become pretty familiar with those in Congress, working through multiple variations of legislation. But I also think it would be really interesting to make sure that I am fully understanding what that looks like in terms of the PRC's role as well, and in terms of sort of what we can do to really make sure that the postal community is working together.

One of the strategic missions that the Postal Regulatory Commission has in their statement is to create more engaging relationships with Congress. I think that is something that I could really bring. I have worked with, obviously, members and staff across both sides of the aisle. I know the stakeholder community incredibly well. I think that is something that I could really bring to this. In addition, I would also say my service experience, which I have talked about quite a bit, I think that is something that really brings an insight into what the American postal customer is looking for.

Ann commented earlier on a review of the universal service obligation. I do think we need to absolutely know what Americans want today, and we need to know what they want all over the country. That is incredibly important. At the end of the day, we are serving the American postal customer and we have really got to look at that.

In addition, I would say it would be interesting—the Postal Service, obviously, a bright spot for it has really been in the package market. I think we need to—I would like to make sure I am understanding everything as well as I can, from the perspective of a commissioner, if confirmed. But I think that really is an area where there is great potential for the Postal Service to continue innovating, and if they are able to do so more flexibly in the future I think that the sky is truly the limit.

Senator CARPER. Alright. Fine. And the same question, Ms. Fisher, if you would please. Thank you.

Ms. FISHER. With respect to the short-term and the long-term financial condition of the Postal Service, I believe resolution of the 10-year review of the market-dominant rate-setting system is a priority, as that would provide the Postal Service with the necessary additional rate authority and incentivize them to become more efficient. So that is my number one priority.

Second after that, I am, as I stated earlier, very interested in updating the Commission's report on the universal service obligations and monopolies. While any changes to the universal service obligations are Congress' to make, I would love for the Commission to be able to provide them with food for thought to help them move ahead in these areas.

Senator CARPER. Alright. Thank you both.

Mr. Chairman, Albert Einstein used to say, in adversity lies opportunity, and there is plenty of adversity.

Senator LANKFORD. And lots of opportunity.

Senator CARPER. But there is a fair amount of opportunity as well, and if confirmed we hope you will help us find that. Thank you. And good luck, everyone. Thank you for your service.

Senator LANKFORD. Thank you.

So then it is down to me. I have just 98 minutes of questions left. [Laughter.]

This will be somewhat of a lightning round, as I go through several things here, to be able to go through. And for fear that the D.C. Court does not feel like they are getting enough attention here I am going to begin with both of you. It is the benefit of being on a panel with five here.

Ms. Matini, I want to begin with you on this. As a nominee, do you pledge that the facts in the law will drive your decisions on the bench?

Ms. MATINI. Yes.

Senator LANKFORD. Thank you. How can you use your position best to be able to help solve the problems that D.C. is currently facing, just in population and criminal issues, civil issues, and just people issues? It is not unique to D.C. It is just folks, nationwide. What can you do best to be able to serve the people of D.C.?

Ms. MATINI. Thank you, Senator. I believe that if I am confirmed to be an associate judge I would continue to do what I have done as a magistrate judge, which is to treat the cases that come before me all individually, try to keep the cases moving expeditiously through the courthouse when people come to court. Their cases are very important to them and they are important to me. I want to make sure that they each have the opportunity to be heard and to receive a decision that is based on the facts that I have heard and the law that applies to those facts, and to manage the courtroom in a way where everyone has the opportunity to be heard but the cases continue to move through the courtroom in an expeditious manner.

Senator LANKFORD. So let me ask you a follow up question on that. How can you make sure that justice is not delayed, because that is a big issue, to be able to make sure that the backlogs do not continue to stack up and that individuals that show up in court actually get their day in the court? They have gone through a lot of pain to be able to get to that moment, some of them for years. They have prepared, paid attorneys, gone through counsel, been in multiple meetings, and it has been very difficult. No one looks forward to their day in court. They look forward to it being done and getting resolution at that point. How can you make sure justice is not delayed in your court?



Ms. MATINI. I hold myself to very high standards. I try to be as prepared as possibly can for every case that comes before me so that I am aware of the potential issues that could come up. And I also hold the lawyers that appear before me to the same high standard, and I believe that in my experience as a magistrate judge over the past 3½ years my expectations are known throughout the courthouse that people should be one time, they should be prepared, and that I expect that cases that are set for that day are going to go that day, and to try to encourage everyone to be as prepared as possible.

Senator LANKFORD. So just because an attorney was really busy and had three other cases they do not necessarily get another 3 months of just extra time for your case.

Ms. MATINI. No, but I also want to make sure that the individual that the attorney represents is adequately represented. So if it is a situation where an attorney needs more time in order to be able to effectively represent an individual, I do have to consider that——

Senator LANKFORD. Sure.

Ms. MATINI [continuing]. Because to simply move a case forward for the sake of expediency, that is not serving the purpose of what I need to be doing.

Senator LANKFORD. Thank you. The same questions I want to ask you, Ms. Brandt. So do you pledge that the facts of the law will drive your decisions from the bench?

Ms. BRANDT. Yes.

Senator LANKFORD. So how can you use your position best to be able to serve the people of D.C.?

Ms. BRANDT. Thank you for the question, Senator. I think just by doing what I have been doing for the past 7 years, is taking each case as it comes in, applying the law to the facts as they present themselves, and making sure that each litigant has an opportunity to be heard.

Senator LANKFORD. How do we deal with the backlogs, as we have talked about before with Ms. Matini? How do we make sure that it is not justice delayed in the process?

Ms. BRANDT. Well, I am a self-confessed Type A personality.

Senator LANKFORD. Nothing wrong with that.

Ms. BRANDT. So I always like to make sure that I am prepared whenever I take the bench, and I expect the lawyers to be prepared as well. And part of being prepared, as the judge, is setting the appropriate deadlines that the lawyers need to meet, and holding the lawyers to those deadlines is part of the process of moving the cases through the system. There is always an opportunity in individual cases where expediency might be to the detriment of the litigant, so you have to take each situation as it presents itself and act accordingly.

I would like to footnote that part of moving the process along is being decisive in you decisionmaking.

Senator LANKFORD. Thank you.

Ms. Bird, let me ask you a little bit about—and let me ask you this, and I failed to do this earlier and I apologize. Have you received a copy of the letters that we put into unanimous consent



(UC) earlier, that Senator Sinema referenced? Have you seen both those letters?

Ms. BIRD. I have not.

Senator LANKFORD. OK. Well, I apologize that I did not ask you about that earlier. I should have asked you earlier on that and to make sure that you get a copy of those.

One of the issues that was raised in the letter was your role in the negotiations with the VA. Can you talk through those negotiations real quick, and what was your role at that time?

Ms. BIRD. Yes. I provided brief support to the VA management team as somewhat of a consultant to them to provide experience and knowledge for a short period of time.

Senator LANKFORD. OK. But not as an official VA negotiator or as a VA representative?

Ms. BIRD. No. there was a detail in place——

Senator LANKFORD. Right.

Ms. BIRD [continuing]. To the VA, but no, I was not officially a part of the VA's bargaining team. Just more of a consultant role.

Senator LANKFORD. Can you describe your approach to managing employees that are in various geographic locations? You are not going to have the privilege of getting a chance to see everyone you manage every day. How are you going to handle that?

Ms. BIRD. That is correct. Right now at HHS I help oversee a division that has 900 employees and many of those employees are remote. And so we utilize all different forms of technology to stay in constant communication with our employees and to be able to do video conferences, things of that nature, to ensure that we are fully engaged with employees across the country.

Senator LANKFORD. I heard your comments earlier about working toward creating a positive working environment, even within the general counsel's office, as well as providing fair arbitration or negotiation and the opportunity to be able to have fair conversation for all parties. Do you feel confident you are ready to be able to do that?

Ms. BIRD. Yes, I do. One of the things I mentioned in my opening statement is that I have been a part of HHS's very well-run Federal employee viewpoint survey——

Senator LANKFORD. Right.

Ms. BIRD [continuing]. And we are number one right now in large agencies, number two across the Federal Government. So I am really excited about the ability to bring that experience to the Office of the General Counsel.

Senator LANKFORD. That is good. Thank you.

There are not many postal regulatory questions that have not already been asked. The two of you all have had plenty of opportunity to be able to go through quite a few things.

Let me ask you this, though. What can the PRC do, without legislative action, to maximize this conversation about rates and sustainability of USPS products, especially those that do not cover costs right now? There has been an ongoing dialogue about some products do not cover the costs, but that is its own unique challenge. If I go back to the newspapers in my small towns, and for the people that are in many of my communities, they are very dependent on trying to be able to get news and to be able to get infor-

mation, and to be able to get periodicals and things. Many of those things do not cover costs.

What do you need legislatively, or what can be done by the PRC without legislation?

Ms. FISHER. Senator, I think that there are the potential for movement among the classes of market-dominant and competitive products that can be done to allow the Postal Service the potential for more rate-setting flexibility. But that requires a willing body of Governors to submit such a request to the Commission and a willing majority body of commissions to approve such a request.

The issue of the underwater products is constant. It has been going on for a long time, decades, I believe. I know that the Postal Service has worked very hard, through changes in equipment, in the way they process those products, to help address the costing issues, but it will also be addressed as well in the 10-year review, I believe.

Senator LANKFORD. Great. Ms. Poling, do you have anything you want to add to that?

Ms. POLING. Yes. I would just add, you had asked about, I think, just really maximizing the role from the position of being a PRC commissioner. I think that there really has to be really effective oversight, to the extent possible. We did not go into this particularly but I know negotiated service agreements have been another area that has come up, in terms of those covering their costs, and that is something else that the Commission obviously evaluates.

I think from what I understand from USPS, OIG, insight, I really think this is somewhere that there needs to be more thorough oversight, of who is getting those discounts and things like that, with the Postal Service. So that is one area.

In addition, I would just say I think continuing to really monitor, as much as they can, service performance results. I think there are excellent examples of collaboration. Right now the Postal Service has an internal measurement system that was approved by the PRC last summer. That is something that Members of Congress, two of my former bosses, worked on, and worked closely with the PRC and the Postal Service to do that.

I bring that up—I think that is an excellent example of collaboration and what we need to see more of while there, and I will look forward to more fully understanding all parts of that role if confirmed.

Senator LANKFORD. Alright. Well, there are quite a few issues that obviously have to be addressed that we have not talked about today, things like security, drugs coming in from outside the country or moving around within the country through the mail system, illegal products, whether that be ivory that is moving into the country or illegal items that are moving in, artifacts and such moving in through the mail.

So there is a wide variety of issues. And we focus very often on drugs moving but there is a wide variety of issues that have to be addresses and be able to determine what is the best way to do that. And we will count on you all to be able to help focus on the ideas and make the proposal that are needed to be able to address these items.

My State is not dissimilar to many other States. In Oklahoma, we are very dependent on the mail coming, whether it be for prescription or for news or for a bill coming in. We are very focused on access to that timely product coming into our box.

There is also a tremendous group of letter carriers and postal employees that serve in our State that are remarkable public servants. And we are very proud of them and very partial to them. But we are also looking for answers and recommendations as we struggle through this process. I appreciate you both stepping up to consider this.

All of you, you have been through this dialogue but this is not the first time to be able to have a dialogue like this. All of you have been through extensive background checks. You have turned in endless documents. I have personally gone through all of your FBI files—it is very exciting, by the way. I have also gone through all of the background information for all five of you. You have met with our staff who have pummeled you with endless questions and then did follow up questions with you. You have submitted lots of answers to lots of issues.

So I appreciate you coming through not only today but what you have already walked through. Our goal is to be able to get you through this process completely, get you through confirmation, and get you on the task, because you did not initiate this process so that you could go through confirmation. You initiated this process so you could be confirmed. So let's finish that out in the days ahead.

I thank all of you for being so willing to be able to go through a long, arduous process, to be able to do this service to your country.

You have all made financial disclosures,<sup>1</sup> provided responses to biographical and hearing questions submitted by the Committee.<sup>2</sup> Without objection, this information will be made a part of the hearing record,<sup>3</sup> with the exception of the financial data,<sup>4</sup> which are on file and available for public inspection in the Committee offices.<sup>5</sup>

The hearing record will remain open until noon tomorrow, July 17, for the submission of statements and questions for the record.

Thank you all and thank your families for walking through this as well, with all of you.

With that, the hearing is adjourned.

[Whereupon, at 11:17 a.m., the Committee was adjourned.]

<sup>1</sup> The information of Ms. Fisher appears in the Appendix on page 39.

<sup>2</sup> The information of Ms. Poling appears in the Appendix on page 89.

<sup>3</sup> The information of Ms. Bird appears in the Appendix on page 147.

<sup>4</sup> The information of Ms. Brandt appears in the Appendix on page 206.

<sup>5</sup> The information of Ms. Matini appears in the Appendix on page 236.

## A P P E N D I X

### Opening Statement of Senator James Lankford

Nomination of Ann C. Fisher to be a Commissioner of the Postal Regulatory Commission;  
Nomination of Ashley E. Poling to be a Commissioner of the Postal Regulatory  
Commission; Nomination of Catherine Bird to be General Counsel of the Federal Labor  
Relations Authority; Nomination of Rainey R. Brandt to be Associate Judge on the  
Superior Court of the District of Columbia; and Nomination of Shana Matini to be  
Associate Judge on the Superior Court of the District of Columbia

July 16, 2019

Good morning. The hearing will come to order. Today we will consider five nominations: Ann Fisher and Ashley Poling to be Commissioners of the Postal Regulatory Commission; Catherine Bird to be General Counsel of the Federal Labor Relations Authority; and Rainey Brandt and Shana Matini to be Associate Judges on the Superior Court for the District of Columbia.

MS. ANN FISHER currently serves as the Director of Public Affairs and Government Relations at the Postal Regulatory Commission. She previously served in several senior staff positions in the U.S. Senate including as Deputy Staff Director of this Committee under Chairman Collins.

MS. ASHLEY POLING currently serves Ranking Member Gary Peters as his Director of Governmental Affairs and Senior Counsel on the Committee. She previously served as Counsel to Senator Jon Tester and Senior Counsel to Senator Heidi Heitkamp on the Subcommittee on Regulatory Affairs and Federal Management.

MS. CATHERINE BIRD currently serves as the Principal Deputy Assistant Secretary for Administration at the Department of Health and Human Services. She previously served as Legislative Director for California State Senator John Moorlach [More-Loch] and as a Legislative Aide for California State Senator Ted Gaines.

MAGISTRATE JUDGE RAINEY RANSOM BRANDT currently serves as a Magistrate Judge on the D.C. Superior Court. She is also an adjunct associate professor at American University's Department of Justice, Law and Criminology.

MAGISTRATE JUDGE SHANA FROST MATINI currently serves as a Magistrate Judge on the D.C. Superior Court. She previously served as a trial attorney in the Office of the Attorney General of D.C.

The Committee takes these nominations very seriously, and we are pleased to have these nominees before us.

Committee staff reached out to many of the colleagues and affiliates of the nominees, and they spoke highly of your professional abilities and fitness to potentially serve in the roles to which you have been nominated.

Staff interviewed the nominees on an array of issues, and each has thoughtfully and competently answered each question.

I look forward to speaking with each of you more today on your experience and accomplishments and how you intend to bring them to bear for the federal government and the District of Columbia.

I now recognize Ranking Member Sinema for her opening statement.

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Nominations of Ann Fisher and Ashley Poling, to be Commissioners, Postal Regulatory Commission;  
Catherine Bird to be General Counsel, Federal Labor Management Authority; and Rainey Brandt and  
Shana Frost Matini, to be Associate Judges, Superior Court of the District of Columbia**

**July 16, 2019**

**Senator Gary C. Peters, Ranking Member**

***Opening Remarks***

Thank you, Chairman Lankford, Ranking Member Sinema, and thank you to all of the nominees for your willingness to serve.

I would like to add a few words about one nominee – Ashley Poling, who I am fortunate to have on my Committee staff as my Director of Governmental Affairs and Senior Counsel.

Over the past year, Ashley has been a valued advisor – and she has been instrumental in much of this Committee's work since she started working for Senator Tester six years ago.

Ashley went on to serve as a key advisor on postal issues for Senator Heitkamp before joining my team.

Mr. Chairman – Senator Heitkamp has submitted a formal letter in "enthusiastic" support of her nomination – which I ask to have entered into the record.

Staff and members who have worked with Ashley over the years are likely familiar with her unique ability to work through complex policy issues to find bipartisan paths forward – I'm confident she will bring this skill set to Postal Regulatory Commission.

I also appreciate Ashley's commitment to mentoring staff on her team as well as the enthusiasm and depth of policy knowledge she has brought to this committee.

Ashley – on behalf of myself – and HSGAC members past and present – thank you. I look forward to your testimony and the testimony of all our nominees.

Senator Thomas R. Carper

**Introduction of Ann C. Fisher to be a Commissioner on the Postal Regulatory Commission**

**July 16, 2019**

I am honored to introduce Ann Fisher for the hearing on her nomination to be a commissioner on the Postal Regulatory Commission.

Before I introduce Ann, however, I want to introduce Ann's family – her husband David, and her two daughters Dagny and Regan. Thank you for sharing your mother and wife with us for the last 20 years and thank you for supporting her in this new role.

When you look at Ann's resume, she can be summed up in various quick bullets:

- Senior government executive with over 20 years of experience on Postal Service related issues.
- Trusted government liaison to the U.S. Congress
- Thought leader on the U.S. Postal Service
- A key leader in the postal stakeholder community

None of these quick snip-its can really describe the Ann Fisher I have worked with and grown to respect over nearly two decades.

Each bullet only describes a piece of Ann and who she is, but together, these bullets show she is unquestionably qualified to be a PRC commissioner.

The Postal Service is the lynchpin of a trillion dollar mailing industry and the role of the regulator is one that cannot be underestimated. You need someone who understand Postal product pricing and someone that understands the intricacies of the Postal market place. And that is Ann.

For more than 20 years Ann has been at the forefront of Postal issues. When Ann was the former Republican Deputy Staff Director of this Committee, I had the pleasure of working with her on Postal Reform in 2006. We have continued to work together since then in her roles at the PRC on numerous legislative policy reforms.

Party politics aside, Ann is a first and foremost a professional. You know that anytime you ask Ann a question – you are going to get an honest and thoughtful answer.

Ann is a woman of integrity and her long-standing relationships in the Postal Community—with all the stakeholders and unions—show that Ann is going to be an impartial leader for the PRC.



Her knowledge and her character are why she is prepared to be a regulatory for the largest employer in America behind Wal-Mart.

I look forward to the work Ann will do as a commissioner on the PRC, and I rest easy knowing that she will be watching out for health of this vital federal agency.

**Statement for the Record**

**Sen. Kyrsten Sinema**

**July 16, 2019**

**Nomination hearing for Ann C. Fisher and Ashley E. Poling to be Commissioners on the Postal Regulatory Commission (PRC); Rainey R. Brandt and Shana Frost Matini to be Associate Judges on the Superior Court of the District of Columbia; and Catherine Bird to be General Counsel for the Federal Labor Relations Authority.**

Thank you, Mr. Chairman.

Today we are considering two nominees to serve on the Postal Regulatory Commission, two nominees to serve as Associate Judges on the Superior Court for the District of Columbia and one nominee to serve as General Counsel of the Federal Labor Relations Authority.

The Postal Regulatory Commission (PRC) is an organization whose unique perspective has been extremely important to various ongoing postal policy debates. As the Postal Service looks to tackle future financial stability, the PRC's role will be crucial in addressing the questions surrounding proposed changes to its financial structure and concerns over service performance. This analysis will inform how the Postal Service proceeds with its plans and will provide key decision makers, such as Congress, with important insight into the resulting impact to postal customers, postal employees, and other important stakeholders.

Having over 20 years of experience as a senior executive working on postal issues in the U.S. Senate, the Postal Service, and the PRC, Ms. Fischer is no stranger to the postal community. This is true of Ms. Poling as well, who has more than six years of experience working within the Senate, focusing extensively on Postal issues. I believe the strong experience of both Ms. Fischer and Poling will provide valuable regulatory insight as the Postal Service considers significant operational changes.

We are also pleased to consider two nominees to serve as Associate Judges of the District of Columbia Superior Court. The court currently faces a historically high number of vacancies, while also dealing with a heavy caseload. A full complement of judges on the Superior Court is 62, and there are currently 10 vacancies, with an additional three expected this year due to retirements. Continued vacancies at the D.C. Superior Court slow the administration of justice.

Ms. Brandt and Ms. Matini have displayed a well-established commitment to public service. Both currently serve as Magistrate Judges within the District of Columbia Superior Court. Ms. Brandt has served as a Magistrate Judge for seven years and previously worked as Special Counsel to the Chief Judge of the Superior Court of the District of Columbia for fourteen years. Ms. Matini has served as a Magistrate Judge for almost four years and previously as an attorney in the Office of the Attorney General (OAG) for the District of Columbia, Civil Litigation Division for eleven years.

The FLRA's Office of General Counsel (OGC) is responsible for investigating, prosecuting, and adjudicating Unfair Labor Practice (ULP) allegations—claims that agencies or labor organizations have failed to uphold their legal obligations to other parties or individual employee.

Ms. Bird, the nominee for the General Counsel of the FLRA, has served as Principal Deputy Assistant Secretary for Administration at the Department of Health and Human Services (HHS) since May 2017. In this position, she has represented HHS management in labor negotiations. Before working at HHS, Ms. Bird worked as a legislative aide in the California State Senate, and as a student life specialist at Simpson University in California.

In the 2018 *Best Places to Work* rankings compiled by the Partnership for Public Service (PPS), the FLRA ranked third to last in overall employee job satisfaction among small agencies. The agency experienced the largest score shift of all small agencies between 2017 and 2018. A motivated workforce is an effective workforce, and I hope FLRA leadership will develop a strategy to reverse this trend.

The FLRA also faces a significant case backlog. Over 200 Unfair Labor Practice Complaints await disposition. I encourage Ms. Bird, if confirmed, to pursue fair and innovative strategies for disposing of pending complaints in a timely and conscientious manner while continuing to process the FLRA's normal influx of complaints and appeals.

I would like to thank the nominees who have volunteered to serve in these important positions, and I look forward to hearing their testimony.

**Opening Statement of Rep. Mark Meadows (R-NC)**  
**July 16, 2019**

Thank you, Mr. Chairman.

Chairman Johnson, Ranking Member of the Senate, Ranking Member Peters, and Members of the Committee:

Thank you so much for giving me this honor. In DC there are a lot of heavy lifts; this is not one of those, I can tell you when I came to Congress, postal reform was last in the ranking of my priorities. And yet, I've had the opportunity to meet with Ann and Ashley, and what I want to share for this Committee's consideration is the fact that you have a Republican Member of Congress introducing a Democrat nominee. That doesn't happen very often in this town, and it only happens because of the exceptional talent of Ashley Poling, and I just want to raise the awareness of this public servant.

Each of you understand the partisan politics happening every day on every piece of legislation. And yet, when we were working in the House, Ashley continued - not once, not twice, not three times, but multiple times - to reach out and to advocate for her state, for Senator Heitkamp, and for the service standards that rural America needs to make sure are put in place. And I can tell you, Senator Sinema, we actually went to Arizona, to your home state, and we visited a processing center in Tucson Arizona. One of the major items for which Ms. Poling was advocating was making sure that we don't close down processing centers necessary to the mail delivery system.

I know, in the mountains of western North Carolina, there are more stories and more living that takes place through the postal service, and at those centers, than at any place else. You go to the post office, and you share the stories, but it's not just that - we have come to rely on this system, and it is in crisis mode. Quite frankly, as a businessman, I don't know how we solve this. I look at the financial stability of where our postal system is, and from the business perspective, it is bankrupt. And so, any considerations that this Committee can make to move these two individuals through very quickly to make sure the Postal Regulatory Commission is fully staffed would be recommended.

Every day we have a 145-billion-dollar deficit. And if we do not address this issue immediately - all of us, whether we are Democrat or Republican, will see the results of that backup.

Lastly, I would close with this. It's not about Ashley. She is here today because she has actually done the hard work as Senator Peters so eloquently put in his opening remarks. She did the hard work behind the scenes each and every day, not caring who received the credit. And in a town where it's all about who gets the credit, I can say that is something that truly impressed me. She knows more about postal issues than anyone on Capitol Hill, and I would strongly encourage your consideration - your expedient consideration - of her nomination. I consider her a friend, but I also consider her an expert. To her parents that are here in the audience - you can be extremely proud of the daughter you have and the way that she carries herself in such a professional manner.

With that, I thank this esteemed body for allowing me the opportunity to introduce Ashley Poling for your consideration.

ELEANOR HOLMES NORTON  
District of Columbia  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
SUBCOMMITTEE  
RAILROADS, HIGHWAYS AND TRANSIT  
Economic Development, Planning,  
Business And Emergency Management  
FUNCTION



COMMITTEE ON OVERSIGHT AND  
GOVERNMENT REFORM  
SUBCOMMITTEE  
GOVERNMENT OPERATIONS  
HEALTH CARE, BENEFITS, AND  
ADMINISTRATIVE REGULATION

## Congress of the United States

House of Representatives

Washington, DC 20515-1501

Statement of Congresswoman Eleanor Holmes Norton  
Senate Homeland Security and Governmental Affairs Committee  
Hearing on Shana Frost Matini and Rainey R. Brandt  
Superior Court of the District of Columbia  
July 16, 2019

I support the nominations of Shana Frost Matini and Rainey R. Brandt to be Associate Judges on the Superior Court of the District of Columbia, an Article I court. Both of these nominees have extensive litigation experience, which is central to the Superior Court, the District's local trial court. I appreciate the Committee's hearing today because the Superior Court is the engine of the day-to-day local criminal and civil justice systems in the District.

Judge Matini has extensive experience with this court, as she currently serves as a Magistrate Judge for the Superior Court. Judge Matini was sworn into this position in January 2016. Judge Matini has served as a magistrate in both the civil and criminal divisions of the Superior Court. This exceptional experience will be very useful to her position as an Associate Judge. Prior to her role as a magistrate, Judge Matini further served the residents of the District as Assistant Attorney General and acting section chief in the Office of the Attorney General for the District of Columbia. In this position, Judge Matini argued cases in both the Superior Court and the U.S. District Court for the District of Columbia. From February 1999 through January 2001, Judge Matini was a senior legal fellow at the Einstein Institute for Science, Health and the Courts, where she led seminars in legal/scientific education for federal and state judges, focused particularly on genetics and molecular biology. Judge Matini also brings experience from the private sector. She served as an attorney at ADR Associates/JAMS in the District, where she worked with a former judge on the Superior Court in his role as Special Master in a federal RICO lawsuit, and as a litigation association at Russell & Russell in Falls Church. After graduating from the University of the District of Columbia School of Law, where she graduated *magna cum laude* and was the Editor-in-Chief of the University of the District of Columbia Law Review, Judge Matini clerked for Judge Richard A. Levie of the Superior Court. After graduating from the George Washington University, Judge Matini served as an English teacher at the Language Teacher's Training College in Slupsk, Poland. Again, I believe Judge Matini's exceptional experience and service to the District of Columbia make her well qualified for a position as an Associate Judge on the Superior Court of the District of Columbia.

I am also pleased to support Judge Rainey R. Brandt's nomination to the Superior Court. Judge Brandt would bring a wealth of educational and professional experience to the bench. Judge Brandt serves as a Magistrate Judge on the Superior Court and is currently the Deputy Presiding Magistrate Judge. Prior to her nomination as a magistrate, Judge Brandt served as Special Counsel to the Chief Judge of the Superior Court. Through that position, Judge Brandt

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helped the District close the prison at Lorton within the timeframe mandated by Congress. Judge Brandt has served as an assistant professor at American University here in the District since 1995, and is currently an adjunct associate professor. After graduating from the Columbus School of Law at the Catholic University of America, Judge Brandt served as a law clerk to two different judges on the Superior Court. Judge Brandt has received numerous awards for her service, including being named Outstanding Adjunct Professor at American University twice in just four years, and has participated in numerous panels on legal issues. Judge Brandt received her Ph.D., M.S. and B.G.S. degrees from American University. She also studied at Brown University.

I would be remiss if I did not express my grave concerns about the large number of vacancies on the Superior Court and D.C. Court of Appeals. Currently, there are 11 vacancies out of 62 authorized judges on the Superior Court and two vacancies out of nine authorized judges on the Court of Appeals. As you know, the chief judges of the Superior Court and Court of Appeals wrote to this Committee last year about the harm the vacancies are causing on the administration of justice in both our trial and appellate courts.

Unfortunately, we seem to have a vacancy crisis every few years, whether the Senate is controlled by Democrats or Republicans. I recognize that this Committee does not have sole responsibility for the fate of D.C. judges. The Senate leadership is understandably more focused on nominees for lifetime federal judgeships and federal agencies than for local D.C. courts, and any individual senator can effectively block a nominee on the floor. However, I implore this Committee to process as many nominees as possible. We cannot confirm a nominee unless we at least start their confirmation process.

**STATEMENT OF ANN C. FISHER**

Chairman Lankford, Ranking Member Sinema, and members of the Committee, thank you for the opportunity to appear before you today, and for your consideration of my qualifications to be a commissioner of the Postal Regulatory Commission. I would also like to thank President Trump for nominating me. I am deeply honored.

I am grateful to have with me today my husband David Fisher, my two daughters Dagny and Regan Fisher, and my nephew August Veerman of Sioux Falls, South Dakota. While my parents, Paul and Cathryn Rehflus, are not able to be here today, I know they will be proudly watching from their home in Yankton, South Dakota. Both were long-time public servants for the State of South Dakota, and have instilled in me the value of a career dedicated to public service.

This past May I marked my 26<sup>th</sup> year of Federal service – with all but two of those years devoted to postal issues.

In the Senate, I benefitted from working for three different senators representing very different states: South Dakota, Mississippi and Maine. Naturally, part of my time was spent assisting the members' constituents with a myriad of postal issues. I noticed that post office closures consistently generated the most passion. I learned how much people across America care about their local post office, especially in highly rural areas.

As a government relations manager at Postal Service headquarters here in Washington, I developed an appreciation for the vast scope of the postal network and the complexity involved in moving a single piece of mail from the post office or a blue box to someone's mailbox across town or across the country. I also spent a good deal of time traveling to midwestern states, meeting with local postal officials and congressional staff – helping to ensure transparency of postal operations and resolve community concerns.

Starting at the Postal Regulatory Commission in 2007, I worked as chief of staff to former Chairman Dan Blair, then became the director of public affairs and government relations, where I have worked the past 11 years. Our mission is to ensure the transparency and accountability of the Postal Service. The Commission prides itself on providing timely and rigorous analyses, while optimizing stakeholder engagement. With a major review of the system for setting Market Dominant rates well underway, the qualifications, fairness and impartiality of the commissioners is paramount.

My background at the Commission provides me a wide variety of experiences necessary to meaningfully contribute as a commissioner and maintain this high level of transparency and accountability.

To date, the most challenging yet rewarding part of my career was my time spent as deputy staff director to the former Chairman of this Committee, Susan Collins, as she, together with then-Ranking Member Carper, crafted a Senate companion to the House of Representatives



postal reform bill. Updating postal laws that had been in place since 1970 was incredibly difficult, for the U.S. Postal Service is the centerpiece of a \$1.4 trillion mailing industry that employs more than 7.5 million people. After years of effort and a multitude of obstacles, The Postal Accountability and Enhancement Act was signed into law in 2006.

Unfortunately, shortly thereafter, the Great Recession coupled with accelerated electronic diversion dramatically reduced mail volume.

Today, the Postal Service has lost money 12 years in a row and has an outstanding debt of \$11 billion.

I took great interest in the December 2018 report issued by Treasury Secretary Mnuchin's Task Force on the United States Postal System. While opinions of the recommendations made within the report may be varied, I think most can agree with the Task Force goal of identifying a path for the U.S. Postal Service to operate a sustainable business model, provide necessary mail services to citizens and businesses, and compete fairly in commercial markets.

Difficult decisions lie ahead for Congress and the Commission with respect to potential postal reform. I believe my experience working within the U.S. Senate, at the U.S. Postal Service and at the Postal Regulatory Commission have given me a clear understanding of the challenges faced by today's Postal Service, as well as viable options for its future.

Mr. Chairman, if confirmed, I will dedicate myself to working with Congress, the Administration and the Postal Service to ensure that users of the postal system have a vibrant and efficient mail system for many years to come. Thank you.

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
	<b>Date of Nomination</b>
Commissioner, Postal Regulatory Commission	April 29, 2019

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Ann	Christine	Fisher	

<i>Addresses</i>					
<b>Residential Address</b> (do not include street address)			<b>Office Address</b> (include street address)		
			Street: 901 New York AVE NW		
City: Washington	State: DC	Zip: 20003	City: Washington	State: DC	Zip: 20268

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Design Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Ann	Christine	Reh fuss		X	05/1966 <span style="float: right;">Est ?</span>	05/2090 <span style="float: right;">Est ?</span>
					<span style="float: right;">Est ?</span>	<span style="float: right;">Est ?</span>

<i>Birth Year and Place</i>	
<b>Year of Birth</b> (Do not include month and day.)	<b>Place of Birth</b>
1966	Yankton, SD

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
<b>Never Married</b>	<b>Married</b>	<b>Separated</b>	<b>Annulled</b>	<b>Divorced</b>	<b>Widowed</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> (current spouse only)			
<b>Spouse's First Name</b>	<b>Spouse's Middle Name</b>	<b>Spouse's Last Name</b>	<b>Spouse's Suffix</b>
David	Nile	Fisher	

<i>Spouse's Other Names Used</i> (current spouse only)						
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>	<b>Check if Maiden Name</b>	<b>Name Used From</b> (Month/Year) (Check box if estimate)	<b>Name Used To</b> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
University of South Dakota	university	01/1992 <input type="checkbox"/> Est <input type="checkbox"/>	12/1993 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	M.A.	12/1993
Minnesota State University at Mankato	university	09/1986 <input type="checkbox"/> Est <input type="checkbox"/>	06/1989 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	B.S.	06/1989
South Dakota State University	university	08/1984 <input type="checkbox"/> Est <input type="checkbox"/>	05/1986 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Government	Postal Regulatory Commission	Director, Public Affairs and Govt. Relations	Wash. DC	Est 01/2007 <input type="checkbox"/>	Est Present <input type="checkbox"/>
Government	U.S. Senate on Homeland Security and Governmental Affairs	Deputy Staff Director	Wash. DC	Est 12/2002 <input type="checkbox"/>	Est 01/2007 <input type="checkbox"/>
Government	U.S. Senate Subcommittee on International Security, Proliferation and Federal Services	Professional Staff	Wash. DC	Est 02/2001 <input type="checkbox"/>	Est 12/2002 <input type="checkbox"/>
Government	U.S. Postal Service	Government Relations Manager	Wash. DC	Est 12/1998 <input type="checkbox"/>	Est 02/2001 <input type="checkbox"/>
Government	U.S. Senate Subcommittee on Intl. Security, Proliferation and Federal Services	Professional Staff	Wash. DC	Est 01/1997 <input type="checkbox"/>	Est 12/1998 <input type="checkbox"/>
Government	Office of U.S. Senator Larry Pressler (R-SD)	Legislative Aide/ Economist	Wash. DC	01/1995	01/1997
Government	U.S. Senate Committee On Small Business	Economist	Wash. DC	05/1993	01/1995

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year)	Date Service Ended (month/year) (check box if estimate) (check
------------------------------	------------------	---------------------------------------	--

		(check box if estimate)	"present" box if still serving)
Romney Transition Team 2012 (Romney Readiness Project)	Volunteer advisory position on postal matters that may come before a new Administration	Summer 2012 <input checked="" type="checkbox"/> Est <input type="checkbox"/>	Fall 2012 <input checked="" type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>

#### **4. Potential Conflict of Interest**

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

NONE.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

Not applicable.

#### **5. Honors and Awards**

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Three service awards received during my tenure at the U.S. Postal Service

"NAPUS Champ" award received at 2007 National Association of Postmasters of the U.S. Leadership Conference

#### **6. Memberships**

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
St. Peter's Catholic Church, Capitol Hill	2004 to present	Parish Member

#### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (If applicable)</u>




(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>


### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>


(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
President Trump's Postal Service Task Force	Lexington Institute Capitol Hill Forum	June 15, 2018


(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>


### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) YES
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? NO
- Have you been charged, convicted, or sentenced of a crime in any court? NO
- Have you been or are you currently on probation or parole? NO
- Are you currently on trial or awaiting a trial on criminal charges? NO
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? NO

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense: Winter 1989

a. Is this an estimate (Yes/No): YES

B) Description of the specific nature of the offense: When I was 22 years old, I drove a highly intoxicated friend home from a college party, in his car. I had also been drinking, but to a lesser extent. I saw a police car nearby and I was nervous. My friend thought it would be funny to jerk the steering wheel. The car swerved and I was pulled over by the police officer. I was given a breathalyzer and found to have a 0.10 blood alcohol level. I was charged with a DUI. I secured a public defender and the charge was reduced to Reckless Driving, Alcohol Related. I received an approximately \$100 fine, which I paid. I was also required to meet with a counselor to discuss the ramifications of drinking and driving. I have had no similar driving experiences since that time.

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country): Mankato, Blue Earth County, MN 56001, USA

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official? Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you: Mankato City Police

2) Location of the law enforcement agency (city, county, state, zip code, country): Mankato, Blue Earth County, MN

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle prosequi" etc). If you were found guilty or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes /

No

N) Provide explanation:



### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

No.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

No.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>


(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No.

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

**14. Outside Positions**

☐ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

#### 15. Agreements or Arrangements

☐ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

#### **16. Additional Financial Data**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



This 7<sup>th</sup> day of May, 2019

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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May 6, 2019

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ann Fisher, who has been nominated by President Trump for the position of Commissioner, Postal Regulatory Commission.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

David J. Apol  
General Counsel

Digitally signed by DAVID  
APOL  
Date: 2019.05.06 19:38:06  
-0400

Enclosures **REDACTED**



February 22, 2019

David A. Trissell  
General Counsel and Designated Agency Ethics Official  
Postal Regulatory Commission  
901 New York Ave., Suite 200  
Washington, DC 20268-0001

Dear Mr. Trissell:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner at the Postal Regulatory Commission.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

My spouse is currently employed by Siemens Medical Solutions USA, Inc. which is a subsidiary of Siemens Healthineers AG (Healthineers) whose parent company is Siemens AG (Siemens). He receives a fixed salary, a bonus, and stock performance awards in Siemens and Healthineers. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Siemens AG or any of its subsidiaries, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Commissioner in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Fisher", written over a circular stamp or seal.

Ann Fisher

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Ann Fisher to be  
Commissioner, Postal Regulatory Commission**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to serve as a Commissioner on the Postal Regulatory Commission ("PRC" or "the Commission")?

I believe I was nominated based upon my knowledge of postal issues developed through 26 years of service in the U.S. Senate, at the U.S. Postal Service (USPS) and at the Postal Regulatory Commission (PRC).

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Commissioner of the PRC? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I have consulted with the Office of Government Ethics and the PRC's Designated Agency Ethics Official (DAEO) to identify potential conflicts of interest. I am not aware of any current conflicts of interest. Also, in consultation with the PRC DAEO and OGE, I have signed an ethics agreement that specifies how I will handle any situations in the future to avoid any conflicts of interest that may arise.

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be a Commissioner of the PRC?

I have over 20 years of experience as a senior executive working on postal issues in the U.S. Senate, the USPS and the PRC. Additionally, I possess a M.A. in economics, which is in line with the PAEA guidance that "...Commissioners shall be chosen solely on the

basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration....."

6. Please describe:

a. Your leadership and management style.

My leadership and management style emphasize openness, teamwork, commitment to mission, and delivering a high quality work product.

b. Your experience managing personnel.

I have over 20 years of managerial experience, primarily of small teams.

c. What is the largest number of people that have worked under you?

Approximately 20 – 25 people worked under me during my tenure as the Deputy Staff Director on the Senate Homeland Security and Governmental Affairs Committee.

### III. Role of the Postal Rate Commission and its Commissioners

7. Please describe your view of the Commission's core mission and an individual Commissioner's role in achieving that mission.

The Commission's mission is to ensure transparency and accountability of the USPS and foster a vital and efficient universal mail system. Commissioners must dedicate themselves to fairness and impartiality, and the provision of timely and rigorous analysis. A Commissioner must also proactively respond to a rapidly changing postal environment.

8. The President's task force on the United States Postal Service (USPS or Postal Service) recommended a stronger regulatory oversight role for the PRC. What role do you believe the Commission should play in overseeing the Postal Service?

The Task Force recommended that the PRC be provided with "expanded controls, imposing increased accountability on the USPS." Specific expanded controls were not listed. The PRC exists to protect the public interest while providing objective, accurate, and timely regulatory analyses and decisions. The Commission must continue to ensure transparency and accountability of the USPS while fostering an efficient universal mail system.

9. The Commission is an independent agency. How do you understand that obligation of independence? How does such independence affect your approach to the evaluation and decision of cases?

I consider an independent agency as one intended to be free from political influence. I intend to serve fairly and impartially with respect to all cases brought before the Commission.

10. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

I have never officially received a whistleblower complaint, nor have I been involved in the resolution of one.

b. How would you plan to implement policies within the Commission to encourage employees to bring constructive suggestions forward without the fear of reprisal?

The Commission's Workplace Harassment Policy clearly states that an employee will be protected from reprisal or retaliation should they participate in an investigation, proceeding or hearing. Additionally, the Commission EEO policy states that the Civil Service Reform Act of 1978, 5 U.S.C. 2302, applies to Commission employees and prohibits reprisal against employees or applicants for whistleblowing.

c. Do you commit without reservation to work to ensure that any whistleblower within the Commission does not face retaliation?

Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

#### IV. Policy Questions

##### *Previous Postal Service Reforms*

11. It has been nearly twelve years since the Postal Accountability and Enhancement Act of 2006 (PAEA) (P.L. 109-435) changed postal pricing to provide the Postal Service with more flexibility as well as improve the rate-making process.

a. Do you believe the Postal Service has effectively utilized the pricing flexibility provided by the PAEA? If yes why, if no why not?

Yes, I believe the pricing flexibility has been effectively utilized. Since the PAEA's enactment, the number of NSAs has steadily risen, the USPS has offered seasonal pricing incentives and introduced a series of experimental market tests.

b. Do you believe the goal of increased flexibility was met? If yes why, if no why not?

I believe the USPS has effectively used its pricing flexibility with Competitive products. The PAEA allowed the USPS Board of Governors to more directly manage and price the USPS' competitive products, subject to minimal regulatory oversight to ensure that the USPS competes fairly with the private sector delivery services. The Market Dominant price cap was intended to balance maximum rate setting flexibility with increased efficiency. It has been difficult for USPS to try to balance the restrictions of an inflation-based rate cap, the downturn in volume, and personnel-related expenses, all while maintaining financial stability.

- c. Should "flexibility" include the ability of the Postal Service to have different price increases for one class of mail versus another class? If yes why, if no why not?

Under the current system, the Postal Service has flexibility to raise prices within a class to varying degrees so long as the average increase of the class as a whole does not exceed CPI-U. Considering that, there will generally be a variety of different rate increases across the classes.

- d. Do the workshare provisions of the Commission rules, all else equal, foster flexibility? If yes why, if no why not?

Yes, I believe the workshare rules do foster flexibility. Workshare discounts allow USPS to offer reduced rates for mail that is prepared or entered in a manner that avoids certain activities postal employees would otherwise have to perform. The Commission's role is to ensure that workshare discounts do not exceed the cost USPS avoids as a result of the workshare activity (unless certain exceptions are met, as specified in law). There is nothing to prevent USPS from increasing a workshare discount that is less than avoided costs. The Postal Service also has the flexibility to enter into new workshare discounts without seeking PRC approval.

12. The PAEA substantially changed the relative responsibilities of the Postal Service Board of Governors and the Commission.

- a. What do you believe are the most important decisions the Commission has made since the PAEA?

- Initial establishment of the Market Dominant rate-setting system
- Consideration of two separate USPS requests for an exigent rate increase
- Consideration of USPS advisory opinion request to move from 6 day delivery to 5 day
- Issuance of a new formula to calculate the minimum amount that Competitive products as a whole are to contribute to USPS institutional costs
- Issuance of a finding that the Market Dominant rate system has not achieved the necessary objectives established by Congress over a 10 year period

b. What are the key decisions you expect the Commission to make in the future under the PAEA?

- Issuance of a final Commission regulation governing the Market Dominant Rate System
- I believe the PRC has a very important role to play in helping Congress and USPS clearly define the USO. Determining what the American public of today needs from the Postal Service should be part of any future reform effort.

c. Generally, what approaches do you advocate the Commission should take in regulating the Postal Service and why?

I believe the Commission should continue to allow the Postal Service to experiment operationally. It is also important that the Commission maintain an emphasis on the rigor of its analysis and seeking regular improvements to data received from the Postal Service.

13. What is your overall impression of how well the postal reforms under the PAEA have been implemented so far? What areas have been most challenging, and what areas do you believe need the most attention in the future?

For the most part I believe the PAEA has been well implemented. A primary goal was a more streamlined rate setting system with pricing flexibility to allow USPS to better respond to customers. The revised rate cap-based system was also intended to provide strong incentives to hold down costs, which I believe it did. However, the unanticipated "Great Recession" severely impacted mail volume, leaving the USPS unable to manage an aggressive payment schedule for the Retiree Health Benefit Fund (RHBF). Given the rapid downturn in the economy post-PAEA, ideally the Act would have allowed a Commission review of the Market Dominant rate system sooner than 10 years post-enactment. For the future, I believe it's vital that Congress, the USPS and the Commission work together to determine what the public wants and needs from the present day Postal Service, and to better align the current network to meet those needs.

14. The PAEA set forth a new process for resolving complaints against the Postal Service. What do you believe must be done to ensure that the Commission will review and resolve any complaints promptly and fairly?

I believe the Commission's current process for resolving complaints works well and allows for complaints to be resolved rapidly and fairly. The Commission has been well-served by its dual-track complaint system, which directs informal complaints to our consumer relations specialist and formal complaints to the legal department. The majority of complaints we receive are informal. Our consumer relations specialist has consistently met her goal of responding to these informal complaints within 48 hours.



*Postal Service Operations*

15. What role, if any, should the Commission have in the Postal Service's operational decisions?

I believe operational decisions should be left to the operator. The Commission's role is to protect the public interest, ensure transparency and accountability of the Postal Service, and to assure that USPS' actions are not in violation of the law.

16. Should Congress modify or repeal the requirement for the Postal Service to seek advisory opinions from the Commission, as some have proposed? Why or why not?

Traditionally, advisory opinion requests have been of great interest to members of Congress and their constituents, due to the nationwide impact on some aspect of postal service. Therefore I believe Congress should consider requiring the Postal Service to submit a written response to PRC advisory opinions prior to implementing its proposed service change. While I do not believe USPS should be required to comply with our recommendations, an explanation of non-compliance should be provided to both the PRC and Congress.

17. What do you believe should be the role of the Commission in helping to ensure that the quality and timeliness of the Postal Service's data in cases before the Commission are adequate?

By law, the PRC has final authority over whether the quality and quantity of data submitted by the USPS is adequate for the PRC to make its decisions. Should the PRC determine that data provided is insufficient or not timely, the PRC may reject or remand any case back to the Postal Service. The PRC should continue its adherence to these important rules.

18. The Postal Service continues to experience volume and revenue losses. According to USPS annual filings, the Postal Service ending Fiscal Year (FY) 2018 with a net loss of \$3.9 billion, an increase of \$1.2 billion over FY 2017.

- a. What additional steps do you believe the Postal Service should take that do not require Congressional action to improve its financial condition?

I agree with portions of a previously introduced Senate bill, S. 2629 (115<sup>th</sup> Congress) and a few of the Task Force recommendations. Specifically, I believe it makes sense to allow the USPS to explore supplying services for Federal, State, and local government entities that have substantial scale, would generate revenue, and would not present a balance sheet risk to the USPS.

The Task Force also suggested that the USPS could potentially capture additional value from its existing retail offices by converting post offices into contract post

offices or by co-locating with or renting space to complementary retail establishments.

The Postal Service should also consider reports by both GAO and the Postal Service IG outlining options for network and operational changes.

- b. What legislative changes do you believe Congress should consider to help improve the Postal Service's financial condition?

The Postal Service has defaulted on \$43 billion in prefunding payments for the RHB Fund. Ideally, Congress would find a way to restructure the annual payments over a longer period of time. I am certainly aware, however, of the difficulty in addressing this issue based upon the direct Federal budget impact.

- 19. In your view, how can the Postal Service return to viability in a market in which e-commerce and electronic communication and payments are increasing and mail volume is declining? What role do you believe the Commission should play in shaping the future Postal Service given these rapid changes?

This is a very challenging environment for USPS. While I do not have a solution, I believe it is imperative that Congress, the USPS and the PRC take a close look at what American consumers want and need from today's Postal Service.

- 20. Since enactment of the PAEA, the Commission has interpreted the term "non-postal service" through consideration of various Postal Service proposals for new products and services.

- a. Do you believe the Postal Service should be allowed to compete with the private sector? If so, under what circumstances?

The Postal Service competes with the private sector in the area of package delivery. With appropriate oversight by the Commission, this has allowed for a robust package delivery market. The PAEA prohibited the USPS from offering nonpostal products. Prior to this prohibition by Congress, the USPS performed very poorly in this area and was the subject of GAO reports and congressional hearings.

- b. What concerns, if any, do you have about such efforts?

I think the issue deserves careful consideration, including a review of previous postal ventures in the nonpostal area. I would be concerned about the potential negative impact upon private sector businesses with whom the USPS may seek to compete. There would likely be issues raised regarding unfair competition and pricing fairness.

- c. What role do you believe the Commission should play in the introduction or pricing of new products?

The Commission should continue its current role of determining whether new products introduced by the USPS Board of Governors are indeed postal, then deciding whether the product belongs in the Market Dominant or Competitive category.

*Postal Ratemaking*

21. During consideration of the PAEA, there was debate about the impact of a consumer-inflation-based rate cap. In your opinion, how has the rate cap helped the Postal Service, the mailing community, and postal customers? How has the rate cap hurt these groups?

In general, I believe the rate cap helped to force network efficiencies that may never have occurred. For the mailing community, it provided them with a consistency and predictability that had been lacking. However, the limitations of a strict CPI-based cap has been very challenging.

22. In your view, what drawbacks and advantages would exist to increasing postal rates through legislation, rather than through the existing ratemaking process?

I believe Congress wisely removed itself from the ratemaking process with passage of the Postal Reform Act of 1970. The Commission, as created by Congress, has the expertise and resources to provide the necessary review, approval and regulation of Market Dominant postal rate increases. However, the limitations of a strict CPI-based cap, locked in for 10 years, has proved extremely challenging for USPS. Postal reform bills from previous congresses have included language to increase the rate baseline subject to the cap. I believe enactment of such measures would have aided the USPS. At this point, I look towards the Commission's ongoing development of a final rule to govern the market dominant system.

23. According to 39 U.S.C. § 407, the Commission submits views to the Secretary of State regarding any treaty, convention, or amendment which alters the rate or classification of certain types of mail. In your view, how should the Secretary of State consider U.S. law and the views of the Commission when concluding such treaties, conventions, or amendments?

The law requires that the State Department ensure each treaty, convention or amendment concluded is consistent with the Commission's views unless there is a foreign policy or national security concern. It is incumbent upon the Secretary of State to make this aspect of the law a priority during Universal Postal Union (UPU) proceedings.

24. The President's task force on the USPS recommended monetizing USPS's exclusive access to the mailbox to generate more income. What is your view of monetizing the "mailbox monopoly" and what role should the PRC play in ensuring fair rates in this type of monopoly?

I believe the Postal Service should thoroughly gauge the public's desire for continuation of the mailbox monopoly. The Commission looked at this issue in 2008 and public sentiment seemed to favor retention of the monopoly, based on issues such as mail security and the efficient collection of mail from cluttered mailboxes. However, public opinion may have changed since then. It is worth studying.

I assume "monetizing" the mailbox would result in the Postal Service proposing to the Commission a new product. In that scenario, the Commission would classify the new product as either Competitive or Market Dominant and ensure it meets the necessary legal requirements of either category.

25. The task force also recommended that USPS redefine mail classes and define products by the type of sender and the declared purpose of the mail item. What should be the PRC's role with regard to the mail classes offered by the USPS?

Current law requires the PRC to review and approve of any changes in product classification. That practice should continue.

#### *Service Standards and Other Performance Obligations*

26. Debates about postal reform legislation raise fundamental questions about the role of the Postal Service in our nation, including the nature of the Postal Service's universal service obligation.

- a. What is your view of the Postal Service's universal service obligation?

The USO is broadly defined by title 39 as "the obligation to provide postal services to bind the nation together through ... the correspondence of the people ... [by providing]... services to patrons in all areas and ... to all communities." For over 30 years, Congress has mandated via the appropriations process that mail be delivered 6 days per week and that no post office shall be closed for operating at a deficit. Beyond that, I consider the USO to largely undefined, and means many different things to different people.

- b. Do you believe the concept of universal service has evolved since the PRC's 2008 report on universal service? If so, how? How do you believe Postal Service can adapt to meet that obligation?

I believe that the public's view of what they expect and need from the Postal Service is certainly evolving, particularly with younger generations and in urban areas with more delivery options. I believe Congress, the Commission and the Postal Service must work together to determine how best the USPS may adapt to meet the needs of today's public.

When the Commission issued the 2008 report, it noted difficulty in capturing the needs and expectations of small businesses, individuals and rural patrons – despite

extensive public outreach efforts. Going forward, gathering this information will be critical.

- c. In your view, what is the Commission's role in preserving universal service?

Each year in its *Annual Report to the President and Congress*, the Commission calculates the cost of the universal service obligation. The Commission also annually reports on the extent to which the USPS meets its service performance standards. In areas where service may be lacking, the USPS will discuss with the PRC opportunities for improvement.

27. What do you believe should be the Commission's role in establishing performance standards for postal products and services and for monitoring the Postal Service's results in meeting these standards?

The PAEA required the Postal Service, in consultation with the PRC, to establish (and from time to time revise) a set of service standards for Market Dominant products. The Commission-issued *Annual Compliance Determination* reports on the extent to which each Market Dominant product achieved its stated service standard for the year. Should a particular product fail to meet its standard, the Commission may issue a directive to USPS in an effort to address the problem. I believe this is an appropriate role for the Commission that provides transparency to the public, while ensuring USPS accountability.

28. The Postal Service continues to face the problem of reducing costs while also maintaining fast and reliable service. In your opinion, how can the Commission help the Postal Service try to find this balance?

Last year, the Commission approved the Postal Service's use of its internal Service Performance Measurement (SPM) plan to publicly report service measurement results. Using metrics and data, the SPM has the potential capacity to locate "pinch points" in the system which may impede mail movement. Ideally, the Commission will be able to use this data to prescribe resources around the "pinch points."

29. In your view, what degree of transparency should the Postal Service provide to Congress, mailers, and the public on delivery performance goals and general quality of delivery services? Do you believe the Commission has sufficient information to monitor service quality?

Congress, mailers and the general public all appear to have a great interest in the extent to which the Postal Service meets their delivery goals. I do not expect that interest to diminish; therefore, I consider maximum transparency by the Postal Service a priority.

Through compilation of its *Annual Compliance Determination*, the Commission regularly seeks to improve upon the amount and quality of data received in this area. At present, I

believe the information received is sufficient, but there is always room for improvement and refinement.

30. The President's task force on the USPS recommended that if products not deemed to be "essential" do not cover their direct costs, then the USPS should increase prices, reduce service costs, or exit the business of these products. What is your view of how the universal service obligation applies to these types of mail products?

The range of products covered by the USO is currently not defined by the law. I believe the job of defining which products are covered by the USO belongs to Congress. This would be a very complicated undertaking. Working together, the USPS and the PRC should be able to provide Congress with different options to consider.

31. Many postal stakeholders have raised concerns about the adequacy of the Postal Service's financial transparency. The PAEA requires the Postal Service to meet the financial reporting requirements of the Sarbanes-Oxley legislation. What is your opinion of this mandate and do you believe the Postal Service has satisfied this mandate? Are further improvements necessary to make Postal Service finances more transparent? If yes, what additional improvements are needed?

Improving the financial transparency of the USPS was a primary goal of the PAEA. I believe the USPS successfully complies with this mandate. Additionally, the Commission issues an annual report detailing its financial analysis of the USPS financial results and 10-K statement. This report has been well received by the postal stakeholder community.

#### *Post Office Closings and Relocations*

32. In your opinion, does the existing process for closing and relocating post offices adequately protect the interests of postal customers and the affected communities, especially in small towns and rural areas? If yes, how? If not, what additional protections do you believe are necessary?

During my years working on the Governmental Affairs Committee, and later the Homeland Security and Governmental Affairs Committee, I frequently worked with Senators, their staff, and the USPS regarding communities' displeasure with the closing/relocation processes. While the USPS has made improvements to the process over time, I understand community frustration often remains.

At present, I do not have enough information to say whether or not the current process offers adequate protection to customers and communities. However, Senate bill S. 2629, introduced last Congress, contained several provisions to expand upon the analysis required before a decision to close could be made. Giving consideration to the distance to the closest retail postal facility not slated for closure, the availability of broadband Internet service, and the unique characteristics of the location all seem sensible to me.

33. To what extent do you think the availability of postal services at alternative locations should be a key factor when considering closing or consolidating traditional retail facilities?

I believe that is an important consideration, especially in rural areas.

34. Do you believe the Postal Service should have additional flexibility to more quickly and easily close post offices? If so, what impact do you believe this will have on the Postal Service's current retail network?

I believe the timelines within the current process allow for necessary public notice and comment.

35. Many members of the public have expressed a concern that the Postal Service does not adequately involve affected communities in the decision-making process for the closings of post offices and processing facilities. What are your views on this issue?

The law allows communities the right to appeal to the Commission a post office closure decision. The Commission takes appeals very seriously. However, I believe it is best left to Congress and the USPS to determine what is the appropriate level of community involvement in closure decisions.

36. Are improvements needed to the Commission's appeals process related to closing and consolidating post offices? If yes, what specific changes do you believe are needed? If no, please explain why you believe the current process is viable.

I believe the Commission serves an appropriate role in ensuring the USPS does indeed follow their own rules for closures. If a customer or community appeals a closure to the Commission and we determine appropriate steps were not followed, the Commission may remand the decision to the USPS and require they take the necessary steps.

Should the Commission have greater input over the closures or consolidations of post offices or postal processing facilities? Why or why not?

These are important operational decisions that I believe are best left to the Postal Service. The Commission is a small agency with limited resources. At present, we do not have staff with the expertise necessary to assist the Commission with such decisions.

#### **V. Relations with Congress**

37. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.



38. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

39. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

#### **VI. Assistance**

40. Are these answers your own? Have you consulted with the Postal Service, the Commission, or any other interested parties? If so, please indicate which entities.

Yes, these answers are my own. I did consult with Commission staff on certain technical matters related to pending and previous cases.

**Minority Supplemental Pre-hearing Questionnaire  
For the Nomination of Ann Fisher to be  
Commissioner, Postal Regulatory Commission**

**I. Nomination Process and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.

**II. Background of Nominee**

3. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

Yes.

4. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

I have on occasion disagreed with my superiors on a policy goal or strategy, and have advocated for my position aggressively. It has sometimes worked and other times failed.

5. What would you consider your greatest successes as a leader?

I led the Senate Republican staff effort in 2006 to pass the Postal Accountability and Enhancement Act of 2006. This was by far my greatest accomplishment as it required years of work, many setbacks and constant negotiation.

6. What would you consider your greatest failure as a leader? What lessons did you learn from that experience?

Having to fire someone who lacked the necessary skills to be successful in his position. I hired him knowing of his shortcomings, but felt with assistance he could grow into the position. I felt responsible for not having had the time to provide more coaching. I am now very careful when screening applicants to ensure they are fully qualified.

**III. The Role of the PRC and its Commissioners**

7. What do you believe are the most important responsibilities of the Postal Regulatory Commission (PRC), and what is your opinion of how those responsibilities have been fulfilled?

The PRC exists to protect the public interest while providing objective, accurate, and timely regulatory analyses and decisions. The Commission must continue to ensure transparency and accountability of the USPS while fostering an efficient universal mail system. To date, I believe the Commission has appropriately fulfilled these duties.

8. In your view, what are the major challenges facing the PRC?

I think it is vitally important that the Commission move rapidly to complete the final rules following its 10 year review of the system for regulating Market Dominant rates.

9. What do you believe should be the PRC's top three priorities over the next five years?

Completion of the 10 year rate review, coordination with Congress and the USPS in seeking to define the universal service obligation, and maintenance of high analytic standards coupled with rigorous review.

10. If confirmed, how will you coordinate and communicate with PRC staff to accomplish the PRC's goals?

Chairman Taub set in place a process for the senior leaders in the agency to meet quarterly and discuss strategic planning goals. The frequency of the meetings and the quality of the input enable the Commission to stay on track with its stated goals.

#### IV. Policy Questions

11. Generally, what approaches do you advocate that the PRC take in regulating the Postal Service and why?

I believe the Commission should continue to allow the Postal Service to experiment operationally. It is also important that the Commission maintain an emphasis on the rigor of its analysis and seeking regular improvements to data received from the Postal Service.

12. The Postal Service has been operating without a quorum on its bipartisan Board of Governors since 2014. What challenges do you believe the Postal Service faces without a Board quorum? How should the PRC approach its role given the vacancies on the Board of Governors?

Through the creation of a "Temporary Emergency Committee", the Board of Governors was able to act upon measures it would not have been able to without a quorum. I anticipate the most serious challenge the Board could face is inability to approve a needed rate increase. The Commission must continue to exercise its responsibilities as required by law. I am

hopeful the Senate will be able to confirm additional Governors in the near future. The USPS definitely benefits from the independent viewpoint provided by Governors.

13. 39 USC § 101 establishes the seven fundamental pillars of U.S. postal policy.

- a. If confirmed, what legislative or administrative reforms would you advocate for to help the PRC and the Postal Service ensure these policies are fully realized?

I think it most important that Congress find a way to restore the Postal Service's long term financial viability.

- b. Should any of these policies be reformed? If not, why not; and if so, in what ways?

No. I think retention of all is necessary as they are important guideposts for future reforms.

- c. Specifically, 39 USC § 101(b) states, "The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities." Do you support this policy goal or believe it should be changed in any way?

I consider it one of the most important of the seven pillars.

*PRC Rate Review*

14. One of the core principles of the PAEA was to provide Postal Service customers, through the establishment of an inflation-based rate cap, with predictability and stability in pricing of the Postal Service's market dominant products. Pursuant to the PAEA, the PRC completed a review of whether the rate cap met the criteria laid out by 30 U.S.C. §3622, including stability, fairness, and generating adequate revenue to cover Postal Service costs. The PRC found that the cap did not meet all of these criteria, including that it did not allow for the Postal Service to reach long-term financial stability or maintain high quality service standards.

- a. What is your opinion of the PRC's conclusions?

I agree with the Commission's findings that while the system was largely successful in achieving the goals related to the structure of the ratemaking system, the system has not increased pricing efficiency, nor has it maintained the financial health of the USPS as intended by the PAEA.

- b. Do you believe any of the objectives or factors should be weighted above others?

The law required the Commission to review the system and determine whether it achieved the nine objectives, considering the 14 factors, established by Congress. Congressional intent was to place the emphasis on whether the objectives were met. Therefore, I believe objectives should be given more consideration than factors, but I would not agree that any one of either categories should be weighted above all others.

15. Some argue that much of the Postal Service's financial instability has been caused by its retiree healthcare prefunding payments.

a. Do you agree with this view?

I believe the payment schedule established by the PAEA has been impossible to meet and is part of the Postal Service's problem. However, it's also important to note that the USPS has not paid into the fund for the past 4 years, with seemingly no penalty. I agree with Commission recommendations submitted to Congress that Congress modify the retiree health benefits fund prefunding level and lengthen the payment schedule to improve USPS sustainability.

b. How, if at all, should the impact of the prefunding requirement affect the PRC's views on the Postal Service's business model?

By law, the USPS is responsible for these payments. Therefore payment of the fund must be a key consideration when looking at ways to restore financial viability to the USPS.

16. As a result of its findings, the PRC issued a Notice of Proposed Rulemaking (NPR) that proposed changes to the market dominant rate system, including additional rate authorities that would allow the Postal Service to raise prices on certain products.<sup>1</sup> In considering price increases, how should the Postal Service balance the need for additional revenue with the possibility that higher rates could further reduce mail volume?

The Commission may grant the Postal Service the authority to increase rates for certain products. It is for the operator to decide how much the market can bear, and increase rates proportionately.

#### *Service Standards and Performance*

17. The PAEA requires the Postal Service to consult with the PRC in establishing modern service standards, as well as in modifying the standards and planning for future standards. Do you believe PRC consultation has been effective thus far? What improvements, if any, would you make to ensure the Postal Service and PRC effectively collaborate in improving service performance and maintaining high quality service standards?

I believe the consultative process has been productive. Issuance of annual reports on service performance by the PRC bring needed transparency to the process.

<sup>1</sup> Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

*Additional Proceedings*

18. On August 23, 2018, President Trump issued a Memorandum stating that “current international postal practices in the UPU [Universal Postal Union] do not align with United States economic and national security interests.” On October 17, 2018, the White House announced the United States would withdraw from the UPU within one year, and concurred with a State Department recommendation that the United States adopt self-declared postal rates no later than January 1, 2020. The UPU held a special meeting in April 2019 to address these concerns and will hold an Extraordinary Congress in September 2019 to vote on rate reform proposals. What do you believe the PRC’s role will be, and what challenges will it face, regarding postal policy issues and the potential implementation of self-declared rates? If confirmed, how would you prepare to meet these challenges?

In accordance with 39 U.S.C. Section 407(c)(1) and 39 CFR part 3017, the Commission established a docket on June 20 for the purpose of developing its views on whether certain proposals for the Third Extraordinary Congress are consistent with the standards and criteria for modern rate regulation; specifically, terminal dues for Inbound Letter Post small packets and bulky letters. Additionally, on May 22, USPS filed with the Commission Order CP2019-155 proposing self-declared rates. The actual implementation of these rates will be up to the USPS.

It is the duty of the State Department, with White House approval, to convene the members of the delegation that will travel to the September Congress. That step has not yet occurred.

For the past 13 years I have served as the Commission representative to the State Department’s Federal Advisory Committee on International Postal and Delivery Services. Holding this position ensures I remain abreast of all international postal matters. I will continue my diligence as a commissioner.

19. The President’s Task Force on the U.S. Postal System recommended the Postal Service distinguish between “essential” mail and packages “for which a strong social or macroeconomic rationale exists for government protection” versus mail and packages that are commercial in nature, and recommended the Postal Service pursue price increases, reduce service costs, or exit the business line for the latter category. What are some of the challenges to the Postal Service and PRC in distinguishing between these categories, particularly given the essential nature of certain deliveries to customers who otherwise would not have access to mail services?

I believe the job of determining which products should or should not be covered by the universal obligation belongs to Congress. The PRC and the USPS could provide input. A thorough assessment of the public’s needs must come first.

20. The number of Negotiated Service Agreements (NSAs) has increased in recent years. In FY 2012, the PRC approved 54 NSAs, growing to 290 in FY 2018.<sup>2</sup> How do you view the increase in NSAs and what do you believe the PRC should do to handle the NSA workload and provide timely reviews?

I consider the increase in number to be positive and reflects increased USPS use of rate setting flexibilities. The vast majority of NSAs filed with the Commission are competitive, and share cost characteristics with existing NSAs. This enables a highly efficient review process by the Commission. On occasion the Postal Service will file a unique NSA that will require additional time for staff review. I do not consider this problematic.

#### **V. Relations with Congress and the Public**

21. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Based upon my years spent working in the U.S. Senate, I am aware of Congress' need for expeditious responses to information requests. As the Commission's Director of Government Relations, I make responding to Member requests a priority. I would continue that practice as a commissioner.

22. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

23. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes.

24. If confirmed, do you commit to take all reasonable steps to ensure that you and the PRC comply with deadlines established for requested information?

Yes.

25. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

<sup>2</sup> Postal Regulatory Commission: *Annual Report to the President and Congress, Fiscal Year 2018* (January 2019) (<https://www.prc.gov/sites/default/files/reports/PRC%202018%20Annual%20Report-FINAL-Digital%20Filed.pdf>)



26. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

27. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving U.S. Postal Service operations and effectiveness?

Yes.

28. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

29. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?


Yes.

#### VI. Assistance

30. Are these answers your own? Have you consulted with the U.S. Postal Service or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with PRC staff on certain case specifics.

I, Ann C. Fisher, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
(Signature)

This 25 day of June, 2019

**Senator Maggie Hassan  
Post-Hearing Questions for the Record  
Submitted to Ann C. Fisher**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal  
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations  
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior  
Court of the District of Columbia  
Tuesday, July 16, 2019**

1. Last fall, I sent a letter with Sen. Shaheen to Postmaster General Megan Brennan encouraging the United States Postal Service to work with city officials to address the concerns raised by the citizens of Portsmouth regarding the relocation of the city's Post Office while the McIntyre Federal Building undergoes renovation. In a letter to Portsmouth officials, the Postal Service committed to returning the Portsmouth Post Office to a central location, if possible.
  - a. If confirmed, will you commit to providing my office with updates on the status of the decision on where the Portsmouth Post Office will be permanently housed, including what factors the United States Postal Service is considering to make that decision?

By law, the Postal Regulatory Commission has a limited role in post office closures and consolidations. Section 404(d)(5) of Title 39 of the United States Code authorizes any person served by a post office subject to closure or consolidation to file an appeal with the Commission within 30 days of the determination to close or consolidate by USPS. When considering an appeal, the Commission must set aside a USPS determination found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record. The Commission must complete its administrative review no later than 120 days after receiving the appeal.

The Postal Service has shared with me general background information related to the relocation of the Portsmouth Post Office. Considering the Commission's limited role, it is best that your information regarding Postal discussions with the citizens of Portsmouth come directly from USPS.

Considering Portsmouth residents' intense interest, I certainly hope the USPS will keep you abreast of all decisions related to the potential relocation of the Portsmouth Post Office. I firmly believe that the USPS should provide maximum transparency of operations to Congress regarding changes to their retail network. In the meantime, I will share this QFR and my response with USPS leadership.

For your information, I would like to share with you appropriate USPS contacts:

Donald Hildreth, Postmaster  
Portsmouth, NH 03801  
Phone: [REDACTED]  
Email: [REDACTED]

Kathi Roy, C&IC Manager  
151 Forest Avenue, Suite 7022  
Portland, ME 04101-7022  
Email: [REDACTED]  
Phone: [REDACTED]  
Fax: [REDACTED]

U.S. Postal Service Government Relations  
Michael Gordon, Government Relations Representative  
Jim Carl, Government Relations Representative  
475 L'Enfant Plaza SW  
Washington, DC 20260-3500  
Phone: [REDACTED]  
Fax: [REDACTED]

**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Ann C. Fisher**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior Court of the District of Columbia  
Tuesday, July 16, 2019**

- 1) The Postal Service is going through a challenging period with extreme financial pressure and a need to make critical changes. To survive, the Postal Service needs strong leadership, and that includes among its regulators.
  - a. What key leadership traits will you bring to the table in this role with the PRC?

Key leadership traits I will bring to the role of commissioner are openness, a focus on teamwork, commitment to mission, and delivery of a high quality work product.

- 2) Given the recent reports of the Postal Service's new business plan and the cuts to service infrastructure contained in the plan.
  - a. What do you believe the role of the PRC should be in evaluating the cost savings and impact on the financial health of USPS on structural changes that involve consolidation or changes in service?
  - b. Given previous USPS decisions regarding consolidation failed to produce promised savings, should PRC play a role in preemptively reviewing proposed business plan changes, to ensure the financial underpinnings of proposed cost savings are accurate?

The PRC has an important role to play regarding proposed structural or service changes proposed by USPS that would have a nationwide impact.

By law, any change made by the USPS that will generally affect service on a nationwide or substantially nationwide basis requires the USPS to seek an advisory opinion from the PRC (39 U.S.C. § 3661). Since 2008, the PRC has issued five advisory opinions. Each contains a thorough review of the USPS proposal, along with the associated cost savings. The Commission also advises as to whether it believes the USPS proposal is consistent with public policy requirements regarding the provision of adequate and efficient postal services to the Nation.

Due to the significant public and congressional interest in such changes, the PRC has previously recommended to Congress that USPS be required, upon receipt of the PRC's advisory opinion, to provide a written response to Congress, prior to implementation, addressing the Commission's recommendations.

SUSAN M. COLLINS  
MAINE

175 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-1804  
(202) 224-2322  
(202) 224-2889 (FAX)

## United States Senate

WASHINGTON, DC 20510-1804

COMMITTEE:  
SPECIAL COMMITTEE  
ON AGING  
CHAIRMAN  
APPROPRIATIONS  
HEALTH, EDUCATION,  
LABOR, AND PENSION  
SELECT COMMITTEE  
ON INTELLIGENCE

July 15, 2019

The Honorable James Lankford  
Chairman  
Senate Subcommittee on Regulatory Affairs and Federal Management  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Kyrsten Sinema  
Ranking Member  
Senate Subcommittee on Regulatory Affairs and Federal Management  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Lankford and Ranking Member Sinema:

I am writing to offer my strong endorsement of Ann C. Fisher to serve as a Commissioner of the Postal Regulatory Commission (PRC). With over 20 years of experience working on Postal Service issues, Ann's expertise makes her highly qualified to serve as the Commissioner of the PRC. Ann has had a successful career as a senior government executive, working in a multitude of roles and serving as a reliable liaison to Congress, the Postal Service, and the many stakeholders invested in Postal Service issues.

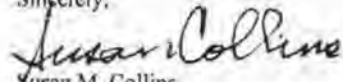
I can attest to Ann's breadth of experience and expertise because she served as my principal advisor on these issues when I was Chairman of the Senate Homeland Security and Governmental Affairs Committee. During her time as my advisor, she was instrumental in the passage of the Postal Accountability and Enhancement Act, which I authored and was signed into law in 2006. This extensive legislation provided crucial updates to postal laws that had not been revised for over three decades. Ann's remarkable knowledge of the issues, combined with her ability to understand the array of concerns of the many disparate stakeholders involved, was the key to successfully passing this incredibly complicated legislation.

She showed those same skills in her roles at the PRC, first as Chief of Staff and now as Director of the Office of Public Affairs and Government Relations. There is no question that Ann understands the challenges and complexities the Postal Service faces. She knows the importance of sufficient postal services in rural states like Oklahoma, Arizona, and Maine. And her appreciation of the larger and smaller scope of the Postal Service has enabled her to serve her roles well and will be a major asset should she be confirmed.

Ann was raised in South Dakota, the daughter of two dedicated public servants in her home state. She has followed suit and pursued a career devoted to public service. I can truly think of no person better suited for this position, and I strongly urge the Subcommittee to approve her nomination for consideration by the full Senate.

85

Sincerely,

A handwritten signature in black ink that reads "Susan Collins". The signature is written in a cursive, flowing style.

Susan M. Collins  
United States Senator

Opening Statement of Ashley E. Poling  
Nominee, Postal Regulatory Commission  
July 16, 2019

Good morning Chairman Lankford, Ranking Member Sinema, and members of the Committee. Thank you for inviting me to testify today regarding my nomination to the Postal Regulatory Commission.

I am thankful for the family, mentors, friends, and colleagues who could all be here today—it means the world to me. I would also like to take a moment to introduce and thank my wonderful parents, Barclay and Lindy Poling. Their unwavering guidance, love, and support over the years have been nothing short of extraordinary, and they have truly shown me what it means to be a public servant. They have also had to hear far more about postal issues over the years than any parents ever should, and for that I will be forever grateful. I would also like to thank Congressman Mark Meadows for introducing me today and Senator Heidi Heitkamp for her letter of support for the hearing record.

I have spent significant time working on postal policy in the United States Senate, and I have been uniquely fortunate to work for three past and present members of this Committee: Ranking Member Gary Peters of Michigan, Senator Heidi Heitkamp of North Dakota, and Senator Jon Tester of Montana. In over five years of working on the Homeland Security and Governmental Affairs Committee, I have gained a strong appreciation for the vital role that the Postal Service plays in the lives of postal customers across our nation.



In my work for the states of Montana and North Dakota, I have personally seen how post offices represent the heart of the communities they serve and why the Postal Service is a lifeline to the individuals and small businesses in rural America. It became clear to me that in order to protect and improve the speed of mail delivery for rural communities, it was essential to improve service performance across the country by ensuring that strong service provisions were included in any comprehensive postal reform bill. Because service provisions were not considered to be an essential part of reform legislation at the beginning of this multi-year effort, we worked to develop a broader national service protection strategy that ultimately benefitted the postal customer on the local level and would ensure the Postal Service's accountability to its customers.

Relationship building is crucial to the success of any legislative efforts on the Hill, and it was a key part of our educational efforts on service in both the House and the Senate and on both sides of the aisle. Key among those relationships was a strong, bipartisan postal alliance between Senator Heitkamp and the Chairman of the Subcommittee with jurisdiction over postal on the House Oversight and Reform Committee, Congressman Mark Meadows of North Carolina. The Senator and the Congressman became aligned on the issue of service after realizing how much they had in common in regards to rural communities in their respective states of North Dakota and North Carolina. Their advocacy in respect to this issue is one of the primary reasons why service provisions are now an important part of any comprehensive postal reform discussion.

In addition to this specific work on service, I have played an integral negotiating role in four separate postal reform bills over the years and have become intimately familiar with the various components that make up comprehensive postal legislation. Throughout this time, I have continued to build, preserve, and advance trusted and strong interpersonal relationships over

multiple Congresses with the entire postal community. This includes stakeholders from a large coalition of mailers, all four of the major postal unions, postmasters, postal supervisors, the Postal Service, the Postal Regulatory Commission, the Postal Service Office of Inspector General, and offices in the House and the Senate, on both sides of the aisle.

The United States Postal Service is at a critical crossroads in our nation's history. It faces significant financial challenges that pose a very real threat to its long-term viability. The fiscal path that the Postal Service is on is not a sustainable one, but it also has the very real potential for revitalization through needed legislative reforms in Congress. By working collaboratively across the postal community on these challenges, I believe we can preserve, revitalize, and modernize a vital lifeline of communication that has existed for over 200 years. If confirmed as a Postal Regulatory Commissioner, I would welcome the opportunity to actively work with all of our stakeholders, this Committee, the entire Congress, my fellow commissioners, and the Postal Service to find commonsense, lasting solutions to the challenges faced by this agency so that the best results can be delivered to postal customers across our country.

Thank you for considering my nomination and I look forward to answering your questions.

###

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Commissioner, Postal Regulatory Commission	June 12, 2019

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Ashley	Jay Elizabeth	Poling	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 442 Hart Senate Office Building		
City: Washington	State: DC	Zip: 20008	City: Washington	State: DC	Zip: 20510

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
<u>Year of Birth</u> (Do not include month and day)	<u>Place of Birth</u>
1987	Raleigh, North Carolina

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
N/A			

<i>Spouse's Other Names Used (current spouse only)</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check box if used</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
N/A			

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Rhon-University School of Law	Law School	Est August 2010 <input type="checkbox"/>	Est Present May 2015 <input type="checkbox"/> <input type="checkbox"/>	Juris Doctor	May 25, 2013
College of William & Mary	University	Est August 2005 <input type="checkbox"/>	Est Present May 2009 <input type="checkbox"/> <input type="checkbox"/>	Bachelor of Arts	May 17, 2009
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>		
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal Employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position/ Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check present box if still employed)
Other Federal Employment	United States Senate, Homeland Security & Governmental Affairs Committee	Director of Governmental Affairs & Senior Counsel, Ranking Member Gary Peters (D-MT)	Washing ton, DC	January 2019 <input type="checkbox"/> Est <input type="checkbox"/>	Present <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate, Homeland Security & Governmental Affairs Committee	Senior Policy Counsel, Subcommittee on Regulatory Affairs and Federal Management, Ranking Member Heidi Heitkamp (D- ND)	Washing ton, DC	October 2017 <input type="checkbox"/> Est <input type="checkbox"/>	January 2019 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate, Homeland Security & Governmental Affairs Committee	Counsel, Subcommittee on Regulatory Affairs and Federal Management, Ranking Member Heidi Heitkamp (D- ND)	Washing ton, DC	March 2015 <input type="checkbox"/> Est <input type="checkbox"/>	October 2017 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate	Legislative Aide, Office of Senator Jon Tester (D-MT)	Washing ton, DC	January 2015 <input type="checkbox"/> Est <input type="checkbox"/>	March 2015 <input type="checkbox"/> Est <input type="checkbox"/>
Other Federal Employment	United States Senate, Homeland Security	Counsel, Subcommittee	Washing ton, DC	April 2014 <input type="checkbox"/> Est <input type="checkbox"/>	January 2015 <input type="checkbox"/> Est <input type="checkbox"/>

	& Governmental Affairs Committee	on the Efficiency and Effectiveness of Federal Programs & the Federal Workforce, Chairman Jon Tester (D-MT)			
Other Federal Employment	United States Senate	Staff Assistant, Office of Senator Jon Tester (D-MT)	Washington, DC	April 2014	April 2014
Other Federal Employment	United States Senate	Senate Intern, Office of Senator Jon Tester (D-MT)	Washington, DC	September 2013	April 2014
Unemployment	Period between end of law school/end of clerkship and when I started job in Senate		Raleigh, NC	July 2013	September 2013
State Government (Non-Federal Employment)	University of North Carolina School of Government/Elon University School of Law	Clerk for Criminal Subcommittee of North Carolina Pattern Jury Instructions Committee	Chapel Hill, NC	August 2011	July 2013
Other	International Rights Advocates	Spring Intern (externship in my final semester of law school for academic credit)	Washington, DC	January 2013	May 2013
Other	Friends Unite (nonprofit organization)	Head of Human Rights Issues & Advocacy/Volunteer	Raleigh, NC	March 2012	May 2013
Other	Santa Clara University School of Law (International Law, Humanitarian Law, and Human Rights Law Program)	Study Abroad Program Student, after 1 <sup>st</sup> year of law school for academic credit (7-week program)	Geneva, Switzerland & Strasbourg, France	June 2011	July 2011
Other	Elon University School of Law	Full time Student	Greensboro, NC	August 2010	May 2013
Nongovernment Employment	Martin & Jones, PLLC	Asbestos Claims	Raleigh, NC	June 2009	July 2010



		Assistant			
Nongovernment Employment	G. Bates Studio	Part-Time Sales Associate	Williamsburg, VA	January 2007	May 2009
Other	College of William & Mary—Reves Center for International Studies	Study Abroad Program Student, Christ's College, before final year of college for academic credit (5-week program)	Cambridge, United Kingdom	July 2008	August 2008
Nongovernment Employment	Poyner Spruill, LLP	Summer Intern	Raleigh, NC	May 2008	June 2008
Nongovernment Employment	Raleigh Racquet Club	Lifeguard/Swim Coach	Raleigh, NC	May 2007	August 2007
Nongovernment Employment	Raleigh Racquet Club	Lifeguard/Swim Coach	Raleigh, NC	May 2006	August 2006
Other	College of William & Mary	Full time Student	Williamsburg, VA	August 2005	May 2009
Nongovernment Employment	Raleigh Racquet Club	Lifeguard	Raleigh, NC	May 2005	August 2005

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
N/A		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/>

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

N/A

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

N/A

### 5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

- **September 2016: Golden Buffalo Award**
  - Awarded by Senator Heitkamp's office for "outstanding service in the planning, execution and follow up of terrific events in North Dakota as we continue to work to improve mail delivery for all North Dakotans." This was largely the result of the development, coordination, planning, and execution of the Postmaster General's visit to North Dakota in 2016.
- **April 2009: William & Mary Benjamin Stoddert Ewell Award**
  - One of 40 members selected from the undergraduate and graduate classes of 2009 (approximately 2,160 students total) to be honored with this award "for outstanding participation and leadership in campus and community activities and for service and contribution to the College."
- **Spring 2009: Kappa Kappa Gamma Outstanding Senior Award**
  - Voted upon by a chapter of approximately 90 women.
- **Spring 2006: Kappa Kappa Gamma Outstanding New Member Award**
  - Voted upon by a chapter of approximately 90 women.
- **Spring 2005: Family Circle Cup/L'Oreal Personal Best Scholarship, North Carolina Recipient**

- o Awarded to three women from South Carolina, Georgia, and North Carolina for "outstanding charitable and volunteer achievements in their respective communities."
- **Spring 2005: Lion's Club International Local Scholarship Recipient, Raleigh, North Carolina**
  - o Awarded to high school students planning to attend two or four-year colleges based on their record of service to their high schools and community.

## 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate)	Position(s) Held
William & Mary Washington, DC Alumni Chapter Board	June 2016 - Present	Scholarship Committee Chair (September 2017 - Present) Events Committee Co-Chair (September 2016 - September 2017)
William & Mary Young Guard Council	May 2009 - Present (membership ends in June 2019)	Vice Chair (May 2016 - Present) Class of 2009 Representative (May 2009 - Present)
William & Mary Society of 1918	March 2019 - Present	Member
Kappa Kappa Gamma Sorority	August 2005 - May 2009 August 2005 - Present (as Alumna)	Member (August 2005 - Present) Alumna (May 2009 - Present)

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### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
N/A			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
Heidi for Senate	Voter Protection Volunteer	Handled hundreds of calls on the Dem-NPL North Dakota Voter Protection hotline and helped educate voters on what documents they would need to vote successfully via absentee ballot, early voting, or on Election Day. Also poll watched during early voting at multiple polling locations in Fargo to ensure voters were being given accurate information to vote successfully by Election Officials.	October 23, 2018 – November 6, 2018
Heidi for Senate	Phone Banking Volunteer	Made calls on behalf of North Dakota Democratic statewide candidates for the 2018 midterm election.	June 27, 2018
Planned Parenthood Advocates of Montana	Phone Banking Volunteer	Made calls on behalf of Montana Democratic	October 6, 2016

		candidates for Governor and Supreme Court.	
Kay Hagan for Senate	Phone Banking Volunteer	Made calls on behalf of Senator Kay Hagan (D-NC) for the 2014 midterm election.	October 28, 2014

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
N/A		


### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

Title	Publisher	Date(s) of Publication
"What does Tribe Pride mean to you?"	College of William & Mary, Alumni University Advancement Gale Blog Post	November 21, 2017
"Study Abroad presents few students with international opportunities"	Elon University School of Law, contributed to reporting for this article	February 20, 2013
"A New Way of Seeing Things: Report on the Fall 2012 Study Abroad/International Panel"	Elon University School of Law, Student Report on International Panel/Benefits of International Study	December 20, 2012
"Saving Babies: One Foot at a Time"	Friends Unite nonprofit volunteer Blog Post	July 29, 2012
"The Impact of Introductions"	Friends Unite nonprofit volunteer Blog Post	July 29, 2012


(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

Title/Topic	Place/Audience	Date(s) of Speech
United Postmasters and Managers of America Legislative Summit Congressional Staff Panelist	G-50 Dirksen Senate Office Building, Washington, DC 20510/Audience made up of UPMA members from across the country	January 28, 2019
The Rural/Urban Divide: Package Delivery in the 21 <sup>st</sup> Century Panel	USPS Office of Inspector General Headquarters, 1735 N. Lynn Street, Arlington, VA 22209/Audience made up largely by members of postal stakeholder community	August 7, 2018
A Grand Alliance to Save our Public Postal Service/Postal Heritage Day Panelist	385 Russell Senate Office Building, Washington, DC 20510/Audience made up of congressional staff, members of postal stakeholder community	July 26, 2018
The Capitol Forum: USPS Last Mile Policy Conference Panelist	The National Press Club, 529 14 <sup>th</sup> Street NW, Washington, DC 20045/Audience made up of members of the postal stakeholder community	June 13, 2018
American Catalog Mailers Association National Conference Panelist	The Dupont Circle Hotel, 1500 New Hampshire Avenue NW, Washington, DC 20036/Audience made up of members of the ACMA from across the country	May 22, 2018
National Rural Letter Carriers Association Legislative Seminar Panelist	Hyatt Regency on Capitol Hill, 400 New Jersey Avenue NW, Washington, DC 20001/Audience made up of NRLCA members from across the country	May 21, 2018
American Postal Workers Union State Convention	C'Mon Inn, 3051 32 <sup>nd</sup> Avenue S, Grand Forks, ND 58201/Audience made up of North Dakota APWU members from across the state	April 21, 2018
National Association of Postal Supervisors Legislative Seminar Congressional Staff Panelist	Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202/Audience made up of NAPS members from across the country	March 12, 2018



United Postmasters of America Legislative Summit Congressional Staff Panelist	Capitol Visitor Center Auditorium in U.S. Capitol/Audience made up of UPMA members from across the country	February 26, 2018

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

Title	Place/Audience	Date(s) of Speech
National Active and Retired Federal Employees Association Legislative and Training Conference Congressional Staff Panelist	Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, VA 22311/Audience made up of NARFE members from across the country	March 11, 2019
Partnership for Public Service Schaeffer Fellows Program "Values and Vision" Session Panelist	1100 New York Avenue, Suite #200 East, Washington, DC 20005/ Audience made up of Schaeffer Fellows who are selected from four elite universities across the country. Focus of program is to help participants become engaged citizens and to develop an informed view of government service and operations.	June 9, 2017
National Active and Retired Federal Employees Association Legislative and Training Conference Congressional Staff Panelist	Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, VA 22311/Audience made up of NARFE members from across the country	March 13, 2017
William & Mary Alumni Capitol Hill Panel Discussion with Congressional Staff who are alumni	385 Russell Senate Office Building, Washington, DC 20510/Audience made up of current students enrolled at William & Mary Washington Center	January 13, 2017
William & Mary Alumni Capitol Hill Panel Discussion with Congressional Staff who are alumni	385 Russell Senate Office Building, Washington, DC 20510/Audience made up of current students enrolled at William & Mary Washington Center	January 14, 2016


### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?  
(Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)  
☐ NO
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?  
☐ NO
- Have you been charged, convicted, or sentenced of a crime in any court?  
☐ NO
- Have you been or are you currently on probation or parole?  
☐ NO
- Are you currently on trial or awaiting a trial on criminal charges?  
☐ NO
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?  
☐ NO

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation,

where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

N/A for all in this section

A) Date of offense:

z. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes /  
No
- N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

Date Claim/Suit Was Filed or Legislative Proceedings Began	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding
N/A				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

Date Claim/Suit Was Filed	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding
N/A				

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(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

N/A

### 11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

Name of Agency/Association/Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint
N/A			

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

NO

### 12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED**

**13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

NO

**14. Outside Positions**

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-



profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Name of Organization	Address of Organization	Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	Position Held	Position Held From (month/year)	Position Held To (month/year)

#### 15. Agreements or Arrangements

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)


**16. Additional Financial Data**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Barry Jay Ezekiel Poling

This 22<sup>nd</sup> day of JUNE, 2019

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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June 18, 2019

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ashley Jay Elizabeth Poling, who has been nominated by President Trump for the position of Commissioner, Postal Regulatory Commission.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

David J. Apol  
General Counsel

Digitally signed by DAVID  
APOL  
Date: 2019.06.18 12:31:58  
-0400

Enclosures **REDACTED**

May 20, 2019

David A. Trissell  
General Counsel and Designated Agency Ethics Official  
Postal Regulatory Commission  
901 New York Ave., Suite 200  
Washington, DC 20268-0001

Dear Mr. Trissell:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner at the Postal Regulatory Commission.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with the William and Mary Young Guard Council. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the William and Mary Young Guard Council is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

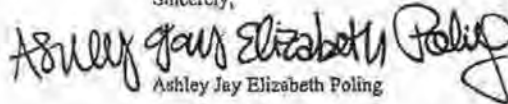
If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Commissioner in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

  
Ashley Jay Elizabeth Poling



**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Ashley Poling to be  
Commissioner, Postal Regulatory Commission**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to serve as a Commissioner on the Postal Regulatory Commission ("PRC" or "the Commission")?  
  
No.
2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.  
  
No.
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Commissioner of the PRC? If so, what are they, and to whom were the commitments made?  
  
No.
4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I am not aware of any conflicts and have worked with the Postal Regulatory Commission's General Counsel and Office of Government Ethics throughout this process to identify any actual or apparent conflicts of interest. I have since signed an ethics agreement where I have pledged to resign from certain non-governmental positions if confirmed. I have also pledged to avoid participating in any matter in which I have financial interest and to ensure that any account professional or investment manager I obtain during my potential appointment would obtain my approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201 (a), obligations of the United States, or municipal bonds.

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be a Commissioner of the PRC?

I have spent significant time working on postal policy in the United States Senate, and specialized in this issue area during my years working for two Senators from rural states—former Senator Heidi Heitkamp of North Dakota and Senator Jon Tester of Montana. The Postal Service plays a central and unique role in rural communities, and I quickly realized just how impacted our constituents were by degradations in service that resulted from a series of operational changes that were made to the Postal Service network after experiencing significant decreases in mail volume. To date, nearly 160 mail processing facilities have been consolidated across the country and the Postal Service also eliminated the overnight service standard for First-Class Mail, meaning that it now takes even longer than it used to for mail to get from Point A to Point B.

It became clear to me that in order to protect and improve the speed of mail delivery for rural communities, it was essential to improve service performance across the country by ensuring strong service provisions were included in any comprehensive postal reform bill. Because service provisions were not considered to be an essential part of reform legislation at the beginning of this multi-year effort, we worked to develop a broader national service protection strategy that ultimately benefitted the postal customer on the local level and that would ensure the Postal Service's accountability to its customers. This strategy ultimately resulted in the introduction of original rural postal legislation, the inclusion of principles from that legislation in broader Senate postal reform legislation in the 114<sup>th</sup> Congress with a strong emphasis on service, and culminated in the bipartisan introduction of the most widely supported comprehensive postal reform bill by the postal stakeholder community in years in the 115<sup>th</sup> Congress (S. 2629).

Relationship building is crucial to the success of any legislative efforts on the Hill, and it was a key part of our educational efforts on service in both the House and the Senate and on both sides of the aisle. Key among those relationships was a strong, bipartisan postal alliance between Senator Heitkamp and the Chairman of the Subcommittee with jurisdiction over postal on the House Oversight and Reform Committee, Congressman Mark Meadows of North Carolina. The Senator and the Congressman became aligned on the issue of service after realizing how much they had in common in regards to rural communities in their respective states of North Dakota and North Carolina, and their advocacy in respect to this issue is one of the primary reasons why service provisions are now an important part of any comprehensive postal reform discussion.

In addition to this specific work on service, I have played an integral negotiating role in four separate postal reform bills over the years and have become intimately familiar with the various components that make up comprehensive postal legislation. Throughout this time, I have continued to build, preserve, and advance trusted and strong interpersonal relationships over multiple Congresses with the entire postal community, including stakeholders from a large coalition of mailers, all four of the major postal unions, the Postal Service, the Postal Regulatory Commission, the Postal Service Office of Inspector General, and offices in both the House and the Senate, on both the Member and staff level, and on both sides of the aisle.

I believe my ability to build strong bipartisan relationships, my trusted and balanced reputation in the postal stakeholder community, my creative problem-solving approach,

my passion for postal issues and my collaborative spirit make me an ideal candidate for this position.

6. Please describe:

a. Your leadership and management style.

I would describe my leadership and management style as highly engaging, collaborative, supportive, and empowering. I strongly believe that being an active listener and always treating team members with respect leads to increased morale and productivity in an office environment. As a leader, I also believe it is important to be approachable, compassionate, self-aware, and to conduct yourself with the highest integrity at all times. In my role, I am constantly required to prioritize and triage issues that we deal with on the governmental affairs team for the Ranking Member.

While this can certainly be a challenge at times, I feel it is incumbent upon me as a supervisor to insulate my team from as much stress as possible and to navigate difficult situations with a positive attitude.

b. Your experience managing personnel.

I currently serve as the Director of Governmental Affairs for the Ranking Member, and my favorite part of my job is managing my team. While I have helped to manage fellows in previous positions, this is my first explicitly supervisory role on the Hill. Throughout my life experience, I have always enjoyed mentoring and I feel like I have the opportunity to do this every single day as a supervisor. I have an open door policy and believe that my team members always feel comfortable coming to me to discuss policy ideas, strategy, or anything else that is important for them to have the best work experience possible. As a supervisor, I am a strong advocate for my team and make it clear that we will work through any challenge together.

c. What is the largest number of people that have worked under you?

I currently manage/oversee ten people as the Director of Governmental Affairs for the Ranking Member. This includes full time staff members, fellows, a detailee, and a law clerk. This number will soon increase to eleven with the addition of an intern.

### III. Role of the Postal Rate Commission and its Commissioners

7. Please describe your view of the Commission's core mission and an individual Commissioner's role in achieving that mission.

The Commission's core mission is to "ensure transparency and accountability of the United States Postal Service and foster a vital and efficient universal mail system" (Postal Regulatory Commission Mission Statement).

An individual Commissioner's role is to be fair and impartial in all matters brought before the Commission and to help carry out the PRC's mission of transparency and

accountability of the Postal Service. I also believe it is important for the Commission to be as responsive as possible to Congress.

8. The President's task force on the United States Postal Service (USPS or Postal Service) recommended a stronger regulatory oversight role for the PRC. What role do you believe the Commission should play in overseeing the Postal Service?

The Commission has regulatory authority over the Postal Service in the following areas: price changes, service standards and service performance, financial accounting and reporting, proposed nationwide changes in service, customer complaints, and overall compliance with the Postal Accountability and Enhancement Act of 2006. I think it is important for the Commission to carry out its regulatory authority in compliance with the law. The President's task force on the United States Postal Service made a number of legislative and administrative recommendations. It is my understanding that any of the administrative recommendations would require administrative proceedings and a majority vote of the Commissioners. Having not served on the Commission, this is something I would need to analyze carefully if confirmed.

9. The Commission is an independent agency. How do you understand that obligation of independence? How does such independence affect your approach to the evaluation and decision of cases?

I understand the Commission's obligation of independence to mean that it must be immune from political and outside influence as it conducts its regulatory oversight authority over the Postal Service. An individual Commissioner's role is to be fair and impartial in all matters brought before the Commission and to help carry out the PRC's mission of transparency and accountability of the Postal Service. I would be strongly committed to that approach as a Commissioner, if confirmed.

10. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

- a. During your career, how have you addressed whistleblower complaints?

In my role as a congressional staffer and supervisor, I have always placed the highest value on whistleblower complaints. While I have not worked on these issues directly very often on the Hill, I recall them coming up the most in the constituent context through casework in my previous position. I learned about some complaints directly when I was out in the state and/or speaking with my state colleagues. After gaining a thorough understanding of what the circumstances entailed from the relevant parties, our office would work to draft a request for the Postal Service Office of the Inspector General to investigate the issues that arose. We were always cognizant of protecting whistleblower confidentiality, and our state staffers did an excellent job of interacting regularly with all of those who reached out to our state offices for help.

- b. How would you plan to implement policies within the Commission to encourage employees to bring constructive suggestions forward without the fear of reprisal?

If confirmed, I would work to make sure that all policies are communicated clearly to employees within the Commission so that they would have the best chance of being followed as fully and as accurately as possible. I would also do my best to make employees aware of the fact that constructive suggestions are important and that they should never be in fear of reprisal.

- c. Do you commit without reservation to work to ensure that any whistleblower within the Commission does not face retaliation?

Yes.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

#### IV. Policy Questions

##### *Previous Postal Service Reforms*

11. It has been nearly twelve years since the Postal Accountability and Enhancement Act of 2006 (PAEA) (P.L. 109-435) changed postal pricing to provide the Postal Service with more flexibility as well as improve the rate-making process.

- a. Do you believe the Postal Service has effectively utilized the pricing flexibility provided by the PAEA? If yes why, if no why not?

The PAEA directed the PRC to develop a modern system for regulating rates and classes for Market Dominant products and also directed the Postal Service Board of Governors to establish rates and classes for products in the competitive mail category. It is my understanding that the increased pricing flexibility provided for under PAEA has helped shape the Postal Service's approach to developing specific initiatives: seasonal pricing incentives, market tests of experimental products, and Negotiated Service Agreements. It is also my understanding that the Postal Service has also used its flexibility within the Market Dominant category of mail to set prices for products below the class level and also when setting workshare discounts.

- b. Do you believe the goal of increased flexibility was met? If yes why, if no why not?

It is my understanding that the Postal Service has taken advantage of the PAEA's increased pricing flexibility through the various specific initiatives listed above. With that said, I imagine there are always ways for the Postal Service to be using these flexibilities more effectively. Having not served on the Commission, this is something I would need to analyze carefully if confirmed. Additionally, I think it is important to note that there are a number of other issues that the Postal Service has been navigating as a result of decreased mail volume and its requirement to prefund

future retiree health benefits under the 2006 law. It is important for a sustainable path to be found soon so that the Postal Service has the ability to overcome these various hurdles as effectively as possible.

- c. Should "flexibility" include the ability of the Postal Service to have different price increases for one class of mail versus another class? If yes why, if no why not?

Under PAEA, my understanding is that rate changes for each Market Dominant mail class (those over which the Postal Service exercises an effective monopoly) may not exceed the inflation-based annual price cap (Consumer Price Index for All Urban Customers) and that Competitive products (those over which the Postal Service competes with the private sector) must cover their attributable costs. It is my understanding that while there is a ceiling by class, there is no floor. This means that the Postal Service is free to have different price increases as long as it does not surpass this ceiling. One of the primary purposes of the PRC's 10-year required rate review under PAEA is to evaluate the rate-setting system and to determine if Congress's objectives under the law have been met. While the PRC issued a proposed rule in December of 2017, that rule has yet to be finalized. It is my understanding that this review is still pending before the Commission. Having not served on the Commission, this is something I would need to analyze carefully if confirmed in order to make a fully informed decision on this question.

- d. Do the workshare provisions of the Commission rules, all else equal, foster flexibility? If yes why, if no why not?

I understand that Postal Service is able to offer Postal Regulatory Commission approved workshare discounts to mailers so that they can perform mail preparation and distribution activities that the Postal Service would otherwise be responsible for carrying out. Under PAEA, these discounts should not exceed (with limited exceptions) the costs that the Postal Service avoids by allowing mailers to perform these activities in this workshare relationship. While the workshare provisions seem to foster flexibility, I have not served on the Commission and would therefore want to evaluate this question further if confirmed. In addition, there was a 2015 Postal Service Office of the Inspector General audit report that found that certain workshare discounts no longer benefit the Postal Service as they were originally intended because of how much the mail processing network has changed over the years and recommended that Postal Service management periodically work with the PRC to review these discounts. I would be interested to see what recommendations have been implemented since the time of this audit report.

12. The PAEA substantially changed the relative responsibilities of the Postal Service Board of Governors and the Commission.

- a. What do you believe are the most important decisions the Commission has made since the PAEA?

I believe that one of the most important decisions that the Postal Regulatory Commission has made since PAEA was on July 5, 2018 when the Commission approved new internal service performance measurement systems for certain Market Dominant products, including products within domestic First-Class Mail, Periodicals, Marketing Mail, and Package Services. Both of my former bosses teamed up on a letter to the Postal Regulatory Commission in May of 2015 that requested that the Commission conduct an in-depth study on rural mail delivery, and specifically, on mail service between rural communities and mail service between rural and urban communities. This request resulted in a number of meetings with both the Postal Service and the Postal Regulatory Commission on the Postal Service's updates to their measurement system. I believe that the emphasis our offices placed on the importance of accurate service measurement in rural communities informed decisions in regards to the new system and ultimately made it much more granular in its tracking of rural mail.

I also believe the exigent rate increase that was put in place as a result of the Great Recession of 2007-2009 is one of the most important decisions that the Commission could have made with respect to the Postal Service's financial health.

- b. What are the key decisions you expect the Commission to make in the future under the PAEA?

I believe that the Commission's final rule on the 10-year rate review that was required under the PAEA will be one of the most important decisions that the PRC has made since the enactment of the law. The Commission issued a proposed rule in December of 2017 that found its system for regulating rates and Market Dominant products has not maintained the financial health of the Postal Service as intended under the law.

- c. Generally, what approaches do you advocate the Commission should take in regulating the Postal Service and why?

I believe that the Commission could become even more engaged in regards to its regulatory oversight role over service standards and service performance as part of its mission is to foster a vital and efficient universal mail system. I am intimately familiar with this area of postal policy from my time working for the rural states of North Dakota and Montana, and understand the very real impacts that mail processing plant consolidations have had on service performance. I think this is an area where greater oversight is needed, but having not served on the Commission, I would have to evaluate the best way to engage more in this area if confirmed. In addition, the PRC is responsible for ensuring transparency and accountability in its regulatory role over the Postal Service.

13. What is your overall impression of how well the postal reforms under the PAEA have been implemented so far? What areas have been most challenging, and what areas do you believe need the most attention in the future?



I understand that the PAEA has been implemented fairly comprehensively since its enactment. It is important to note that at the time of the bill's enactment, the Postal Service was in a very different place in respect to mail volume and revenues. While the retiree health prefunding mandate may not have been as burdensome at the time of enactment, it became increasingly more so as the Postal Service navigated the Great Recession and declining mail volumes in the years since the PAEA's passage.

14. The PAEA set forth a new process for resolving complaints against the Postal Service. What do you believe must be done to ensure that the Commission will review and resolve any complaints promptly and fairly?

I believe it is important for the Commission to do everything it can to resolve any complaints against the Postal Service as promptly and as fairly as possible, which means that there also must be strong communication. It is also important to make sure that the Commissioners are approaching their review with an aligned methodology for evaluation purposes. It is also important for the Commission to monitor and maintain adequate staffing levels.

#### *Postal Service Operations*

15. What role, if any, should the Commission have in the Postal Service's operational decisions?

The Postal Service's role is that of the operator, while the Postal Regulatory Commission's role is that of the regulator. The Commission is responsible for ensuring the accountability and the transparency through its oversight of the operator, the Postal Service, and for fostering a vital and efficient universal mail system. The Postal Service is solely responsible for making operational decisions, while the Commission would only provide guidance on those decisions through advisory opinions.

16. Should Congress modify or repeal the requirement for the Postal Service to seek advisory opinions from the Commission, as some have proposed? Why or why not?

As the Postal Service touches every single household in our country, I believe it is important to consider the importance of the regulator's role in protecting the public, as well as its commitment to transparency. I understand that the Commission's issuance of advisory opinions allows the PRC to evaluate certain operational decisions of the Postal Service. I also understand that there is nothing that requires the Postal Service to take into account the Commission's guidance—something I am familiar with from years of working on postal policy. One potential way of making the role and impact of advisory opinions more clear would be through legislation. I have only thought of this in terms of congressional legislation. Having not served on the Commission, this is something I would need to analyze carefully if confirmed.



17. What do you believe should be the role of the Commission in helping to ensure that the quality and timeliness of the Postal Service's data in cases before the Commission are adequate?

It is my understanding that the Commission relies significantly on quality and timeliness of the data that the Postal Service provides in order to review cases, and that the Commission has the ability to remand or reject cases when this data has not complied with these requirements. Having not served on the Commission, I am not directly familiar with the data that the PRC receives from the Postal Service. From a congressional perspective, however, my former bosses have routinely asked for accurate data from the Postal Service.

18. The Postal Service continues to experience volume and revenue losses. According to USPS annual filings, the Postal Service ending Fiscal Year (FY) 2018 with a net loss of \$3.9 billion, an increase of \$1.2 billion over FY 2017.

- a. What additional steps do you believe the Postal Service should take that do not require Congressional action to improve its financial condition?

The Postal Service should do everything it can to make sure its current customers continue using the Postal Service. One way to do that is by ensuring that their new internal mail measurement system is being implemented as effectively as possible. The most frequent concern I heard from rural constituents while working on postal policy was in regards to poor service performance. Because the Postal Service is a lifeline to individuals and small businesses in rural America, it is important to make sure that these customers can rely on their mail in the same way as other customers throughout the country. Because the new measurement system has the ability to track mail delivery at a more granular level, that means that the Postal Service now has the ability to identify problems more quickly at the district level and fix them before issues rise to a congressional level.

In addition, the Postal Service needs to take advantage of cost saving measures that the Postal Service Office of Inspector General has identified, such as identifying opportunities to collocate with other federal agencies after determining that 86 percent of postal facilities have excess space in a congressionally mandated 2018 audit report (a determination that was close to what the Postal Service had reported to Congress under the Federal Property Management Reform Act of 2016).

Another example of where the Postal Service could improve its retail decisions and improve customer service, sales, and efficiency is by better tracking its foot traffic. According to a 2017 Postal Service Office of the Inspector General RARC Report, there were 2.7 billion post office visits in FY 2016. The Postal Service could better understand that foot traffic by gathering data on in store flows and analyzing who visits post offices and why. By better understanding its customers, the Postal Service can do a better job of ensuring that it is serving them effectively.

Finally, the Postal Service should be doing all that it can under its current authority to both manage costs and increase revenues. It is important to note that this is not an easy task, as there have been a number of technological and economic changes in the postal landscape since postal legislation was last passed in 2006.

- b. What legislative changes do you believe Congress should consider to help improve the Postal Service's financial condition?

I believe it is essential for Congress to act in order to implement the legislative changes that are necessary to foster the improvement of the Postal Service's financial condition. Having worked on comprehensive postal reform legislation nearly my entire time in the U.S. Senate, there are several areas that are always discussed when contemplating potential bill provisions: the prefunding of future retiree health benefits (as required under the 2006 law), service performance, postal rates, governance, and innovation and modernization of the existing business model. One of the toughest parts about postal reform legislation is coming up with a package that will improve the Postal Service's fiscal solvency for a significant duration of time. My former boss used the word "rehydrate" when she spoke about the Postal Service, and I think that is an accurate word to describe what must be done for the Postal Service's financial health in the near term. One of the reasons it is so difficult to find a solution that will be a more permanent fix is because technology is ever changing, as is the Postal Service's dynamic customer base. The legislative solution that Congress finds will not be a permanent one, but with bipartisan negotiations and significant stakeholder support, it does have the potential to revitalize the Postal Service at a critical time in the agency's financial health.

2. In your view, how can the Postal Service return to viability in a market in which e-commerce and electronic communication and payments are increasing and mail volume is declining? What role do you believe the Commission should play in shaping the future Postal Service given these rapid changes?

The Postal Service operates at the center of a massive \$1.4 trillion printing, delivery, and logistics industry that employs approximately 7.5 million people, all while processing nearly half of the world's mail and using no taxpayer dollars to operate. While the services that the Postal Service offers are still vital, it is critical that the agency be given the ability to modernize through congressional action. One of the key issues that must be addressed is the prefunding mandate for future retiree health benefits. Because of the agency's remarkable liabilities, the Postal Service has continuously been working to cut costs, which prevents them from properly investing in the infrastructure they so desperately need. One of the reasons the Postal Service been able to navigate the e-commerce boom as well as it has is due to its unique network, as well as its key role in last mile delivery.

I believe that the Commission must be in tune with the challenges that the Postal Service faces under its current model, and should carefully consider all Postal Service proposals.

that seek to modernize the Postal Service's network to meet its ever changing customer demands.

3. Since enactment of the PAEA, the Commission has interpreted the term "non-postal service" through consideration of various Postal Service proposals for new products and services.

- a. Do you believe the Postal Service should be allowed to compete with the private sector? If so, under what circumstances?

The Postal Service currently competes with the private sector through its competitive products, which cannot be cross-subsidized by Market Dominant products, must cover their attributable costs, and must collectively cover what the Commission determines to be an appropriate share of the Postal Service's institutional costs. The PAEA limits the Postal Service's authority to provide nonpostal services (aside from those that were grandfathered in before enactment of the law), which are defined as any services that are nonpostal in nature. The PAEA requires the Commission to review each nonpostal service offered by the Postal Service and to determine whether that service can continue.

- b. What concerns, if any, do you have about such efforts?

While there have been a number of discussions around increasing the Postal Service's use of nonpostal services, it is important to carefully consider the ramifications of any potential changes to the current law. The Postal Service plays an important role in the lives of the American public, so it would be important to evaluate whether expansion into certain nonpostal product spaces would allow the Postal Service to unfairly compete. I also believe that the primary goal of any comprehensive reform legislation should be to put the Postal Service on firm financial footing.

- c. What role do you believe the Commission should play in the introduction or pricing of new products?

The Commission is responsible for making sure that any new products or prices are in compliance with the law. The Postal Service is responsible for introducing and pricing these products before requesting a regulatory review from the Commission.

#### *Postal Ratemaking*

4. During consideration of the PAEA, there was debate about the impact of a consumer-inflation-based rate cap. In your opinion, how has the rate cap helped the Postal Service, the mailing community, and postal customers? How has the rate cap hurt these groups?

With the exception of the exigent rate increase that resulted from the 2007-2009 Great Recession, the consumer-inflation-based rate cap has provided stability and rate

predictability to the postal mailing community by capping rates at the class level to the rate of inflation.

The consumer-inflation-based rate cap has probably impacted the Postal Service the most negatively as it has not allowed them to address the financial challenges they face more aggressively.

5. In your view, what drawbacks and advantages would exist to increasing postal rates through legislation, rather than through the existing ratemaking process?

As a congressional staffer who has worked on numerous postal bills over the years, I have primarily considered potential postal rates increases in the context of legislation as opposed to the traditional ratemaking process. Having not served on the Commission, I would need to analyze the advantages and disadvantages of both processes if confirmed.

6. According to 39 U.S.C. § 407, the Commission submits views to the Secretary of State regarding any treaty, convention, or amendment which alters the rate or classification of certain types of mail. In your view, how should the Secretary of State consider U.S. law and the views of the Commission when concluding such treaties, conventions, or amendments?

It is my understanding that the Secretary of State should prioritize U.S. law and the Commission's views when navigating treaties, conventions, or amendments.

7. The President's task force on the USPS recommended monetizing USPS's exclusive access to the mailbox to generate more income. What is your view of monetizing the "mailbox monopoly" and what role should the PRC play in ensuring fair rates in this type of monopoly?

While it is vital that new revenue streams be developed for the Postal Service, it is also important that Postal Service customers be protected from mail-related criminal activity. Opening up the Postal Service's mailbox monopoly to private companies could pose risks to the personal privacy of customers, and could potentially make them more susceptible to mail fraud, theft, etc. With that said, I would reserve judgment on this proposal until it has been further developed. The PRC would be responsible for ensuring that any proposed rates are in compliance with the law.

8. The task force also recommended that USPS redefine mail classes and define products by the type of sender and the declared purpose of the mail item. What should be the PRC's role with regard to the mail classes offered by the USPS?

It is my understanding that the Commission's role would be to ensure that any new products or rates are in compliance with the law.

#### *Service Standards and Other Performance Obligations*

9. Debates about postal reform legislation raise fundamental questions about the role of the Postal Service in our nation, including the nature of the Postal Service's universal service obligation.

- a. What is your view of the Postal Service's universal service obligation?

The universal service obligation is a wholly unique obligation that makes the Postal Service both accessible and affordable to all American postal customers, no matter where they live.

- b. Do you believe the concept of universal service has evolved since the PRC's 2008 report on universal service? If so, how? How do you believe Postal Service can adapt to meet that obligation?

The postal landscape has changed significantly since 2008, meaning that the universal service obligation has also evolved during that time. Technology has continued to evolve, as has Americans' reliance on electronic communication. While mail volume has also declined in the past decade, it is important to keep in mind the unique role that the Postal Service still plays in rural communities, and why it is important to make sure that universal service is protected. The Postal Service needs to continue to evaluate customer experience to assess how to most effectively serve the American public in rural and urban areas across the country.

- c. In your view, what is the Commission's role in preserving universal service?

The Commission is required to estimate the costs incurred by the Postal Service in providing three types of public services or activities under the universal service obligation including: postal services to areas of the nation the Postal Service would not otherwise serve, free or reduced rates for postal services as required by title 39, and other public services or activities the Postal Service would not otherwise provide but for the requirements of law. In addition to calculating costs, the Commission also has regulatory authority over service standards and service performance.

10. What do you believe should be the Commission's role in establishing performance standards for postal products and services and for monitoring the Postal Service's results in meeting these standards?

Under current law, the Postal Service, in consultation with Postal Regulatory Commission, establishes a set of service standards for Market Dominant products. It is my understanding that the Commission continuously monitors the Postal Service's service performance results in meeting those service standards. The Commission is also responsible for reviewing and assessing service performance results annually and can direct the Postal Service to improve weak service performance areas when necessary. I believe this role makes sense for the Commission, but I think additional enforcement mechanisms need to be considered so that the Postal Service can be held accountable when they are not improving service performance. My position on this is derived from

my work on service issues as a congressional staffer. Having not served on the Commission, I would have to consider this from a different perspective if confirmed.

11. The Postal Service continues to face the problem of reducing costs while also maintaining fast and reliable service. In your opinion, how can the Commission help the Postal Service try to find this balance?

In the face of declining mail volumes, a significant prefunding requirement for future retiree health benefits, the Great Recession, and changes in technology, the Postal Service has been forced to cut costs—often at the price of service to postal customers. While this has been frustrating to members of Congress, it also highlights why congressional action is necessary to implement effective postal reform legislation. The Postal Service is required to consult with the Commission in its establishment of service standards for Market Dominant products, and the Commission also continuously monitors the Postal Service's results in meeting those standards. If confirmed, I think it is important to explore how the Commission could be even more engaged in terms of monitoring the Postal Service's service performance.

12. In your view, what degree of transparency should the Postal Service provide to Congress, mailers, and the public on delivery performance goals and general quality of delivery services? Do you believe the Commission has sufficient information to monitor service quality?

I think it is essential for the Postal Service to provide as much transparency as possible to Congress, mailers, and the public on delivery performance goals and general quality of delivery services. One suggestion in prior iterations of postal legislation would be to publish such results online to promote absolute transparency with the public. There could be potential ways of increasing this transparency further through legislation, as certain information is already published. Having not served on the Commission, I would need to evaluate whether the Commission has sufficient information to monitor service quality if confirmed. It is my understanding that there have been instances where the information provided by the Postal Service has not been sufficient, but that the quality of the Postal Service's information has since improved.

13. The President's task force on the USPS recommended that if products not deemed to be "essential" do not cover their direct costs, then the USPS should increase prices, reduce service costs, or exit the business of these products. What is your view of how the universal service obligation applies to these types of mail products?

While a creative proposal, I think this would be a tough recommendation to implement in practice. As was raised at the Committee's hearing on the Postal Task Force in March of this year, how do you objectively differentiate between products that are deemed "essential" to one person in one part of the country and "non-essential" to another? A number of factors could be at play (geographical location, season, etc.) in any given situation that would make it difficult to develop a one-size-fits-all approach. I think you could potentially run into a situation where a postal customer's access to the universal

service obligation is compromised because a product they need may not be deemed objectively "essential."

14. Many postal stakeholders have raised concerns about the adequacy of the Postal Service's financial transparency. The PAEA requires the Postal Service to meet the financial reporting requirements of the Sarbanes-Oxley legislation. What is your opinion of this mandate and do you believe the Postal Service has satisfied this mandate? Are further improvements necessary to make Postal Service finances more transparent? If yes, what additional improvements are needed?

It is important for there to be adequate financial oversight of the Postal Service, and I believe this mandate helps significantly in that oversight. Having not served on the Commission, I am not intimately familiar with the financial reports that are filed by the Postal Service with the PRC. It would be hard for me to make an accurate assessment regarding whether further improvements are necessary to make Postal Service finances more transparent at this time.

#### *Post Office Closings and Relocations*

15. In your opinion, does the existing process for closing and relocating post offices adequately protect the interests of postal customers and the affected communities, especially in small towns and rural areas? If yes, how? If not, what additional protections do you believe are necessary?

I believe the existing process for closing and relocating post offices is adequate, but could also be further strengthened so postal customers and affected communities are more strongly protected. It is important that postal customers are given adequate notice with a specific timeline of when a post office is closing, and are alerted as quickly as possible regarding what alternative options they may have. In addition, it is important that these closing/relocation determinations consider distance, the weather and terrain of an area, and access to broadband.

16. To what extent do you think the availability of postal services at alternative locations should be a key factor when considering closing or consolidating traditional retail facilities?

The availability of postal services at alternative locations should definitely be a key factor when considering whether to close or consolidate a traditional retail facility. It is important to keep in mind that a closing or consolidation will have a distinct impact on a community, and it is important to make sure that they will have adequate access to any potential alternative.

17. Do you believe the Postal Service should have additional flexibility to more quickly and easily close post offices? If so, what impact do you believe this will have on the Postal Service's current retail network?



I do not. Post offices are central components of communities across the country and any decision to close them should be subject to a uniform process where the Postal Service is held accountable to the postal customers in a community, and is responsible for ensuring that they have alternate adequate access to postal services.

18. Many members of the public have expressed a concern that the Postal Service does not adequately involve affected communities in the decision-making process for the closings of post offices and processing facilities. What are your views on this issue?

Having heard about this problem a number of times while working for rural offices, I can affirm that this is absolutely the case. In one particular instance, we learned that a post office had closed unexpectedly in Halliday, North Dakota (population 230) in the fall of 2016. My former boss sent a letter to the Postmaster General urging the Postal Service to resolve the issues at the post office as quickly as possible so that it could be reopened, and to also make sure postal customers were provided with an alternative postal location in the interim, which ultimately became the local town hall. We worked closely with our western state staff on this situation and after continuing to press the Postal Service, were successful in getting them to reopen the post office in January of 2017. While the Postal Service's plan had never been to close Halliday's post office forever, the way in which things were handled sparked significant concern among residents, which ultimately led to our office getting involved. It is important to make sure we are building in an adequate process for members of the local community in any instance where a post office could potentially be closed—even a temporary one.

19. Are improvements needed to the Commission's appeals process related to closing and consolidating post offices? If yes, what specific changes do you believe are needed? If no, please explain why you believe the current process is viable.

It is my understanding that the Commission adopted new rules in 2015 in regards to public notice, participation by interested parties, the contents of required filings, and deadlines. I also understand that the Commission has continued to examine the appeals process related to closing and consolidating post offices. As someone who understands just how much these closures can impact communities in rural America, if confirmed, I think it is important to continue to evaluate this process so that the postal customer is prioritized.

20. Should the Commission have greater input over the closures or consolidations of post offices or postal processing facilities? Why or why not?

Having not served on the Commission, I have not had the opportunity to comprehensively assess the PRC's current role in the process, which primarily relates to appeals. If confirmed, I would need to evaluate the effectiveness of the PRC's current role in the process before making additional suggestions for further input.

## V. Relations with Congress



21. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

22. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

23. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

#### **VI. Assistance**

24. Are these answers your own? Have you consulted with the Postal Service, the Commission, or any other interested parties? If so, please indicate which entities.

Yes, these answers are my own. I have consulted with the Commission and they have reviewed my answers for legal, regulatory, and technical accuracy.

**Minority Supplemental Pre-hearing Questionnaire  
For the Nomination of Ashley Poling to be  
Commissioner, Postal Regulatory Commission**

**I. Nomination Process and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.

**II. Background of Nominee**

3. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

I continuously strive to create a respectful environment for my team members where they feel comfortable having constructive discussions, even if this means that their views are different than my own or others. Being willing to voice when one has different views regarding a particular policy is essential to ultimately making that policy better. I believe I encourage constructive dialogue with my team members by being an approachable, active listener.

4. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

A time that specifically comes to mind is in the postal arena. As people who work in Washington, DC are aware, the two years leading up to an election are critical and members have limited time to focus on multiple issue areas. In the fall of 2017, I made a pitch to the leadership in my former office as to why it was important for my boss to continue to advocate strongly on postal issues as one of the few voices committed to a bipartisan approach. While the work the Senator had done in this realm was certainly appreciated, there was concern over how much time she would have to devote to the area in the coming months. I came to the meeting with a one-pager and a strategy for how the Senator could continue her leadership on this issue while maximizing staff involvement. I aggressively advocated for this position and was successful in the way that the Senator introduced one of the most widely supported bipartisan postal bills in the spring of 2018, along with her bipartisan colleagues in the Senate.

5. What would you consider your greatest successes as a leader?

I consider my greatest success as a leader to be my ability to make people feel valued for the work that they contribute to our team. In an atmosphere like the Hill, it is easy to get caught up in every day stressors and to forget to recognize team members when they have done an exceptional job. After the last committee markup, I made a specific point to sit down with my team members who worked to advance specific bills led by the Ranking Member and not only recognized their terrific work, but also pointed out just how difficult it is to get bills out of committee. There is a tremendous amount of work that goes into every single stage of the legislative process, and I consider it to be my duty as a supervisor to be there as a support system as my team members navigate challenges, and to guide them as well as I possibly can from my own experiences on the Hill. It is not hard to make people feel valued, yet so few people take the time to actually do so on the Hill.

6. What would you consider your greatest failure as a leader? What lessons did you learn from that experience?

One of my greatest failures as a leader is not always recognizing that mistakes shape our work and who we become as much, if not more so, than our successes. While it is my job to guide and advocate for my team members, I also find that I constantly want to protect them from making mistakes. While this is inherent in the role of a supervisor to some extent, it is also important to step back and realize that mistakes are not fatal and that they can ultimately make us all better in the work that we do. It is important to give employees the space they need to flourish even if that means that they are making some mistakes along the way.

### III. The Role of the PRC and its Commissioners

7. What do you believe are the most important responsibilities of the Postal Regulatory Commission (PRC), and what is your opinion of how those responsibilities have been fulfilled?

The Commission's core mission is to "ensure transparency and accountability of the United States Postal Service and foster a vital and efficient universal mail system" (Postal Regulatory Commission Mission Statement). In practice, the Commission is able to do this through the postal rate setting process, annual determinations of Postal Service compliance, and through oversight of the Postal Service's ability to meet service performance goals. Having not served on the Commission, I cannot fully evaluate how these responsibilities have been fulfilled, but it does appear that the Commission has been very engaged in addressing pricing regulations in recent years.

8. In your view, what are the major challenges facing the PRC?

I believe the PRC has a number of challenges, some of which are also listed below, but the one that will need to be addressed in the near future is finalizing the rule of the 10-year rate review under PAEA. I know this has been an incredibly long process with significant feedback from the stakeholder community along the way. What the PRC ultimately implements with respect to this rule will have a significant impact on the Postal Service's financial health.

9. What do you believe should be the PRC's top three priorities over the next five years?

**1) Careful Consideration of Universal Service Obligation:**

- a. From a cost perspective, the Commission is going to have continue to evaluate the USO. From a larger policy perspective, it is important to dig into this issue and to evaluate if there are more effective ways of defining it than what is currently under the law. The goal should always be to serve postal customers as effectively as possible and to ensure accessibility and affordability.

**2) Increase Engagement with Congress:**

- a. While Chairman Taub has made himself very accessible to Congress, I have often wondered how the Commission as a whole could be more engaged. This is an area I would like to explore further if confirmed to serve on the Commission.

**3) Review Process/Resources for Handling Negotiated Service Agreements (NSA's):**

- a. In FY 2018, the Commission approved 290 NSA's. This is a large number for a small agency that has limited resources. It will be important to assess how the Commission can most effectively handle this workload in the future.

10. If confirmed, how will you coordinate and communicate with PRC staff to accomplish the PRC's goals?

I would first make sure that I have a thorough understanding of the Commission's current strategic plan and would then make sure that I am communicating clearly with PRC staff to help accomplish these goals. I am a highly collaborative person, so I would look forward to tackling these goals as a team if confirmed.

#### IV. Policy Questions

11. Generally, what approaches do you advocate that the PRC take in regulating the Postal Service and why?

The PRC is responsible for ensuring the transparency and the accountability of the Postal Service through the postal rate setting process, annual determinations of Postal Service compliance, and through oversight of the Postal Service's ability to meet service performance goals. In respect to service, it is important for the PRC to continue demanding the highest quality data from the Postal Service in order to evaluate its cases effectively. If confirmed, I would be very focused on this, as well as diligent oversight of the Postal Service's ability to meet its service performance targets.

12. The Postal Service has been operating without a quorum on its bipartisan Board of Governors since 2014. What challenges do you believe the Postal Service faces without a Board quorum? How should the PRC approach its role given the vacancies on the Board of Governors?

In the absence of a quorum on the Postal Service Board of Governors, it is my understanding that the Board is limited from making operational decisions on the establishment of service standards, on approving annual financial statements, and on adopting official positions on legislative proposals, among others. Because the Board of Governors was completely vacant until last year, it has been an open question in the postal community regarding what powers the Postal Service had in the interim. It is very positive that Congress was able to confirm two Board members last year, and it is my understanding that they are working hard to get up to speed on the Postal Service's current financial situation. I also believe that the Postal Service faces challenges in regards to service issues without a quorum. The Postal Service has made a number of changes to their network in recent years, including the elimination of the overnight service standard. Unfortunately, the Postal Service never realized the cost savings that they predicted from their Operational Window Change (OWC). An October 2018 Postal Service Office of the Inspector General report found that the Postal Service only realized 5.6 percent of their projected savings, and that they were unlikely to ever realize their annual projections fully. It is important that the Board be fully functioning so that service issues can be accurately addressed.

13. 39 USC § 101 establishes the seven fundamental pillars of U.S. postal policy.

- a. If confirmed, what legislative or administrative reforms would you advocate for to help the PRC and the Postal Service ensure these policies are fully realized?

39 USC § 101(d) states that "Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis." The Commission has a critical role to play in the ratemaking process and has already undertaken the 10-year rate review as required by the PAEA to evaluate whether the system for regulating rates and Market Dominant products is working as intended, while also taking into account all of the Postal Service's outstanding liabilities. The PRC determined in their proposed rule that the rate system has not supported the health of the Postal Service as intended. Having not served on the Commission, I am not able to comment on this specific rule, but I do think it is vital that we address the Postal Service's financial health in the most effective way possible.

Having worked on various postal reform bills over the course of my career in the Senate, I definitely believe there are ways to address and enhance some of these pillars through legislation.

- b. Should any of these policies be reformed? If not, why not; and if so, in what ways?

I am generally comfortable with these pillars and believe they provide a broad spectrum of the various areas that impact postal policy.

- c. Specifically, 39 USC § 101(b) states, "The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that

effective postal services be insured to residents of both urban and rural communities." Do you support this policy goal or believe it should be changed in any way?

I absolutely support this policy goal and have substantially worked on both protecting and enhancing service over the course of my postal career on the Hill with respect to legislation.

*PRC Rate Review*

14. One of the core principles of the PAEA was to provide Postal Service customers, through the establishment of an inflation-based rate cap, with predictability and stability in pricing of the Postal Service's market dominant products. Pursuant to the PAEA, the PRC completed a review of whether the rate cap met the criteria laid out by 30 U.S.C. §3622, including stability, fairness, and generating adequate revenue to cover Postal Service costs. The PRC found that the cap did not meet all of these criteria, including that it did not allow for the Postal Service to reach long-term financial stability or maintain high quality service standards.

a. What is your opinion of the PRC's conclusions?

The Commission has a critical role to play in the ratemaking process. The PRC determined in their proposed rule that the rate system has not supported the health of the Postal Service as intended. Having not served on the Commission, I am not able to comment on this specific rule, but I do think it is vital that we address the Postal Service's financial health in the most effective way possible. I also believe it is essential for high quality service standards to be prioritized.

b. Do you believe any of the objectives or factors should be weighted above others?

Having not served on the Commission, I am not able to address this question fully from the perspective of a regulator. If confirmed, I would analyze these factors carefully in order to conduct an informed analysis. I would observe that section 3622 of title 39 of the U.S. Code mandates that each of the objectives "... shall be applied in conjunction with the others."

15. Some argue that much of the Postal Service's financial instability has been caused by its retiree healthcare prefunding payments.

a. Do you agree with this view?

I believe that the retiree health prefunding payments have greatly contributed to the Postal Service's financial instability over the past decade or so.

b. How, if at all, should the impact of the prefunding requirement affect the PRC's views on the Postal Service's business model?

Addressing the prefunding requirement is key in terms of addressing the Postal Service's current business model and improving the agency's financial health. The stress of the prefunding requirement has forced the Postal Service to cut costs at the price of service and has prevented the agency from investing in critical infrastructure. The sooner this requirement is addressed, the sooner the Postal Service can fully focus on modernizing.

16. As a result of its findings, the PRC issued a Notice of Proposed Rulemaking (NPR) that proposed changes to the market dominant rate system, including additional rate authorities that would allow the Postal Service to raise prices on certain products.<sup>1</sup> In considering price increases, how should the Postal Service balance the need for additional revenue with the possibility that higher rates could further reduce mail volume?

Data and technical analysis must play a central role in achieving this particular balance. It is also important that the postal landscape be considered as a whole and that different perspectives are integrated from across the postal stakeholder community.

#### *Service Standards and Performance*

17. The PAEA requires the Postal Service to consult with the PRC in establishing modern service standards, as well as in modifying the standards and planning for future standards. Do you believe PRC consultation has been effective thus far? What improvements, if any, would you make to ensure the Postal Service and PRC effectively collaborate in improving service performance and maintaining high quality service standards?

While I think it is important that the Commission already plays a consultative role in this process, I think there is room to evaluate whether the PRC's role could be strengthened with respect to greater enforcement of service performance. One potential way of enhancing the Commission's role would be through legislative reforms that would seek the PRC's guidance at various points throughout the monitoring process of service performance targets for the Postal Service. I also think it is important for the Commission to be as responsive as possible to Congress regarding these issues. One of the reasons the new internal mail measurement system takes into account rural areas is because of the letter my former bosses wrote to the Commission.

#### *Additional Proceedings*

18. On August 23, 2018, President Trump issued a Memorandum stating that "current international postal practices in the UPU [Universal Postal Union] do not align with United States economic and national security interests." On October 17, 2018, the White House announced the United States would withdraw from the UPU within one year, and concurred with a State Department recommendation that the United States adopt self-declared postal rates no later than January 1, 2020. The UPU held a special meeting in April 2019 to address these concerns and will hold an Extraordinary Congress in September 2019 to vote on rate

<sup>1</sup> Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).



reform proposals. What do you believe the PRC's role will be, and what challenges will it face, regarding postal policy issues and the potential implementation of self-declared rates? If confirmed, how would you prepare to meet these challenges?

It is my understanding that while the Commission would serve in its regulatory role, the State Department would take the lead in terms of negotiating treaties. As I understand the framework under the law, the Commission's role is limited to reviewing rates and classifications under this process and advising the State Department regarding compliance with U.S. postal laws. As the operator, the Postal Service must consider the impacts of remaining in or ultimately leaving the Universal Postal Union. I would imagine that this could be a highly sensitive case, and I would do all that I could to ensure that I am as well versed as possible in the Universal Postal Union's structure and the terminal dues system. Having not served on the Commission, it is difficult for me to fully evaluate the PRC's role in the process unless confirmed.

19. The President's Task Force on the U.S. Postal System recommended the Postal Service distinguish between "essential" mail and packages "for which a strong social or macroeconomic rationale exists for government protection" versus mail and packages that are commercial in nature, and recommended the Postal Service pursue price increases, reduce service costs, or exit the business line for the latter category. What are some of the challenges to the Postal Service and PRC in distinguishing between these categories, particularly given the essential nature of certain deliveries to customers who otherwise would not have access to mail services?

As was raised at the Committee's hearing on the Postal Task Force in March of this year, how do you objectively differentiate between products that are deemed "essential" to one person in one part of the country and "non-essential" to another? A number of factors could be at play (geographical location, season, etc.) in any given situation that would make it difficult to develop a one-size-fits-all approach. I think you could potentially run into a situation where a postal customer's access to the universal service obligation is compromised because a product they need may not be deemed objectively "essential." Having directly worked with constituents in rural areas on postal issues, I think this proposal is one that would have to be evaluated with the utmost caution.

20. The number of Negotiated Service Agreements (NSAs) has increased in recent years. In FY 2012, the PRC approved 54 NSAs, growing to 290 in FY 2018.<sup>2</sup> How do you view the increase in NSAs and what do you believe the PRC should do to handle the NSA workload and provide timely reviews?

This is a large number of NSA's to handle for a small agency with limited resources. It will be important to assess how the Commission can most effectively handle this workload in the future. Having not served on the Commission, I am not intimately familiar with the PRC's approval process of NSA's, but I would look forward to understanding and evaluating this process more comprehensively if confirmed.

<sup>2</sup> Postal Regulatory Commission: *Annual Report to the President and Congress, Fiscal Year 2018* (January 2019) (<https://www.prc.gov/sites/default/files/reports/PRC%2018%20Annual%20Report-FINAL-Digital%20Final.pdf>)

#### V. Relations with Congress and the Public

21. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Having worked in Congress for my entire professional life, I have a deep appreciation and understanding of the importance of agencies being responsive in a timely manner to Member requests for information. If confirmed, I would do everything I could to work with my fellow Commissioners to ensure that we are doing everything in our power to address Member requests in a thorough and timely fashion.

22. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

23. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes.

24. If confirmed, do you commit to take all reasonable steps to ensure that you and the PRC comply with deadlines established for requested information?

Yes.

25. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

26. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

27. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving U.S. Postal Service operations and effectiveness?

Yes.

28. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

29. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Yes.

#### VI. Assistance

30. Are these answers your own? Have you consulted with the U.S. Postal Service or any other interested parties? If so, please indicate which entities.

Yes, these answers are my own. While I have not consulted with the U.S. Postal Service, I have consulted with the Commission. The Commission has reviewed my answers for legal, regulatory, and technical accuracy.

I, ASHLEY POLING, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Ashley Poling Elizabeth Poling  
(Signature)

This 25<sup>th</sup> day of June, 2019

**Senator Maggie Hassan  
Post-Hearing Questions for the Record  
Submitted to Ashley E. Poling**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal  
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations  
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior  
Court of the District of Columbia  
Tuesday, July 16, 2019**

1. Last fall, I sent a letter with Sen. Shaheen to Postmaster General Megan Brennan encouraging the United States Postal Service to work with city officials to address the concerns raised by the citizens of Portsmouth regarding the relocation of the city's Post Office while the McIntyre Federal Building undergoes renovation. In a letter to Portsmouth officials, the Postal Service committed to returning the Portsmouth Post Office to a central location, if possible.
  - a. If confirmed, will you commit to providing my office with updates on the status of the decision on where the Portsmouth Post Office will be permanently housed, including what factors the United States Postal Service is considering to make that decision?

I absolutely commit to providing your office with updates on the status of the Portsmouth Post Office, if confirmed. I have specific experience with similar issues from my work with Senator Heidi Heitkamp of North Dakota. It is important for citizens to have centralized access to their post office, and it is important for the Postal Service and the Postal Regulatory Commission to do everything they can within their respective roles to make sure that customers are served as effectively as possible.

Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Ashley E. Poling

Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal  
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations  
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior  
Court of the District of Columbia  
Tuesday, July 16, 2019

- 1) The Postal Service is going through a challenging period with extreme financial pressure and a need to make critical changes. To survive, the Postal Service needs strong leadership, and that includes among its regulators.
  - a. What key leadership traits will you bring to the table in this role with the PRC?

I am confident that Congress has the ability to give this vital institution the tools it needs to address its serious financial challenges. However, this must be more than just a legislative effort – it must be an all-out collaboration of the entire postal community. My leadership style is best described as very approachable and highly collaborative. I have strong relationships across the entire postal stakeholder community from my years working on Capitol Hill. One of the strategic goals of the Postal Regulatory Commission is to “actively engage with Congress and stakeholders in support of a dynamic postal system.”<sup>1</sup> I believe that my proven ability to work on comprehensive postal reform in a highly bipartisan and bicameral way in Congress will serve me well in this new role as a Postal Regulatory Commissioner, if confirmed.

- 2) Given the recent reports of the Postal Service’s new business plan and the cuts to service infrastructure contained in the plan.
  - a. What do you believe the role of the PRC should be in evaluating the cost savings and impact on the financial health of USPS on structural changes that involve consolidation or changes in service?

It is my understanding that under current law, the Postal Service consults with the Commission in its establishment of service standards for Market Dominant products and continuously monitors the Postal Service’s results in meeting those service standards. If confirmed to the PRC, I would like to explore what additional authority the Commission has in terms of holding the Postal Service accountable in regards to service. As I mentioned during the hearing, there is also a potential role for Congress to play in terms of enhancing the Postal Service’s accountability when it comes to meeting service standards and performance through legislation.

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<sup>1</sup> Fiscal Year 2018 Annual Report to the President and Congress, Postal Regulatory Commission, p. 15.

- b. Given previous USPS decisions regarding consolidation failed to produce promised savings, should PRC play a role in preemptively reviewing proposed business plan changes, to ensure the financial underpinnings of proposed cost savings are accurate?

While I think it is important to explore what additional authority the Postal Regulatory Commission may have when it comes to service accountability, it is also important to note that the Postal Service serves in the role of the operator, while the Postal Regulatory Commission serves in the role of the regulator. It is my understanding that the Postal Service's Board of Governors plays a significant role in the long-term planning of the Postal Service, approves the Postal Service's annual financial, operating, and capital plans, and also sets postal policies. I am not familiar with the ins and outs of how the Operational Window Change (OWC) decision was made, but it is my understanding that the Postal Service made this decision because they thought it would amount to significant cost savings. Because last fall's USPS OIG report revealed that this was not the case, I think it is important to evaluate how greater oversight can be implemented so that the Postal Service is relying on accurate data and cost saving projections in the future. It is also my understanding that under current law, the Postal Service consults with the Commission in its establishment of service standards for Market Dominant products. Because this was a service standard change, it would seem that the Commission would have at least played a consultative role in the process. I am committed to exploring what the consultative role of the Commission entails, as well as what can be done in terms of holding the Postal Service accountable to strong service standards at the Commission level. I also believe that Congress could potentially have a role to play through legislation in terms of enhancing this oversight.

United States Senator Heidi Heitkamp  
North Dakota  
2013-2019

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July 14, 2019

To Whom It May Concern:

I enthusiastically support Ashley Poling's nomination for the Postal Regulatory Commission. Ashley possesses a unique blend of research expertise, perspective on bureaucratic and political dynamics, and intellectual curiosity that would make her well-suited to produce first-rate ideas and solutions. I have no doubt she will serve honorably and with enthusiasm.

Ashley served my U.S. Senate office with distinction and her work was thorough, informative and results oriented. She worked closely with me on improving service performance of the United States Postal Service (USPS) across the country and I am pleased that our work is now an important part of postal reform discussions. She was pivotal in moving forward our work with Congressman Mark Meadows of North Carolina ensuring we had bi-partisan support for the efforts.

Her work is always led with a commitment to hold the postal service accountable to taxpayers. I appreciate that she also couples that ethos with a keen understanding of the postal worker and their important role in the USPS.

Ashley would bring the same knowledge, insights from her work in this area, and thoughtful analysis to the Commission. She makes effective arguments using facts and data. Her congenial, collaborative approach that made her an excellent team player in my office will help her thrive in this new role.

I believe Ashley is a leader. Her analytical ability, credibility, and good judgment already make her a respected voice. I whole heartedly endorse her nomination and hope you will give it serious consideration.

Sincerely,



Heidi Heitkamp



Statement of Catherine E. Bird  
Before the Committee on  
Homeland Security and Governmental Affairs  
United States Senate  
July 16, 2019

Chairman Lankford, Ranking Member Sinema, Members of the Committee, thank you for the opportunity to discuss my nomination to become General Counsel of the Federal Labor Relations Authority. I would like to thank the Committee on Homeland Security and Governmental Affairs and its staff for all the courtesies they have shown me as I have prepared for this hearing. Additionally, I would like to thank the staff at the FLRA who have provided assistance during this process.

To start, I would like to acknowledge my parents, Gary and Linda Hoyer, who are with me today. My mother, who has been a teacher for over 40 years and my father, who works as a computer programmer at Dallas Theological Seminary in Texas, helped mold me to who I am today. I am extremely grateful for their constant support and guidance in my life.

It is an honor and privilege to be nominated by President Trump to serve as the General Counsel of the FLRA.

I grew up in a household which values service to others. As I evaluated various career paths to utilize my law degree, I quickly chose to use it in service to the American people. Our federal government serves many critical roles, from providing national security to ensuring the safety of our food, air, and water; from preserving our majestic National Parks to caring for our wounded warriors or those suffering from the devastating effects of the opioid crisis. The American people count on the federal government every day in so many ways. I have the utmost respect for the work of our federal government and for the dedicated public servants performing that work. If confirmed as General Counsel of the Federal Labor Relations Authority, I can assure you of my commitment to ensure that all federal employees are treated fairly and that their rights under the Federal Service Labor Management Relations Statute are respected. In particular, I will uphold the rights of employees to form, join, or assist any labor organization, or to refrain from any such activity, and their right to engage in collective bargaining.

I also believe, as stated in the President's Management Agenda, that those in public service must be accountable for mission-driven results and that agencies must have the necessary tools and resources to deliver those results. If confirmed, I would be guided by the need to maintain the smooth functioning of our government and never lose sight of the fact that agencies, managers, and all employees should be constantly striving to deliver mission outcomes defined and authorized by Congress, to provide excellent service to the public, and to be effective stewards of taxpayer dollars on behalf of the American people. I truly value the incredibly diverse, complex, and challenging work our government does, and I consider the FLRA's mission to administer the Statute as integral to achieving a well-functioning government. If confirmed as General Counsel of the FLRA, I would be honored to be a part of the Federal Labor Relations Authority's leadership in promoting stable, constructive labor relations that contribute to a more effective and efficient government.

My career has provided me with the skill-set and experience needed to excel in the position for which I am being considered. During my time at the Department of Health and Human Services, I have worked on three specific issues that would benefit me if I were to be confirmed to this position.

First, I participated in term-bargaining negotiations on behalf of HHS management in discussion with the National Treasury Employees Union. This experience taught me the importance of an objective and impartial Federal Labor Relations Authority in ensuring that labor negotiations proceed efficiently and effectively. This first-hand experience of the collective bargaining process has given me a keen understanding and sense of the dynamics of the process and the ability to understand the process in a practical and not only theoretical manner. If confirmed as General Counsel, I will strongly support the need for good faith negotiations as envisioned in the Statute and case law, and I will apply the law independently and impartially.

Second, in my role as Principal Deputy Assistant Secretary for Administration, I oversaw a highly successful Federal Employee Viewpoint Survey program, centered on employee engagement. If confirmed, I vow to take employee engagement seriously and do everything within my authority to improve employee morale in the Office of the General Counsel. While I assist in the supervision of nearly 900 employees at HHS, I welcome the views and opinions of all employees and encourage them to speak their minds freely and respectfully. My time at HHS has taught me to rely on a wide range of employees at all levels when dealing with the complex issues that arise.

Third, in my role at HHS, and in other positions, I have been entrusted by employees to investigate complaints and address issues they have raised to my attention. These situations have required me to critically look at the facts of a case, apply applicable rules and regulations and come to a fair and impartial decision. I would apply a similar approach in evaluating charges of unfair labor practices or representational disputes at the FLRA, viewing each allegation with an open mind. My decisions would be grounded in the Statute, regulations, and case law, using my best, independent judgment in each case.

I believe that my experience and passion will provide value to not only the FLRA, but by embracing a customer-service approach, will also benefit the many federal agencies, labor organizations, and employees who rely on the work that FLRA does.

Thank you for considering my nomination. I look forward to answering any questions you may have.

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### I. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
General Counsel of the Federal Labor Relations Authority	April 11, 2019

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Catherine	Elaine	Bird	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 200 Independence Ave, S.W., Suite 309F		
City: Washington	State: D.C.	Zip: 20002	City: Washington	State: D.C.	Zip: 20201

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Washington State	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Catherine	Elaine	Hoyer		YES	01/1984 Est n	03/2009 Est ✓
Cassie					01/1984 Est o	Present

<i>Birth Year and Place</i>	
<i>Year of Birth</i> (Do not include month and day.)	<i>Place of Birth</i>
1984	San Antonio, Texas

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> (current spouse only)			
<i>Spouse's First Name</i>	<i>Spouse's Middle Name</i>	<i>Spouse's Last Name</i>	<i>Spouse's Suffix</i>

<i>Spouse's Other Names Used</i> (current spouse only)						
<i>First Name</i>	<i>Middle Name</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Check if Middle Name</i>	<i>Name Used From</i> (Month/Year) (Check box if estimate)	<i>Name Used To</i> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix

## 2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/on- line school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Howard Payne University	University	02/2002 <input type="checkbox"/> Est <input type="checkbox"/>	05/2006 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	Bachelor of Science	5/2006
Baylor Law School	Law School	08/2007 <input type="checkbox"/> Est <input type="checkbox"/>	05/2010 <input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	5/2010
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> Present <input type="checkbox"/>		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPIS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) "present" box if still employed
Other Federal Employment	U.S. Department of Health and Human Services	Principal Deputy Assistant Secretary for Administration	Washington, D.C.	05/2017	Present
State Government	California State Senate	Legislative Director for Senator Moorlach	Sacramento, CA	08/2016	05/2017
State Government	California State Senate	Legislative Aide for Senator Gaines	Sacramento, CA	02/2013	08/2015
Non-government employment	Simpson University	Student Life Specialist	Redding, CA	06/2010	05/2014
Non-government employment	Blalock & Blalock	Law Clerk	Redding, CA	06/2010	11/2011
Unemployment	I was in law school and then studying for Texas Bar Exam	N/A	Waco, TX	06/2009	08/2010
Non-government employment	Thomas Fulkerson Law Firm	Summer Law Clerk	Houston, TX	06/2009 Est <input checked="" type="checkbox"/>	08/2009 Est <input checked="" type="checkbox"/>
Non-government employment	Jackson Walker, LLP	Summer Law Clerk	Dallas, TX	05/2009 Est <input checked="" type="checkbox"/>	06/2009 Est <input checked="" type="checkbox"/>
Unemployment	Study abroad summer of 2008 and law school Aug. 2008-Mar 2009	N/A	Waco, TX	06/2008	05/2009 Est <input checked="" type="checkbox"/>
Non-government employment	Thomas Fulkerson Law Firm	Summer Law Clerk	Houston, TX	05/2008	06/2008

Unemployment	I was in Law School	N/A	Waco, TX	08/2007	05/2008
Non-Government employment	Dallas Theological Seminary	Data Entry Clerk	Dallas, TX	04/2007 Est <input checked="" type="checkbox"/>	08/2007 Est <input checked="" type="checkbox"/>
Unemployment	Took a few months off in preparation for law school	N/A	Dallas, TX	01/2007 Est <input checked="" type="checkbox"/>	04/2007 Est <input checked="" type="checkbox"/>
Other Federal employment	Subcommittee on the Constitution and Civil Justice of the U.S. House Committee on the Judiciary	Staff Assistant	Washington, DC	09/2005 Est <input checked="" type="checkbox"/>	01/2007 Est <input checked="" type="checkbox"/>
Non-government employment	A. Herndon and Associates	Document Scanner	Dallas, TX	05/2006 Est <input checked="" type="checkbox"/>	08/2006 Est <input checked="" type="checkbox"/>
Self-employed	N/A	Babysitter, Nanny, Tutor	Brownwood, TX	08/2004	05/2005
Non-government employment	Howard Payne University	Student Aide	Brownwood, TX	05/2005 Est <input checked="" type="checkbox"/>	05/2006 Est <input checked="" type="checkbox"/>
Non-government employment	Quality Body Shop	Receptionist	Brownwood, TX	08/2004 Est <input checked="" type="checkbox"/>	12/2004 Est <input checked="" type="checkbox"/>
Non-government employment	Howard Payne University	Student Life Assistant	Brownwood, TX	05/2003 Est <input checked="" type="checkbox"/>	05/2004 Est <input checked="" type="checkbox"/>
Non-government employment	Dallas Theological Seminary	Accounts Payable Clerk	Dallas, TX	05/2003 Est <input checked="" type="checkbox"/>	08/2003 Est <input checked="" type="checkbox"/>
Unemployed	Freshman Year of College	N/A	Brownwood, TX	05/2002	05/2003
Non-government employment	Dallas Theological Seminary	Accounts Payable Clerk	Dallas, TX	05/2002 Est <input checked="" type="checkbox"/>	08/2002 Est <input checked="" type="checkbox"/>
Unemployed	Senior year of high school	N/A	Dallas, TX	01/2002	05/2002 Est <input checked="" type="checkbox"/>

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
Subcommittee on the Constitution and Civil	Internship	05/2005 Est <input checked="" type="checkbox"/>	08/2005 Est <input checked="" type="checkbox"/>

Justice of the U.S. House Committee on the Judiciary			
		Est □	Est □
		Est □	Est □

#### 4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

While at the U.S. Department of Health and Human Services I represented management in labor negotiations. I will work with FLRA ethics officers to ensure that I avoid actual or apparent conflicts of interest and will follow the advice of FLRA ethics officers concerning recusals.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

While working as a Legislative Director and Legislative Aide in the California State Senate, I lobbied in support of my bosses' bills. I did all of this in my official capacity as a state government employee.

#### 5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Halton W. Sumners Scholarship  
Full Tuition scholarship to Baylor Law School  
Summa Cum Laude, Howard Payne University  
Magna Cum Laude, Baylor Law School

#### 6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.



Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Redding Republican Women	2012-2014 (approx.)	Board Member
Sacramento Mental Health Board	2017	Board Member
League of Women Voters	2012-2014 (approx.)	Member
Women's Fund	2012-2014 (approx.)	Member
Texas State Bar	2010-Present	Member
California State Bar	2011-Present	Member

#### 7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
Shasta County Supervisor	Candidate Only	2012	N/A


(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Brian Dahle for California State Assembly	Volunteer	Organized other volunteers and conducted research	2012

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year. None

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>


#### 8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Caring to Correct the Curriculum	Texas Journal of Free Enterprise and Public Policy	2006


(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>


(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Speeches during my campaign	Candidates Forums	March 2012-June 2012


### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you?  
(Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)  
No
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?  
No
- Have you been charged, convicted, or sentenced of a crime in any court?  
No
- Have you been or are you currently on probation or parole?  
No
- Are you currently on trial or awaiting a trial on criminal charges?  
No
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

No

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

1) Name of the law enforcement agency that arrested/cited/summoned you:

2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No

1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros." etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: Yes / No

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense. Yes/  
No

N) Provide explanation:



### 10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings. No

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. No

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

#### **11. Breach of Professional Ethics**

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed. No

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? No

#### **12. Tax Compliance**

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED****13. Lobbying**

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). No

**14. Outside Positions**

See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

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### 15. Agreements or Arrangements

☒ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

States and Terms of Any Agreement or Arrangement	Parties	Date (month/year)

### 16. Additional Financial Data

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED**

**SIGNATURE AND DATE**

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Carlton B. B.

This 27<sup>th</sup> day of May, 2019

**REDACTED**

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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April 18, 2019

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Catherine Bird, who has been nominated by President Trump for the position of General Counsel, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

**DAVID APOL**  
Digitally signed by DAVID  
APOL  
Date: 2019.04.18 12:53:13  
+0400

David J. Apol  
General Counsel

Enclosures **REDACTED**

April 12, 2019

Rebecca J. Osborne, Esq.  
Acting Deputy Solicitor and Alternate Designated Agency Ethics Official  
Federal Labor Relations Authority  
1400 K St., NW  
Washington, DC 20424

Dear Ms. Osborne:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of General Counsel, Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I will meet in person with you during the first week of my service in the position of General Counsel in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I further understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13770) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Bird".

Catherine Bird



**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire  
For the Nomination of Catherine Bird to be General Counsel of the  
Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be General Counsel of the Federal Labor Relations Authority (FLRA)?

No.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel of the FLRA? If so, what are they, and to whom were the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

While at the U.S. Department of Health and Human Services (HHS) I represented management in labor negotiations. I will work with FLRA ethics officers to ensure that I avoid actual or apparent conflicts of interest and will follow the advice of FLRA ethics officers concerning recusals.

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be General Counsel of the FLRA?

I have spent the majority of my career working as a government employee, in both management and non-management positions. As such, I am well aware of the challenges facing both groups and the need to have an independent entity, such as the FLRA, assist in finding solutions to disputes. I currently oversee the Human Resources division at

HHS. In this role, I have participated in investigations and have impartially evaluated the merits of allegations and disputes. Additionally, during my time at Simpson University, I oversaw the Student Conduct Board and was charged with ensuring students were provided with a fair and equitable process to present their cases. I listened to both sides objectively, exercised good judgment, and rendered fair decisions.

6. Please describe:

a. Your leadership and management style.

I believe in trusting my employees to effectively perform their duties. If guidance is needed, I readily step in to assist and work hard to ensure my employees are set up for success.

b. Your experience managing personnel.

In most of my positions, I have managed a team of employees. In my current position, I oversee management of six division leads, each with large portfolios and a total of close to 900 employees under them. These employees are located across the country.

c. What is the largest number of people that have worked under you?

In my current role, I assist with overseeing a division of close to 900 employees.

### III. Role of General Counsel, FLRA

7. Please describe your view of the agency's core mission and the General Counsel's role in achieving that mission.

The FLRA provides leadership in establishing policies and guidance related to federal-sector labor management relations and compliance with the Federal Service Labor-Management Relations Statute. The FLRA's mission is to protect rights and facilitate stable relationships among Federal agencies, labor organizations, and employees, while advancing an effective and efficient Government through the administration of the Statute. The General Counsel plays a vital role in carrying out this mission by investigating and, if warranted, prosecuting charges of unfair labor practices and determining appropriate bargaining units.

8. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

**I have worked swiftly to investigate whistleblower complaints brought to my attention and have ensured that no retaliation was taken against the whistleblower.**

- b. How do you plan to implement policies within the FLRA Office of General Counsel to encourage employees to bring constructive suggestions forward without the fear of reprisal?

**While it is premature for me to speak on any specific policies, I strive to create an environment where my employees are encouraged to express all constructive viewpoints.**

- c. Do you commit without reservation to work to ensure that any whistleblower within FLRA does not face retaliation?

Yes.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

9. What are the top challenges facing the FLRA Office of General Counsel today? What steps do you plan to take, if confirmed, to address these challenges?

**It is premature for me to comment on the top challenges facing the office since I am not currently in the office. However, I am aware of a backlog of cases. I will gather advice and counsel from the top managers in the Office of the General Counsel on addressing this challenge and any other challenges facing the office.**

#### **IV. Policy Questions**

10. What is your assessment of the current state of federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

**I don't believe I am currently in a position to assess the state of federal labor-management relations on a government-wide basis or whether improvements should be made. From my vantage point at HHIS, I have found that having a strong and impartial FLRA is essential for a well-functioning federal labor-management relations system.**

11. Given your understanding of the FLRA's mission, do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

**It is premature for me to comment on improvements to the Statute until I have been involved in its implementation.**

12. The FLRA Office of General Counsel has been without a General Counsel since January 2017. During that time, the FLRA Office of General Counsel has been unable to issue unfair labor practice (ULP) complaints or rule on ULP appeals decisions for those charges found by a FLRA Regional Office to lack merit. If confirmed, how will you ensure that these cases are decided on in a timely and efficient manner?

**It is premature for me to comment on a specific plan. However, I would listen to the advice and counsel of the top managers in the Office of the General Counsel and quickly develop a plan to effectively and fairly address the cases.**

13. What considerations do you believe should guide the FLRA Office of General Counsel in deciding to investigate a ULP charge? What considerations should guide ULP appeals decisions by the FLRA?

**The General Counsel should be guided by the provisions of Chapter 71 of title 5, United States Code, FLRA regulations, and relevant case law.**

14. What do you believe is the appropriate role of the FLRA Office of General Counsel in union elections?

**The role established in Chapter 71, FLRA regulations, and relevant case law.**

15. What do you believe should guide determinations of national consultation rights and consultation rights for government-wide rules and regulations?

**I believe the provisions of Chapter 71, FLRA regulations, and relevant case law should be used as the guide.**

16. What considerations do you believe should guide determinations on representation petitions before the FLRA Office of General Counsel?

**I believe the provisions of Chapter 71, FLRA regulations, and relevant case law should be used as the guide.**

17. Under what circumstances do you believe the FLRA Office of General Counsel should deny a motion to withdraw a claim before the office?

**I would look to the Statute, applicable regulations, and relevant case law to make such determinations.**

18. What do you believe is the role of the General Counsel in identifying and remedying terms in collective bargaining agreements that may violate federal law or regulation?

The General Counsel would take no action unless a charge of unfair labor practice is filed with the Office of the General Counsel. Should such a case be filed, I would need to review the specific circumstances and determine whether the particular fact pattern would constitute a violation of the Statute within the jurisdiction of the General Counsel. I do not think speculating about hypothetical issues would be appropriate.

#### V. Relations with Congress

19. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

20. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

21. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes, in accordance with applicable law.

#### VI. Assistance

22. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

These answers are my own. I received technical assistance from the FLRA.

**Minority Supplemental Pre-hearing Questionnaire  
For the Nomination of Catherine Bird to be  
General Counsel, Federal Labor Relations Board**

**I. Nomination Process and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Have you been asked to pledge loyalty to the President, Administration, or any other government official?

No.

3. Were there any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

4. Have you ever represented a party in a matter before or involving the Federal Labor Relations Authority (FLRA)? If so, please describe the matter(s) and the nature of the representation.

**I represented the U.S. Department of Health and Human Services (HHS) before the Federal Service Impasses Panel. I assisted with the brief.**

5. Have you made any commitments with respect to the policies and principles you will attempt to implement as General Counsel of the FLRA? If so, what are they, and to whom were the commitments made?

No.

**II. Background of Nominee**

6. Why do you want to be General Counsel of the FLRA?

**I strongly believe in the importance of an efficient and effective government which is providing the best service possible to the American people. For this to be accomplished, there must be a healthy relationship between federal employees and their management. I see the role of the General Counsel at the FLRA as essential in harmonizing this relationship.**

7. Please describe your experience, if any, conducting investigations and impartially evaluating the merits of allegations or disputes.

**I currently oversee the Human Resources division at HHS. In this role, I have participated in investigations and have impartially evaluated the merits of allegations and disputes. Additionally, during my time at Simpson University, I oversaw the Student Conduct Board and was charged with ensuring students were provided with a fair and equitable process to present their cases. I listened to both sides objectively, exercised good judgment, and rendered fair decisions.**

8. Please describe your experience, if any, with prosecuting unfair labor practice (ULP) complaints.

**I have not prosecuted an unfair labor practice complaint.**

9. If confirmed, you will be responsible for reviewing appeals of decisions issued by Regional Directors regarding the merits of ULP charges. Do you believe you will review and adjudicate appeals that come before you with good judgement and impartiality? Please explain, citing examples of prior work or experience that could bear on your abilities, if applicable.

**Yes, I will exercise good judgement and impartiality. I currently oversee the Human Resources division at HHS. In this role, I have impartially evaluated the merits of allegations and disputes. Additionally, during my time at Simpson University, I oversaw the Student Conduct Board and was charged with ensuring students were provided with a fair and equitable process to present their cases. I listened to both sides objectively, exercised good judgment, and rendered fair decisions.**

10. If confirmed as General Counsel of the FLRA, you would be responsible for all Office of General Counsel (OGC) staff at headquarters and at regional offices around the country. Please describe any experience you have managing staff remotely.

**In my current position, I oversee staff across the country.**

11. Please describe:

a) Your leadership and management style.

**I believe in trusting my employees to effectively perform their duties. If guidance is needed, I readily step in to assist and work hard to ensure my employees are set up for success.**

b) Your experience managing personnel.

**In most of my positions, I have managed a team of employees. In my current position, I oversee management of six division leads, each with large portfolios and a total of close to 900 employees under them. These employees are located across the country.**

c) What is the largest number of people that have worked under you?

**In my current role, I assist in overseeing a division with close to 900 employees.**

12. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates?

**Yes. All viewpoints should be heard to make an informed decision.**

13. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

**I believe my role as an employee is to ensure my supervisors are well aware of all viewpoints before they make a decision. Therefore, I have disagreed and aggressively advocated for a specific position. I have been successful.**

14. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

**I strive to always do what is in the best interest of the country. Politics do not play a role in that decision.**

15. What would you consider your greatest successes as a leader?

**I am most successful when I build a team and provide the support necessary to accomplish my organization's mission.**

16. What would you consider your greatest failure as a leader? What lessons did you learn from that experience?



I fail when my employees have found themselves unequipped to accomplish what I have asked of them. These experiences have taught me to be fully attuned to the needs of my team and how to anticipate the tools they will require.

17. During your career, has your conduct as a government employee ever been subject to an investigation or audit by an Inspector General, Office of Special Counsel, Department of Justice, agency Equal Employment Opportunity office or investigator, or any other federal or state investigative entity? If so, please describe the nature of the allegations/conduct and the outcome of the investigation(s) or audit(s).

No.

*Experience with Unions*

18. Please list and describe your professional experience with labor unions.

While working for the California State Senate, I interacted with labor unions when they were a stakeholder in legislation. While working at HHS, I have participated in labor relations.

19. Please elaborate on your recent role representing Department of Health and Human Services (HHS) management in labor negotiations.

I provided support and counsel to the management team during labor negotiations.

20. Have you participated in any labor negotiations on behalf of any other agency besides HHS? If so, please elaborate on those circumstances.

Yes, I briefly provided support and counsel to the management team at U.S. Department of Veterans Affairs (VA).

21. Have you ever participated in labor negotiations that resulted in a bargaining impasse? If so, please describe your role and the outcome of the impasse(s).

Yes, the labor negotiations between HHS and the National Treasury Employees Union (NTEU) resulted in impasse. I provided support and counsel to the management team during those negotiations. FSIP heard the case and made a determination.

22. How would you characterize good-faith labor negotiations?

I would look to Chapter 71, as well as court cases and Authority precedent, to determine the parameters of good faith negotiations.

- a) In your view, why are good-faith negotiations important to the collective bargaining process?

**Good-faith negotiations should result in a collective bargaining agreement which furthers an effective and efficient government.**

23. Please describe, to the best of your knowledge, any unfair labor practice (ULP) charges or complaints against HHS during your tenure.

**HHS has had unfair labor practice charges filed against it regarding labor negotiations.**

- a) Are you aware that any such charges have been substantiated?

**To my knowledge, no.**

- b) Have you been involved in responding to any ULP charges or complaints while at HHS?

**I have provided support and counsel in responding to some of the charges.**

24. Please describe, to the best of your knowledge, any ULP or charges or complaints brought by HHS during your tenure.

**I am unaware of any.**

- a) Are you aware that any such charges have been substantiated?

**Since I am unaware of any charges or complaints, no.**

- b) Have you been involved in bringing ULP charges or complaints while at HHS?

**Not to my knowledge.**

25. Have you ever been named in an ULP charge or complaint? If yes, please elaborate on each charge or complaint.

**I was named in a complaint brought against the VA labor negotiations team. However, I am unaware of the details of the charge or complaint.**

### **III. Policy Questions**

26. The FLRA has been without a General Counsel for over 18 months (since November 2017). This has resulted in a number of issues, including a backlog of over 200 cases that have been recommended for prosecution.

a) If confirmed, how would you address the case backlog?

**It is premature for me to comment on a specific plan. However, I would listen to the advice and counsel of the top managers in the Office of the General Counsel and quickly develop a plan to address the case backlog.**

b) How will you balance efficiency and quality when dealing with the backlog?

**It is premature for me to comment on a specific plan. However, I would listen to the advice and counsel of the top managers in the Office of the General Counsel and quickly develop a plan to efficiently and fairly address the cases.**

c) Under Chairman Kiko's leadership, the FLRA has closed two major regional offices in Boston and Dallas. As a result, the FLRA's capacity to prosecute has been diminished by 21%. Do you have any concerns that your ability to tackle the backlog will be impeded by a diminished staff?

**It is premature for me to determine what concerns, if any, I have. However, I would work with the Chairman to ensure that the Office of the General Counsel is staffed to effectively address its workload.**

d) If confirmed, under what circumstances would you decline to issue a complaint for any of the pending cases recommended for prosecution?

**I would have to look at the specific facts and circumstances of the case before me and the law and make a determination at that time on each and every case. I cannot prejudge the outcome of any particular case.**

27. Employee morale at the FLRA has plummeted 31 points in the last two years on the Federal Employee Viewpoint Survey (FEVS). The Partnership for Public Service recently ranked the FLRA 27 of 29 small agencies in its Best Places to Work rankings.

a) In your view, how does employee morale affect workplace efficacy?

**Depending on the specific circumstances, employee moral can affect workplace efficacy.**

b) What steps would you take as a leader within the agency to bolster employee morale?

**It is premature for me to comment on specific steps. However, I would work with the Chairman and OGC management to bolster morale.**

- c) The Deputy General Counsel issued a follow-up survey to the Office of General Counsel staff in response to the agency's overall poor FEVS performance. At a hearing in front of the House Committee on Oversight and Reform, Chairman Kiko refused to provide Congress with results from the follow-up survey, citing confidentiality concerns. If confirmed, will you commit to providing those survey result – with appropriate redactions of Personally Identifiable Information—to Congress?

**I can commit to providing the Congress with appropriate information about decisions I make in the future, consistent with applicable law. Regarding comments of FLRA staff made prior to my appointment, if confirmed, I would need to review the circumstances of any such statements and consult with the appropriate FLRA officials, including the Solicitor, before making any determination about their disclosure.**

28. In December 2018, Chairman Kiko decertified the FLRA's Union of Authority Employees, citing her interpretation of the Federal Service Labor-Management Relations Statute (the Statute) as precluding FLRA employees from unionizing. Do you agree with Chairman Kiko's interpretation of the Statute? Please explain.

**While this is a matter under the authority of the Chairman, my understanding is that the Statute, on its face, excludes the FLRA from coverage.**

#### *Labor Relations*

29. Please discuss your views on the role of collective bargaining in the federal workforce.

**Collective bargaining in the federal sector is in the public interest. Congress envisioned the Statute as the primary means by which the FLRA would protect the rights of, and facilitate the collective-bargaining relationships among federal agencies, labor organizations, and employees.**

30. The current FLRA board has been overturning arbitration cases at an unprecedented rate – under Chairman Kiko, the FLRA has overruled arbitrators 51 times, and each was in favor of the agency involved. The Federal Education Association, a union representing Defense Department education employees, has sued the FLRA, saying that the board has an anti-union bias. Please discuss your understanding of the situation.

**I am not familiar with this line of cases of the Authority, the statistic mentioned, or the litigation referred to.**

31. What is your view of the President's 2018 Executive Orders 13836, 13837, and 13839?

- a) How do you view telecommuting rights for federal workers?

- b) How do you view recent attempts by agencies to charge unions rent for office space?
- c) How do you view recent proposals to standardize Performance Improvement Plans at 30 days across government?
- d) Please discuss your views on official time.

Because the Executive Order are the subject of pending litigation, it would not be appropriate for me to express an opinion or offer speculation on them. If confirmed as General Counsel, I could be called on to interpret the Executive Orders or the subject matter contained therein. As mentioned, my decisions and actions would be guided by the Statute, Chapter 71 of title 5.

- 32. In your view, can an agency implement a collective bargaining contract without the full and explicit agreement of its labor union counterpart?

This or a similar issue may be before the FLRA and/or the courts, and it would not be appropriate for me to comment or speculate on pending cases. I would need to understand the particular facts and circumstances at issue and then would apply the provisions of Chapter 71 and applicable regulations and case law.

**IV. Relations with Congress and the Public**

33. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Yes.

34. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

35. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes.

36. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

37. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

38. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving your office's operations and effectiveness?

Yes.

39. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

40. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Yes.

**V. Assistance**

41. Are these answers completely your own? If not, who has provided you with assistance?

**These answers are my own. I received technical assistance from the FLRA.**

42. Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

**I received technical assistance from the FLRA.**

I, Catherine Bird, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Catherine Bird  
(Signature)

This 2nd day of July, 2019



**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Minority Supplemental Questionnaire for the Nomination of Catherine Bird to be  
General Counsel, Federal Labor Relations Authority**

**July 12, 2019**

1. For each position you have held at Department of Health and Human Services (HHS), please provide the following:
  - a. Start and end dates;
  - b. Title;
  - c. Office/division;
  - d. type of appointment (e.g. Schedule A, Schedule C, Noncareer SES); and
  - e. The title/position of your direct supervisor(s).
  - Start and end dates: May 22, 2017-July 30, 2017
  - Title: Advisor
  - Office/Division: Immediate Office of the Secretary, Office of the White House Liaison
  - Type of appointment: Schedule C
  - Title/Position of direct supervisor: Timothy Clark – IOS/White House Liaison for Political Personnel Boards and Commissions
  - Start and end dates: July 31, 2017-May 12, 2018
  - Title: Advisor and Legal Counsel
  - Office/Division: Office of the General Counsel
  - Type of appointment: Schedule C
  - Title/Position of direct supervisor: Heather Flick, Deputy General Counsel
  - Start and end dates: May 13, 2018-February 2, 2019
  - Title: Associate Deputy General Counsel
  - Office/Division: Office of the General Counsel
  - Type of appointment: Schedule C
  - Title/Position of direct supervisor: Robert Charrow, General Counsel
  - Start and end dates: August 20, 2018 – February 2, 2019
  - Title: Acting Principal Deputy Assistant Secretary for Administration
  - Office/Division: Office of the Assistant Secretary for Administration
  - Type of appointment: Schedule C
  - Title/Position of direct supervisor: Scott Rowell, Assistant Secretary for Administration
  - Start and end dates: February 2, 2019-present\*
  - Title: Principal Deputy Assistant Secretary for Administration
  - Office/Division: Office of the Assistant Secretary for Administration
  - Type of appointment: NC SES
  - Title/Position of direct supervisor: Scott Rowell, Assistant Secretary for Administration

\* I have maintained some responsibilities in the Office of the General Counsel. For those responsibilities, Robert Charrow, General Counsel, is my supervisor. Additionally, for the last few weeks, I have provided support as acting Deputy Chief of Staff while the current Deputy Chief of Staff is on maternity leave.
2. During your staff interview you stated that you were recused from working on labor negotiations for the HHS following the announcement of your nomination. Please provide the following:
  - a. the exact date on which you ceased work on HHS labor negotiations;

- i. April 4, 2019
  - b. the specific terms and scope of your recusal(s) (*For example, whether you were formally removed from the negotiation team, walled off from all related communications, removed from other Human Resources matters, etc.*); and
    - i. On April 4, 2019, I formally recused myself via email to David Mansdoerfer and Darrell Hoffman from all labor relations issues, which I understood to mean all things related to labor relations activity that could potentially come before the General Counsel of the FLRA. Accordingly, after April 4, 2019, I had no involvement with the negotiation team and provided no counsel or assistance to the team on matters related to HHS labor negotiations.
  - c. Copies of any documents memorializing the terms of any recusal(s) resulting from your actual or expected nomination.
    - i. Enclosed email.
- 3. In your response to Question 20 of the Minority Supplemental Pre-hearing Questionnaire, you stated that while employed by HHS you "briefly provided support and counsel to the management team at the U.S. Department of Veterans Affairs (VA)" during labor negotiations. During your staff interview you stated that this involvement was ad hoc, but that a formal agreement was in place regarding your work with the VA's management team.
  - a. Please explain why you did not list your position with VA under Section 3(B) of the HSGAC Biographical Questionnaire.
    - i. As stated, while working at HHS, I provided *ad hoc* support for the VA. When I completed the questionnaire, I didn't feel as if question 3(B) included this issue. While it is correct that there was an MOA in place, in fact, during the detail, I provided only limited assistance on a sporadic basis, as requested by VA. I considered my assistance to VA as being performed in my capacity as an HHS employee and thus not a separate position. I apologize for the oversight and any confusion it may have caused.
  - b. Please provide copies of all agreements (including any modifications/addenda) under which you performed work for the VA.
    - i. Enclosed Memorandum of Agreement (MOA)
  - c. Please provide the exact start and end dates for your work with the VA. If the actual dates on which you began or ceased working with the VA differ from any dates identified in any written agreement, please explain.
    - i. I started working with the VA on August 20, 2018. Per the terms of the MOA, the detail was extended beyond the initial 120-day period by informal mutual agreement of the parties. For additional context, to the best of my recollection, other than a for a few weeks during the late fall and winter, my role with VA was very limited. For most weeks of the detail, I provided little or no assistance to VA. I don't recall the exact date, but I officially ended work with VA in mid-March of 2019. To my knowledge, the completion of my detail was not documented.
- 4. During your staff interview you stated that you served as a member of the Interagency Labor Relations Working Group (LRG) established by Executive Order 13836 (May 25, 2018), including serving as the co-chair of the Committee on Model Agreements.
  - a. Please explain why you did not list your position with the LRG under Section 3(B) of the HSGAC Biographical Questionnaire.
    - i. I represented HHS in my official capacity during LRG meetings. I did not view my interactions with the LRG as separate and distinct from my HHS responsibilities.

- b. Please provide the start and end dates of your involvement in the LRG.
  - i. Start -Approximately July 10, 2018
  - ii. End- Approximately February 20, 2019, in light of the fact I was being considered for this position.
- c. Other than the Committee on Model Agreements, please identify any committees you participated in as a member of the LRG and describe the activities of those committees during your tenure.
  - i. I was Co-Chair of the Model Collective Bargaining Agreement (CBA) Language and Analysis of Government-wide CBA Provisions, which was the only Committee I participated in.
  - ii. The Committee analyzed provisions of term CBAs on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights and examined general trends and commonalities across term CBAs, and their effects on bargaining-unit operations.
- d. What were the objectives of the Committee on Model Agreements and what were your responsibilities as co-chair?
  - i. As co-chair, I helped facilitate communications.
  - ii. The objective was to analyze provisions of CBA and examine general trends.
- e. What other agencies or entities participated in the Committee on Model Agreements?
  - i. I did not maintain records on participants, and ended my participation in February, shortly after the end of the partial government shutdown. However, I have some recollection of representatives from the Department of Education and the Office of Personnel Management participating.
- f. Please describe any communications you have had with the LRG or its members following your formal departure from the group.
  - i. I have had informal, social interactions or communications with members of the LRG on a few occasions, but I don't recall any substantive communications with LRG members regarding labor relation issues since leaving the group in February. After February, for a brief period, I may have responded to general inquiries from other agency employees regarding an HHS matter that was before the FLRA Federal Service Impasses Panel. I am not sure whether any of these were from LRG members, and the communications were not substantive, but in the nature of status updates.

**Bird, Catherine (OS/OGC)**

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**From:** Bird, Catherine (OS/OGC)  
**Sent:** Thursday, April 4, 2019 6:41 PM  
**To:** Hoffman, Darrell (OS/ASA/IO); Mansdoerfer, David (HHS/OASH)  
**Subject:** Recusal

Hi Darrell and David,

Effective immediately, due to my pending nomination as the General Counsel of FLRA, I am recusing myself from all labor relations issues.

Thank you,  
Catherine Bird  
Principal Deputy Assistant Secretary for Administration Department of Health and Human Services

**MEMORANDUM OF AGREEMENT  
BETWEEN  
DEPARTMENT OF VETERANS AFFAIRS  
(HOST AGENCY)  
AND  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
(PARENT AGENCY)**

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**A. PURPOSE**

This Memorandum of Agreement (MOA) documents the reimbursable interagency agreement under which (i) David Mansdoerfer, Deputy Assistant Secretary for Health for Operations, (ii) Catherine Bird, Associate Deputy General Counsel, (iii) and Heather Flick, Deputy General Counsel (the Detailees) will be episodically detailed from the Department of Health and Human Services (HHS) to assist the Department of Veterans Affairs (VA) subject to the terms and conditions below.

**B. GENERAL**

Both parties agree that the Detailees have skills, knowledge, and experience that VA currently does not have. The work contemplated by this MOA will benefit the VA and its Office of the General Counsel (VA OGC) as it provides legal advice and guidance to VA officials on labor management relations, including negotiating master labor agreements. It is expected that the Detailees' expertise will enhance the VA's ability to oversee labor management negotiations and associated policies.

**C. ADMINISTRATION/FINANCIAL**

The details subject to this MOA will commence no later than August 20, 2018 and are not to exceed 120 days. This assignment may be extended upon mutual agreement of the host and parent agency for a period not to exceed 12 months. The Detailees' immediate supervisors are Robert Charrow, General Counsel, HHS who can be reached at 202-690-7741 and Admiral Brett Girior, Assistant Secretary for Health, HHS who can be reached at 202-690-7694.

The Detailees will directly report to the General Counsel, VA. The duty location of the Detailees at the parent agency is 200 Independence Avenue, S.W., Washington, DC 20201. The duty location of the Detailees at the host agency will be 810 Vermont Ave., N.W., Washington, DC 20420.

Upon receiving a request for services under this MOA from the VA, the Detailees' HHS supervisors, in consultation with the Detailees, will determine whether the Detailees can accommodate the request. The VA recognizes that the Detailees' primary responsibilities are to provide services to HHS. The Detailees may work remotely under this MOA, as necessary.

Any VA related travel, per diem costs, and training associated with this assignment will be the responsibility of the host agency.

The Detailees' compensation shall be reimbursed by the host agency to the parent agency, per diem, at their respective pay grade.

The Detailees will provide all required time and attendance documentation to assigned HHS timekeeper. HHS will maintain sole responsibility for approving all leave requests and certifying time cards in the ITAS system. The employees shall be entitled to annual and sick leave in accordance with HHS regulation. The Detailees will be counted as occupying their current positions of record and will remain on the payroll at HHS.

The host agency will support the Detailees with furnished office, conference room access, telephone, customary office amenities, computer/connectivity, and building/base access to accomplish their duties.

Furthermore, the host agency will not subsequently detail the Detailees to perform substantially different duties from those formally approved without additional approval from the parent agency.

#### **D. SECURITY**

At a minimum, the Detailees will continue with their current level of access and authority; however, the host agency is authorized to certify access to other agencies and organizations, as necessary.

#### **E. ASSIGNMENT RESPONSIBILITIES**

The Detailees will be assigned to the VA OGC under the supervision of the General Counsel, VA. Specific duties are outlined below:

Catherine Bird and Heather Flick will serve as Attorney-Advisors to the VA for labor management relations. David Mansdoerfer will serve as a Senior Advisor to the General Counsel, VA for labor management relations. Specifically, the Detailees will provide expert advice to the VA on labor management relations and facilitate the negotiation of master labor agreements and compliance with laws regulations, and other requirements.

##### *Top Line Duties:*

- Advise and assist on labor management relations to include policy formulation, master agreement negotiations, and implementation of policies.
- Review ground rules, proposals, articles, and other documents pertaining to labor management relations at the VA.
- Inform strategy and policy supporting new labor management relationships at the VA.
- Guide VA officials in labor management discussions, communications, and representation within and outside the VA.

**F. PERFORMANCE EVALUATION**

The Detailees' Employee Performance Management System evaluations for 2018 and 2019 will be completed by HHS with input from the VA.

**G. RULES, REGULATIONS, AND POLICIES**

This agreement shall comply with the provisions of title 5, chapter 41, United States Code (USC). The employees are subject to the Federal Conflict of Interest Statutes; the Standards of Ethical Conduct for employees of the Executive Branch, including supplemental instructions that apply to the respective employees; and the Hatch Act limitations on political activities (18 U.S.C. §§ 203, 205, 207, 208, and 209), as well as applicable state and local statutory and regulatory provisions.

The Federal Tort Claims Act and other Federal Tort liability statutes shall apply to the employees. The rules and policies that govern the internal operation and management of the host and parent activity are applicable to the employees.

**H. CONTACTS**

Office of the General Counsel  Jim Byrne, General Counsel Office of the General Counsel Department of Veterans Affairs (VA) 810 Vermont Ave., NW Washington, DC 20204 Telephone: 202-461-4995 E-mail: jim.byrne@va.gov	Office of the Secretary  Robert Charrow, General Counsel Office of the General Counsel Department of Health and Human Services 200 Independence Ave., SW Washington, DC 20201 202-690-7741 Email: robert.charrow@hhs.gov  Admiral Brett Giroir Office of the Assistant Secretary for Health Assistant Secretary for Health Department of Health and Human Services 200 Independence Ave., SW Washington, DC 20201 202-690-7694 Email: ash@hhs.gov
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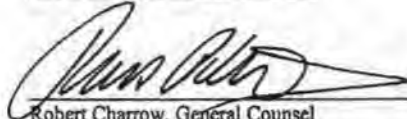
**I. REVIEW/TERMINATION**

This MOA may be terminated at any time by either host or parent agency if either party agrees that termination is in the best interest of the employees and/or the agencies concerned.

The undersigned agency representatives will review the benefits and efficacy of continuing to maintain this agreement.

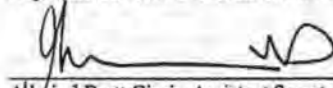
Office of the Secretary for Health and Human Services:

APPROVED AND ACCEPTED



Robert Charrow, General Counsel  
Department of Health & Human Services

8-22-18  
Date



Admiral Brett Giroir, Assistant Secretary for Health  
Department of Health & Human Services

8-22-18  
Date

Approvals for the Office of the General Counsel:

\_\_\_\_\_  
Jim Byrne  
General Counsel  
Department of Veterans Affairs

\_\_\_\_\_  
Date



**Ranking Member Gary C. Peters  
Post-Hearing Questions for the Record  
Submitted to Catherine Bird**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior Court of the District of Columbia  
Tuesday, July 16, 2019**

1. In your testimony, when asked: "Is there is anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated," you answered—"no." Do you believe that your previous involvement in federal labor negotiations – as a representative of HHS management and as an advisor to VA management – might present a conflict of interest with the duties of the FLRA General Counsel? Please explain your answer.

I answered no because, if confirmed, I could carry out the duties of the General Counsel position without reservation. Regarding potential conflicts in particular matters, I understand that if confirmed, I will meet with the Solicitor of the Federal Labor Relations Authority (FLRA) and develop a screening agreement, which I fully expect would address HHS matters. If the Solicitor finds that my prior involvement in a matter as an HHS official presents a conflict or otherwise recommends that I recuse myself from a particular FLRA matter, I will recuse myself. However, generally speaking, I do not believe that my ability to carry out the duties of the office is negatively impacted by anything in my background.

2. In your testimony you stated: "[Prior to 2017,] I did not have specific experience with federal labor law; however, I did deal with unions often as stakeholders in legislation that was coming before members that I worked with in the California State Senate." Please describe at least one specific example of a bill or issue you worked on, for which unions were stakeholders. How, if at all, did the unions' viewpoint(s) impact your approach to the bill or issue?

On multiple occasions, while working for the California State Senate, unions provided input on various pieces of legislation that I worked on. Each time, our office took their input into consideration – as we did with all stakeholder input.

For a specific example, I was the lead staffer for Senate Bill 168 (2015), Unmanned Aircraft System. This bill made it a criminal offense to fly a drone during specified public emergencies and provided first responders with immunity from civil liability for damage to an unmanned aircraft system, if the damage was caused while the emergency responder was providing emergency services. The California Professional Firefighters (CPF), one of the nation's most influential public employee organizations, as well as many other unions, were active and important stakeholders during the drafting and development of the legislation. I worked closely with CPF throughout the process to incorporate their

suggestions. In addition to CPF, the bill was supported by the following organizations, among others: Air and Surface Transport Nurses Association, California Ambulance Association, CAL FIRE Local 2881, California State Firefighters Association, Emergency Nurses Association, Fire Districts Association of California, the Long Beach Police Officers Association, LIUNA Local 792, Los Angeles County Professional Peace Officers Association, Orange County Professional Firefighters Association, Local 3631, and the Sacramento County Deputy Sheriff's Association. The viewpoints of these unions, particularly the need for firefighters and first responders to safely carry out their jobs of protecting the public, informed my approach to the issues and were critical in advancing the legislation.

3. During your staff interview, you stated of your time working in the California State Senate, that you enjoyed the challenge of finding consensus among many stakeholders. Please describe at least one specific example of a time you were able to find consensus on an issue for which unions were a stakeholder.

Senate Bill 168 (2015) required a two-thirds vote in the California State Legislature, and thus needed bi-partisan support. In addition, the bill addressed complex issues of criminal liability, immunity to civil liability, regulation of a new technology, public safety and first responder safety, among others. As part of the legislative team, we worked hard to address the concerns of a broad array of stakeholders, including unions, drone manufacturers, technology centered groups, local governments, and others. Obtaining the support of these stakeholders and addressing their competing concerns was challenging and ultimately rewarding, as we were successful in ushering the bill through both legislative chambers. The issues of particular concern to the unions involved immunity from civil liability in certain circumstances, and protecting the safety of first responders and the communities they serve. I believe my efforts effectively advanced these interests in a manner that could be supported by the other stakeholder groups and the State legislature.

4. Please describe your experience in the practice of law prior to joining HHS in May 2017, including the following:

- a. Have you ever tried a case before any judicial or administrative adjudicatory body? If so, please identify the venue, the party you represented, and the disposition of the matter.

**No, prior to joining HHS, I worked primarily in the legislative branch of the California State Government and did not have the opportunity to participate in litigation.**

- b. Have you ever been the lead attorney for any written motion, brief, pleading, or similar filing before any judicial or administrative adjudicatory body? If so, please describe those written products and the related proceedings.

**No, see 4a.**

- c. Please describe any additional legal proceedings in which you participated substantively as an attorney, even if you were not the designated lead.

No, see 4a.

5. Please describe your experience in the practice of law since the time you joined HHS in May 2017, including the following:

- a. Have you ever tried a case before any judicial or administrative adjudicatory body? If so, please identify the venue, the party you represented, and the disposition of the matter.

I served in the Immediate Office (IO) of the General Counsel. Attorneys in the IO do not try cases as a general rule. Trials in federal court are usually handled by the Department of Justice and administrative trials are usually handled by either our divisional or regional counsel. I have been involved and assisted with Freedom of Information Act (FOIA) litigation and administrative adjudicatory matters.

While I would not consider myself to be a trial attorney, I believe I have the skills, training, and ability to oversee and manage the prosecution of cases led by the FLRA Senior Executive Service (SES) management team. Throughout my career I have used my legal training to assess the specific facts and relevant law of a situation and to apply the relevant law to those facts. Should I be confirmed, I intend to use these analytic techniques and skills to reach fair and impartial decisions. Additionally, in my role at HHS, I successfully oversee a division with fourteen SES managers. This experience has provided me with the necessary tools to oversee the SES management team at FLRA.

- b. Have you ever been the lead attorney for any written motion, brief, pleading, or similar filing before any judicial or administrative adjudicatory body? If so, please describe those written products and the related proceedings.

No. Please see my answer to 5.a., above.

- c. Please describe any additional legal proceedings in which you participated substantively as an attorney, even if you were not the designated lead.

I have participated substantively in drafting motions, affidavits, and briefs in FOIA litigation. I have also assisted substantively in establishing a record to be used in administrative proceedings before the Merit Systems Protection Board and the Equal Employment Opportunity Commission. These proceedings involve the adjudication of individual agency appeals with respect to matters involving charges of prohibited personnel practices and employment discrimination.

6. In response to the Minority Supplemental Pre-hearing Questionnaire (#4), you stated that you "assisted with the brief" on behalf of HHS before the Federal Service Impasses Panel. Please elaborate on your involvement, including the following:

a. Which articles of the HHS brief did you work on?

**As part of the negotiation team, I worked on all articles that were submitted to the Federal Service Impasses Panel.**

b. Were you the principal author of those articles?

**No, each article was drafted as a team, and the lead decision maker was the HHS chief negotiator, David Mansdoerfer.**

c. Did you draft any of the articles or position statements included in the brief? Which ones?

**No, each article was drafted as a team, and the lead decision maker was the HHS chief negotiator, David Mansdoerfer**

7. Since joining HHS in May 2017, you have held several positions at the Agency with a variety of responsibilities. Approximately what portion of your work for HHS has been on labor relations matters?

**I would estimate about twenty-five percent of my time.**

8. At any point during your involvement in labor negotiations on behalf of HHS, did the White House, Office of Management & Budget (OMB), or any entity outside of HHS provide direction or guidance on any proposals negotiators submitted? If so, please describe the nature and source of this direction or guidance.

**To the best of my knowledge, HHS received no direction or guidance from outside entities, including the White House, on any proposals negotiators submitted.**

9. Did the White House, Office of Management & Budget or other entity provide direction or guidance in your work on the VA contract? If so, please describe the nature and source of this direction or guidance.

**Neither the White House, OMB or any other entity provided direction or guidance to me on my work on the VA contract.**

10. In response to the Minority Supplemental Pre-hearing Questionnaire (#7), you stated that in your current role overseeing the Human Resources division at HHS you "have participated in investigations and have impartially evaluated the merits of allegations and disputes."

- a. Please describe the general nature of the allegations and disputes you evaluated.

**I have handled investigations on topics including misuse of government funds, fraud, and performance and conduct. These investigations have ranged from senior executives to front-line staff.**

- b. Approximately how many such investigations have you conducted?

**I would estimate between 20 and 30.**

11. In response to the Committee's Pre-hearing Questionnaire (#8a), you stated: "I have worked swiftly to investigate whistleblower complaints brought to my attention and have ensured that no retaliation was taken against the whistleblower."

- a. How many whistleblower complaints have you personally investigated?

**I have investigated approximately five such complaints.**

- b. How did you ensure that no retaliation occurred?

**I provided strong and specific guidance and direction to staff, in accordance with the Office of Special Counsel, to ensure no retaliation occurred.**

12. In response to the July 12, 2019 Minority Supplemental Pre-hearing Questionnaire, you stated that you represented HHS as a member of the Interagency Labor Relations Working Group (LRG) established by Executive Order 13836 from approximately July 10, 2018 – Feb. 20, 2019.

- a. Over the course of your involvement with the Labor Relations Group, did the Group ever create or share drafts or templates for CBAs? Did you provide feedback or edits on drafts or templates for agencies besides HHS and VA? Which agencies?

**While I was involved in the Labor Relations Group, to the best of my knowledge, the LRG did not create or share drafts or templates for collective bargaining agreements (CBA). I am unaware of what, if any, steps the group took after I ended my involvement. I did not provide any edits, comments, or other feedback on any draft CBA for any other agency.**

- b. Did you have formal discussions regarding best practices or strategies for negotiating CBAs?

**No.**

13. In your staff interview and your hearing before the Committee, you expressed readiness to handle FLRA's low employee morale based on your experience conducting the Federal Employee Viewpoint Survey at HHS. While HHS is second among all large agencies in Best Places to Work, the agency subcomponent in which you currently serve – the Office of the Secretary – is ranked significantly lower (317 of 415 agency subcomponents), particularly in the area of "effective leadership." Please the efforts you have taken to address employee morale specifically in the Office of the Secretary.

When I became Principal Deputy Assistant Secretary for Administration (PDAS), I requested a briefing on results of the 2018 Federal Employee Viewpoint Survey (FEVS) for the Office of the Assistant Secretary for Administration, Office of the Secretary (OS), and the Department of Health and Human Services overall. I wanted to gain global insight into HHS employee perceptions of the working conditions, as I would have oversight for this function across the Department.

In the OS, the 2018 FEVS scores for employee engagement, global satisfaction, and effective communications each fell by at least one percentage point. I re-established an OS Integrated FEVS Program Manager team with representatives from each Staff Division. This team meets regularly throughout the year and partners with executive leadership to address workforce conditions in support of creating a positive, healthy, engaged, and innovative work environment. I ensured the head of every Staff Division received a briefing that highlighted their highest positive and negative FEVS scores. I initiated a campaign called "You Spoke, we listened, this happened" to connect leadership action as a result of the survey. The OS Integrated FEVS Program Manager team executed a seven-week communications plan to promote the 2019 FEVS. The campaign resulted in a nine percentage point increase in the response rate for the OS from 51% in 2018 to 60% in 2019 at the survey close.

In my role as PDAS, I strengthened organizational and individual accountability among members of the SES for using FEVS data to inform improvements in advancing the employee experience. In support of the achievement of successful organizational outcomes, all SES now have standard language in the "Leading People" element of their performance plans.

**Senator Maggie Hassan  
Post-Hearing Questions for the Record  
Submitted to Catherine Bird**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior Court of the District of Columbia**

**Tuesday, July 16, 2019**

1. The Federal Service Labor-Management Relations Statute states that federal agencies have a duty to bargain in good-faith before requesting mediation or the assistance of the Federal Services Impasses Panel.

- a. As Federal Labor Relations Authority General Counsel, what steps would you take when there is clear evidence that federal agencies have not negotiated in good-faith?

**As with any case that comes before me, I would apply Chapter 71 of title 5 and applicable regulations and case law. If there were clear evidence that an agency refused to consult or negotiate in good faith, absent extraordinary circumstances, I would file a complaint against the agency.**

- b. In your view, are federal agency actions such as ignoring union requests for information, refusing to discuss specific contract language, or requesting Federal Services Impasses Panel assistance when there is no sign of an impasse, indicative of a federal agency not negotiating in good-faith? If not, please provide your own examples.

**While I cannot speak to any specific cases, if a federal agency is found to have committed a ULP, as defined Chapter 71 of title 5 and applicable regulations and case law, that would be considered an unfair labor practice.**

**Indications of a federal agency not negotiating in good-faith include not approaching negotiations with a sincere resolve to reach an agreement, not agreeing to meet at reasonable times and convenient places as frequently as needed, and causing unnecessary delays.**

**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Catherine Bird**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal  
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations  
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior  
Court of the District of Columbia  
Tuesday, July 16, 2019**

- 1) In addition to your involvement in the recent federal labor-management disputes with the VA and HHS that led to the filing of Unfair Labor Practice (ULP) complaints, you have been a member of a working group through OPM that brought together most of the federal agencies to discuss and develop Administration strategies for settling federal labor-management disagreements. Given your involvement in that type of group, as well as the situations with the HHS and VA labor negotiations where you had a direct role in negotiations, the chance of you needing to recuse yourself from some of your duties at FLRA seems high. I know you said in your questionnaire that you would follow agency guidance on recusal issues, and I appreciate that.
  - a. Are you concerned that your previous roles with the Administration will make it more difficult for you to be the impartial arbiter who follows the facts and case law that this position calls for? Why or why not?

**I am not concerned that my previous roles will make it difficult to serve as an impartial arbiter. I fully appreciate that my role as General Counsel at the Federal Labor Relations Authority would be quite different from my current or prior role as an agency official or attorney. My responsibility was to represent management of HHS, and to a limited extent the VA, to the best of my ability. If confirmed, my duty will be to follow Chapter 71 of title 5 and all applicable regulations and case law, and to be an impartial decision maker, which I commit to doing.**

- 2) Looking at the situation with HHS and the way those labor negotiations unfolded, and including the labor negotiations with the VA.
  - a. What do you wish you had done differently in those situations?

**During these negotiations, my responsibility was to provide my best advice and counsel as part of the team representing management, which is what I did. I don't think there is anything I would have done differently.**

- b. What do you feel like you could have done to avoid the Unfair Labor Practice complaints that both negotiations led to?

**It is not within my ability to control when an unfair labor practice charge is made. While I understand that parties have different points of view and may not always agree on positions taken, I always negotiated in good faith.**



- 3) I would be interested to know more about the Administration's working group on federal labor issues that you were involved with.
- a. Can you provide a brief rundown of your understanding of the working group's goals and the outcomes it achieved?

The working group's goals as I understood them were to carry out the responsibilities set forth in the relevant Executive Order establishing the group. These include analyzing provisions of term collective bargaining agreements (CBA) on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights, and examining general trends and commonalities across term CBAs, and their effects on bargaining-unit operations. Because I left the group in February, I am not aware of the outcomes the group has achieved.

- b. How did the group's efforts and findings influence the negotiating stance that the agencies took in either the VA or HHS labor negotiations that you were involved with?

To the best of my knowledge, it had no impact.

- 4) At the hearing, we discussed your experience for the General Counsel position with FLRA, and I had several follow-up questions along those lines.
- a. What experience do you have, from your entire legal career, working on, with, prosecuting or answering Unfair Labor Practice complaints?

Since I have been at HHS, I am not aware of any ULP complaints that have been filed against HHS.

- b. Do you feel you are qualified today to adjudicate a ULP charge? Why or why not?

Yes. While at HHS, I have been involved in addressing allegations of unfair labor practices. Prior to my tenure at HHS, a ULP charge was filed with the FLRA, and I have been involved in responding to that charge. In addition, my first-hand experience at the bargaining table and responding to grievances concerning unfair labor practices, as well as my legal training provide me with the knowledge and skill-set needed to evaluate a ULP charge and prosecute a ULP complaint.

- c. Given your limited experience with ULPS, what steps do you need to take to handle the challenging backlog of cases at FLRA?

I believe my experience with HHS labor issues is valuable experience that provides me with a solid foundation in labor management relations. However, I do not know specific steps needed at this point to reduce the backlog. I would look to the career attorneys in the Office of General Counsel, particularly the

**career SES Deputy General Counsel and SES Regional Directors, to develop a project management plan which will focus on prioritization and set deadlines to eliminate the backlog.**

- d. How do you answer concerns that your background does not contain enough federal labor law experience to be successful as General Counsel at the FLRA?

**At HHS, I have been involved in all aspects of labor-management relations, including ensuring compliance with current CBAs, negotiations with labor organizations, and responding to allegations of unfair labor practices. I believe I have the skills, training, and ability to oversee and manage the prosecution of cases led by the FLRA SES management team. Throughout my career I have utilized my training in analyzing the specific facts of a situation, applying the applicable rules and regulations, and coming to fair and impartial decision. Additionally, in my role at HHS, I successfully oversee a division with fourteen SES managers. This experience has provided me with the necessary tools to oversee the SES management team at FLRA if confirmed as General Counsel.**

- 5) How long have you been in a role to oversee the HHS Human Resources division? How many investigations have you conducted during this period and how many decisions have you issued based on those investigations?

**I have been in this role for approximately one year. I have overseen approximately 20-30 investigations. As I was often not a sole decision maker, I do not have specifics on the number of decisions issued.**

- 6) How many whistleblower complaints have personally you investigated? How many decisions related to whistleblower complaints have you issued?

**I have personally investigated approximately five complaints. I was not the deciding official in those cases.**

- 7) Please explain the nature and extent of your experience interacting with federal sector labor unions at HHS. What specific activities did you participate in and what was your role? Was there interaction beyond your involvement in the labor-management negotiations?

**At HHS, I have interacted with federal sector unions primarily in negotiations and participated in employee and labor relations issues more generally. As Principal Deputy Assistant Secretary for Administration, part of my responsibilities have been to ensure that HHS management are aware of, and fully compliant with, all current active collective bargaining agreements in place at HHS.**

Senator Jacky Rosen  
Post-Hearing Questions for the Record  
Submitted to Catherine Bird

Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal  
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations  
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior  
Court of the District of Columbia  
Tuesday, July 16, 2019

1. During your time at the Department of Health and Human Services (HHS) you have represented management in labor contract negotiations. As General Counsel of the Federal Labor Relations Authority (FLRA), you would be charged with investigating and prosecuting unfair labor practice charges, including charges brought by workers against management.

- a. How will you determine when it is appropriate to recuse yourself from a case where it appears there may be a conflict of interest with your work at HHS?

**I understand that if I am confirmed, I will meet with the Solicitor of the Federal Labor Relations Authority to develop a screening agreement, which I fully expect will address HHS matters. If the Solicitor finds that my prior involvement in a matter as an HHS official presents a conflict or otherwise recommends that I recuse myself from a particular FLRA matter, I will recuse myself.**

- b. Can you provide some examples of the types of cases where you feel it would be appropriate to recuse yourself?

**It would be appropriate to recuse myself from matters I have been personally involved with at HHS, such as negotiating as part of the HHS team. I would follow the advice of the Solicitor in identifying specific cases where recusal would be appropriate.**

- c. If you do recuse yourself from a case, who at FLRA will make the decision whether and what cases to investigate and prosecute?

**It is my understanding that the authority of the General Counsel would be delegated to the FLRA Deputy General Counsel.**

2. In September 2018, you attended a mediation between a union representing federal employees and their employer, the Department of Veterans Affairs (VA).
  - a. Why did you attend the mediation, even though you worked for HHS and not the VA?

**VA leadership asked that I attend to provide counsel, if needed by team.**

- b. Was there written authorization for you to represent the VA in those negotiations, even though you were an employee of HHS?

Yes, I have provided the Committee with a copy of the Memorandum of Agreement (MOA) between HHS and VA setting forth the terms of my detail, which authorized my participation.

- c. What was your role during the negotiations?

As stated in my supplemental questionnaire, I provided *ad hoc* support for the VA. While there was an MOA in place, in fact, during the detail, I provided only limited assistance on a sporadic basis. During the negotiations in September 2018, I was not at the negotiation table but provided limited counsel during caucus.

**Opening Statement of Rainey R. Brandt**  
**Nominee to be an Associate Judge of the District of Columbia Superior Court**  
**July 16, 2019**

Mr. Chairman and members of the committee, thank you for this opportunity to appear today, as you consider my nomination to serve as an Associate Judge of the Superior Court of the District of Columbia. The committee members and their staff have been very welcoming and I appreciate the hard work and careful consideration of my nomination. I would like to thank the DC Judicial Nomination Committee and its chair Judge Emmett Sullivan for recommending me to the White House, and the President for nominating me.

It is an honor to be seated here today with my colleague and friend, Judge Shana Matini. Our friendship began over twenty years ago when we clerked together at Superior Court. I am fortunate to have the support and guidance from many friends and colleagues, some of whom are here today. I thank you all for helping me get to this point. Five of them in particular who are present, I would like to recognize at this time: Chief Judge Robert Morin, as well as former Chief Judge Lee Satterfield, have been with me every step along my judicial journey. Deputy Director of Interpol, Michael Hughes, whose friendship is a source of support and guidance. Judge Michael Rankin and Judge Stephanie Duncan Peters, for whom I clerked, and learned so much about how to be a good judge.

I would like to observe that my mom, Eloise Ransom, who died 3 years ago, is in my heart and I know she is proud of what both her daughters have accomplished. My sister, Cricket Ransom, a dedicated DC public school teacher, is here today to offer her support. Last but certainly not least, I would like to thank my husband, Chief Robert Brandt of the United States Marshals Service. His unconditional love and support enable me to give 110% to DC Superior Court.

I have lived in the District of Columbia for over 30 years. Much of my legal career has been at Superior Court, first as a student practicing attorney, then judicial law clerk to Judges Michael Rankin and Stephanie Duncan-Peters, then as a special counsel to three chief judges, and now as a magistrate judge. In addition to my work as a lawyer and judicial officer, I teach at American University and have done so for over twenty five years. All of these experiences have given me the opportunity to be a good public servant, and prepared me to become an associate judge.

Since 2012, I have been a magistrate judge at DC Superior Court. During my tenure I have been assigned to the criminal, civil and domestic violence divisions. I am well-prepared to assume the additional responsibilities of an associate judge. In addition to my caseload responsibilities, I serve on a variety of court committees and have taken on the leadership role of currently being the Deputy Presiding Magistrate Judge.

Each day I see people from all walks of life, with varied degrees of temperament and vulnerability. I work diligently to ensure that all litigants who appear before me feel they are heard and each case handled fairly—all while preserving the rule of law.

It is an honor to serve the citizens of the District of Columbia as I maintain the court's mission of being open to all, trusted by all, providing justice to all. Thank you again for your consideration, and I look forward to answering your questions.

**REDACTED**

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,  
UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**  
Rainey Ransom Brandt (formerly Rainey Eloise Ransom)
2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**  
I am a citizen of the United States.
3. **Current office address and telephone number.**  
Superior Court of the District of Columbia  
Magistrate Judges' Chambers 4450  
500 Indiana Avenue, NW  
Washington, DC 20001  
(202) 879-4795
4. **Date and place of birth.**  
March 12, 1966; LaGrange, GA.
5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**  
I am married to Robert W. Brandt, Chief, United States Marshals Service, DC Superior Court, 500 Indiana Avenue, NW, Washington, DC 20001
6. **Names and ages of children. List occupation and employer's name if appropriate.**  
I have no children.
7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**  
  
The Catholic University of America Columbus School of Law, Washington, DC; 1992 – 1995; Juris Doctor awarded 1995.  
  
American University, Washington, DC; 1990 – 1993; Doctor of Philosophy awarded

1993.

American University, Washington, DC; 1989 – 1990; Master of Science awarded 1990.

American University, Washington, DC; 1987 – 1989; Bachelor of General Studies awarded 1989.

Brown University, Providence, RI; 1984 – 1987; no degree received.

LaGrange High School, LaGrange, GA; 1980 – 1984; High School Diploma awarded 1984.

8. **Employment record.** List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

1993 – present  
American University  
School of Public Affairs  
Department of Justice, Law and Criminology  
[Formerly Department of Sociology]  
4400 Massachusetts Avenue, NW  
Washington, DC 20016  
Adjunct Associate Professor

9. **Honors and awards.** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

American University SPA Adjunct of the Year (2017)  
Distinguished Alumnus Award, DC Law Students in Court (2015)  
Certificate of Service, Bar Association of DC (2013)  
Potter Stewart Award, Council for Court Excellence (2010)  
Adjunct Professor of the Year, American University (2009)  
Service Pin, District of Columbia Courts (2007)  
Teaching Recognition, Washington Semester Program (2007)  
Adjunct Professor of the Year, American University (2006)  
Board Pillar Award, DC Law Students in Court (2004)  
Medal of Excellence, Superior Court of the District of Columbia (2000)

10. **Business relationships.** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

Voices For A Second Chance  
 [Formerly Visitors' Services Center]  
 Board of Directors (2006 – 2013)  
 President (2009 – 2012)

DC Law Students in Court  
 Board of Directors (2000 – 2012)  
 Secretary (2008 – 2010)  
 Vice President (2006 – 2008)  
 President (2002 – 2006)

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

D.C. Superior Court  
 Judicial Mentoring Program (2013 – present)  
 Criminal Justice Act Panel Committee (2014 – present)  
 Judicial Education Committee (2015 – present)  
 Pretrial Mental Examination Committee (2014 – 2016)

Bar Association of the District of Columbia  
 Bar Association of the District of Columbia Member (2014 – 2017)  
 Bar Association of the District of Columbia Foundation (2007 – 2014)

District of Columbia Bar (Court's Lawyers Committee) (2011 – 2012)

Women's Bar Association of the District of Columbia (Mentor) (2013 – present)

Thurgood Marshall Inn of Court (1999 – 2002)

American Bar Association (1999 – present)

Maryland State Bar Association (1996 – 2012)

American Correctional Association (1989 – 1995)

American Society of Criminology (1989 – 1998)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**



John Carroll Society (2016 – present)

Kappa Alpha Theta Sorority (1985 – 1987)

Kappa Alpha Theta Sorority is an all-female fraternity. Neither the John Carroll Society nor Kappa Alpha Theta Sorority discriminates or has ever discriminated on the basis of race, sex, or religion.

13. **Court admissions.** List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

District of Columbia, 2008 – present.

United States Supreme Court, 2001 – present.

Maryland, 1996 – 2012.

My membership has been inactive since 2012 because I am a Magistrate Judge in DC.

14. **Published writings.** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Co-Author, *Jurors in Capital Cases: What Can One Maryland Jury Teach Us?*, 14 CRIM. JUST.18 (1999).

15. **Speeches.** List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. **Legal career.**

A. Describe chronologically your law practice and experience after graduation from law school, including:

- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

From 1996 to 1997, I served as a law clerk to the Honorable Michael L. Rankin, Associate Judge of the Superior Court of the District of Columbia.

During the summer of 1998, I served as law clerk to the Honorable Stephanie Duncan-Peters, then Associate Judge of the Superior Court of the District of Columbia.

- (2) Whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

2012 – present  
Superior Court of the District of Columbia  
500 Indiana Avenue, NW  
Washington, DC 20001  
Magistrate Judge

1998 – 2012  
Superior Court of the District of Columbia  
500 Indiana Avenue, NW  
Washington, DC 20001  
Special Counsel to the Chief Judge

- B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

From 1996 to 1997, I served as a judicial law clerk for the Honorable Michael L. Rankin, Associate Judge of the Superior Court for the District of Columbia. The majority of my clerkship involved researching, analyzing, and preparing orders for civil cases. In January 1997, the calendar assignment changed to an AFTC (Accelerated Felony Trial Calendar), and the remainder of my clerkship involved criminal law research and the preparation of orders.

In 1998, I briefly served as a judicial law clerk for the Honorable Stephanie Duncan-Peters, then-Associate Judge of the Superior Court for the District of Columbia. During that time, the focus of my work involved criminal case research and the preparation of orders.

In 1998, then-Chief Judge Eugene Hamilton hired me to be his legal advisor and designated the position Special Counsel to the Chief Judge. Initially, my primary duties were to provide legal support to the judge on sentencing and other issues related to corrections and parole. Examples of those duties included providing expertise to judges to ensure that sentences were legal, troubleshooting prisoner issues, and providing education on changes in the law.

Over the succeeding years, my role as Special Counsel expanded to include duties

of a Chief of Staff, senior court manager, and court ombudsman to other agencies, such as the Criminal Justice Coordinating Council, D.C. Department of Corrections, U.S. Attorney's Office, and D.C. Public Defender Service. Among the duties performed daily were briefing the Chief Judge on various matters, dealing with court operations issues, conducting meetings, making presentations, and a host of other responsibilities. During this time, I wrote numerous administrative orders and memoranda of understanding where the court was a party, developed forms and protocols for court functions related to criminal practice, and prepared reports for the Chief Judge and the presiding judges of the divisions.

In 2012 I was appointed as a Magistrate Judge at DC Superior Court. My initial assignment was in the Domestic Violence (DV) Unit. As the DV Magistrate Judge, my calendar handled cases that spanned the criminal, civil, and family areas of law. I was responsible for hearing all misdemeanor DV arraignments, detention hearings, temporary protection order requests, and child support matters in which an active civil protection order exists. Additionally, I took pleas, monitored deferred sentencing agreements that resulted from said pleas, imposed sentences, and handled probation show causes.

Since 2013, I have presided over a misdemeanor trial calendar in the criminal division. On a daily basis, I handle pleas, conduct status hearings, probation show causes, sentencings and trials. The cases range in subject matter from driving under the influence, leaving after colliding, unlawful possession of firearms to disorderly conduct. There are currently approximately 800-900 cases assigned to my calendar. I dispose of over 250 cases each month by trial, plea or dismissal. I hear an average of 40-50 cases per day.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

As Special Counsel to the Chief Judge, my chief client was the D.C. Superior Court. I served the Court by providing guidance to judges, attorneys, staff, and the public in response to questions about sentencing, court procedures, inmate issues, and a variety of other topics.

**D. Describe the general nature of your litigation experience, including:**

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

When I was Special Counsel, I occasionally appeared in court as a court official because that position did not allow me to litigate matters. While in law school, I did represent clients in the DC Law Students in Court

Program, a non-profit legal clinic that allows third year law students to take cases under the supervision of staff attorneys. As part of this program and with the supervision of practicing attorneys, I represented adults charged with misdemeanor offenses. My duties included interviewing witnesses, writing discovery and pre-trial motions, preparing witnesses for testimony, and drafting questions for direct and cross examination. My clients were charged with an array of crimes such as theft, simple assault, shoplifting, drug possession, and sexual solicitation. I appeared in court approximately twice a month while a participant in the DC Law Students in Court Program.

(2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);
- (b) State courts of record (excluding D.C. courts);
- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
- (d) other courts and administrative bodies.

All appearances have been in D.C. Superior Court.

(3) What percentage of your litigation has been:

- (a) civil;
- (b) criminal.

100% of the cases I handled while a student litigator in the DC Law Students in Court Program were criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

Prior to becoming a magistrate judge, my position with the D.C. Superior Court did not involve litigation. However, while I was a student litigator in the DC Law Students in Court Program, I achieved an acquittal in one case and successfully won a motion for a civil protection order in another. In both matters, I was acting under the direct supervision of a practicing attorney.

(5) What percentage of these trials was to

- (a) a jury;
- (b) the court (include cases decided on motion but tabulate them separately).

One-hundred percent of the cases were decided by the court.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

i. District of Columbia v. James Barber, 2013 CDC 18385

During the early morning hours of June 7, 2013, a female correctional officer and her trainee officer were patrolling a cellblock within the D.C. Jail. It was alleged that several inmates exposed themselves in view of the officers. Eleven inmates were subsequently arrested and charged with disorderly conduct. All eleven defendants' trials were scheduled before me as separate trials with the same prosecutor. Some defendants have been represented by the Public Defender Service for the District of Columbia ("PDS"), but most have been represented by Criminal Justice Act attorneys. Before each trial, I disclosed my familiarity with the issue and potential government witnesses from previous trials, and gave both sides an opportunity to request a different judicial officer to preside. No one opted out. There have been five pleas, three dismissals, two guilty verdicts and one acquittal. James Barber's case was dismissed because of discovery issues raised by the defense that could not be cured. As the judge who has presided over each case, I had to compartmentalize the evidence so that my knowledge of the incidences as a whole did not taint my assessing of the evidence presented in each trial.

Counsel for the District of Columbia:

Jack Korba

Assistant United States Attorney

[then Assistant Attorney General for the District of Columbia]

555 4<sup>th</sup> Street, NW

Washington, DC 20001

(202) 514-1000

Defendants' Counsel:

Dana Page

Public Defender Service for the District of Columbia

633 Indiana Avenue, NW

Washington, DC 20004

(202) 824-2549

2. District of Columbia v. James Mitchel, 2012 CTF 18814 and 2013 CTF 7300

James Mitchell was arrested for suspected driving under the influence in October 2012 and again in May 2013. His attorney asked the Court to order a mental health forensic evaluation based on his interaction with Mr. Mitchell. That evaluation led to further evaluations and tests, ultimately leading the doctors to conclude that Mr. Mitchell was incompetent to stand trial. I convened a hearing so that the doctors and Mr. Mitchell could testify. After weighing the testimony and reviewing numerous medical reports, I found Mr. Mitchell incompetent.

Counsel for the District of Columbia:

George Peter Saba  
Assistant Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, NW  
Washington, DC 20001  
(202) 727-4779

Defense Counsel:

Winston Yallery Arthur  
Scott & Yallery – Arthur Law Offices  
7306 Georgia Avenue, NW  
Washington, DC 20012  
(202) 882-5770

3. Nefisa Mussa Siraj v. Abdulaye H. Gassama-Himmiou, 2009 SUP 1907

Parties to a civil protection order (CPO) who have children in common can open a paternity and support case that is handled by the Domestic Violence (“DV”) unit as long as the CPO is active. In light of the busy calendar obligations of the DV magistrate assignment, I expected to transfer this case back to the child support branch, since the CPO had expired. This would have resulted in a lengthy continuance of the case. Upon review of the file, and after hearing from the parties, I noted that this case had been in the DV unit since 2009, and I was the fourth judge to handle the matter. Since 2009, the respondent had amassed \$21,000.00 in child support arrearages. I concluded it was in the best interest of justice to keep the case and work to resolve the matter.

The government filed a Motion for Contempt against the respondent in 2011, which had not been resolved. I scheduled the matter for a hearing, where the respondent’s ability to pay was demonstrated, and I found him in civil contempt. I ordered him to jail for 30 days or until the purge amount of \$2700.00 was paid. The purge amount was paid in 7 days. At the next hearing, the respondent had retained counsel, and a new payment schedule was established.

Counsel for the District of Columbia:

Anita Monteiro  
Assistant Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, NW

Washington, DC 20001  
(202) 442-9815

Counsel for Respondent:  
Claude Roxborough, Esq.  
[Joined as Counsel for the respondent in May 2013]  
[Deceased]

4. District of Columbia v. Juana Alvarado, 2015.CTF 0410

Juana Alvarado pled guilty to one count of driving under the influence and one count of leaving after colliding—property damage, for events that occurred in January 2015. Ms. Alvarado took her friend's car without permission, drove it while intoxicated, hit a fence, then proceeded down another street and hit a truck. The car she was driving was essentially totaled because the estimated cost to repair it was more than the car's actual value. At sentencing the government asked for restitution for the totaled car, and presented several different numbers (amount victim wanted, amount victim paid for the car a year ago, and the amount the insurance appraiser estimated for repairing the car). Ms. Alvarado's counsel disputed all proffered numbers in a very well thought out opposition, that not only countered the numbers, but also focused the Court on its restitution parameters per the statute.

Counsel for the District of Columbia:  
Jamie Carter  
Assistant Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, NW  
Washington, DC 20001  
(202) 727-6381

Defense Counsel:  
Sharon Weathers, Esq.  
717 D Street, NW, Suite 300  
Washington, DC 20004  
(703) 725-9674

5. District of Columbia v. Craig Tucker, 2014 CDC 4912

Craig Tucker was charged with one count of possession of an unlawful firearm, and one count of possession of unlawful ammunition stemming from events that occurred on March 20, 2014. Mr. Tucker was the building manager of a secure parking garage located on G Street, NW. Federal Protective Services received a series of anonymous phone calls from the same person reporting a handgun in the back seat of a dark truck located in the garage. Officers located the truck, but did not see a gun. The caller continued to call back, telling the officers to go back to the truck because he was looking at the gun right now. Officers returned to the truck, saw a gun, located the owner of the truck (Craig Tucker), and placed him under arrest. As this case progressed, the defense

filed a number of suppression motions and a motion to dismiss, citing Rule 16 discovery violations and Brady v. Maryland, 373 U.S. 83 (1963). The main defense argument was that the government failed to turn over the videos from the interior and exterior of the garage. According to the defense, that video would have shown not only the identity of the anonymous caller, but also that the caller planted the gun. That was the defense theory of the case. After reviewing the parties' pleadings, hearing arguments thereto, and reviewing much case law, I ruled in favor of the defense finding that the government had an obligation to preserve the video, and dismissed the case. The government filed a motion for review of my order to an associate judge pursuant of Super. Ct. Crim. R. 117(g)(1).

Counsel for the District of Columbia:

Brian Kim  
Assistant Attorney General for the District of Columbia  
441 4<sup>th</sup> Street, NW  
Washington, DC 20001  
(202) 727-3223

Defense Counsel:

Bernard Grimm  
The Law Office of Bernard Grimm  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036  
(202) 912-4888

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

As Special Counsel, I had the opportunity to write several administrative orders for Chief Judges Hamilton, King, and Satterfield. These orders, issued by the Chief Judge, give guidance and direction covering a wide variety of issues, such as how the court will function during emergencies, the process for appointing counsel to cases, and setting up protocol for the implementation of new laws passed by the D.C. Council that impact the court. One order that I wrote established and defined the parameters for courthouse release of prisoners, and another set the administration of the arraignment process.

Additionally, on August 5, 2000, parole for sentenced misdemeanants was abolished. The D.C. Superior Court became the paroling authority for misdemeanants serving sentences that predated the law change. The Presiding Judge of the Criminal Division became the granting official for this administrative process. As Special Counsel, I served as the recommending official for all misdemeanor parole packages submitted by the D.C. Department of Corrections. In order to arrive at a recommendation, I reviewed parole requests, which consisted of the offenders' case files, letters requesting parole



consideration, and any additional reports or commendations. Since parole is discretionary, I developed a checklist of items to consider in order to ensure consistency in the process. That checklist included a synopsis of the crime committed, institutional adjustment documentation, reports of disciplinary infractions, and how much of the sentence imposed had been served thus far. I submitted written recommendations to the Presiding Judge of the Criminal Division.

In 2007, Chief Judge King created a task force to investigate over-detentions and erroneous releases at the jail. I chaired that task force, which included the Director of the D.C. Department of Corrections, the U.S. Marshal for Superior Court, and the Director of the D.C. Superior Court's Criminal Division. We determined that releasing low-level offenders from the courthouse instead of the jail would decrease over-detentions and erroneous releases and accordingly devised a process through which defendants could be released after a series of records checks and completed paperwork confirmations. As part of this process, suitable clothing, Metro tokens, identification cards, as well as medical and community wraparound services information are currently provided for the defendants. Since 2008, the courthouse release program has resulted in reduced bureaucracy and over 2,500 low-level D.C. defendants being released to their families at an earlier time.

From January 2010 to March 2011, I wrote and helped implement an order that streamlined the Superior Court's initial presentment, or arraignment process. For many years, the initial presentment process had consistently drawn criticism because of its inefficiency and untimeliness despite many piecemeal attempts to improve the process. Most of the process is electronic now and information is readily available to attorneys and the public about the order and status of cases. This eliminated a tremendous amount of frustration, and of wasted time and money, and it resulted in eighty percent of all papering activity being completed before the courtroom opens. The practical changes span the gamut from restructuring the flow of paperwork to adding computer access for the attorneys.

As an adjunct professor in American University's Department of Justice, Law and Criminology, I have provided foundational legal instruction to undergraduate and graduate students for the past 26 years, through teaching courses like *Justice, Law and the Constitution*; *Critical Issues in Justice*; *Criminal Procedure*; and *Concepts of Punishment*.

As a magistrate judge I sit on several judicial committees, the two most significant being the Criminal Justice Act Panel Committee (CJA) and the Judicial Education Committee. All committee assignments are designated by the Chief Judge, which is important since I am a magistrate judge on two out of three of the most coveted committees. The CJA committee is responsible for selecting the court-appointed attorneys to represent indigent people charged with crimes. The vetting process for attorneys to be on that panel is detailed, highly selective and requires much time of the members who conduct investigations and interviews with the candidates.

The Judicial Education Committee is responsible for organizing training for the judges. Annually, we hold two, two-day sessions ranging a wide variety of topics. Each member is additionally responsible for producing a monthly training module. Since being a member of the committee, I have conducted training on the court's response during a pandemic emergency, and the aging brain.

The Judicial Coaching Program is a new, intensive approach to assist judges to be better jurists, while dealing with the work-life balance. It is required for all new judges, and optional for any judge who feels a coach would help them. Since the program started after I had been a judge for only two years, I volunteered to have a coach. The coaching theory is simple—you and your coach are to talk about things that have an effect on your being a judge. There are a variety of coaching skills and tools utilized, but it is not meant to teach the law or analyze cases and instead strengthens the judge as a whole. I gained great benefits and insights into my own way of doing things, and two years later, I was asked to become a judicial coach. I am currently coaching a new colleague in hopes of passing along all that I have learned to achieve success on the bench.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I was appointed as a Magistrate Judge at DC Superior Court in 2012. The jurisdiction of DC Superior Court Magistrate Judges is set forth in DC Code Sections 11-1732 and 11-1732A. My initial assignment was in the Domestic Violence (DV) Unit. In that role I took pleas, monitored deferred sentencing agreements that resulted from said pleas, imposed sentences, and handled probation show causes. Currently, I preside over a misdemeanor trial calendar in the Criminal Division. I resolve over 250 cases each month by trial, plea or dismissal. My assignments thus far have not been the type that require written opinions.

- A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

District of Columbia v. Craig Tucker, 2014 CDC 4912. Craig Tucker was charged with one count of possession of an unlawful firearm, and one count of possession of unlawful ammunition stemming from events that occurred on March 20, 2014. Mr. Tucker was the building manager of a secure parking garage located on G Street, NW. Federal Protective Services received a series of anonymous phone calls from the same person reporting a handgun in the back seat of a dark truck located in the garage. Officers located the truck, but did not see a gun. The caller continued to call back, telling the officers to go back to the truck because he was looking at the gun right now. Officers returned to the truck, saw a gun, located the owner of the truck (Craig Tucker), and placed him under arrest. As this case progressed, the defense filed a number of suppression motions

and a motion to dismiss, citing Rule 16 discovery violations and Brady v. Maryland, 373 U.S. 83 (1963). The main defense argument was that the government failed to turn over the videos from the interior and exterior of the garage. According to the defense, that video would have shown not only the identity of the anonymous caller, but also that the caller planted the gun. After reviewing the parties' pleadings, hearing arguments thereto, and reviewing much case law, I ruled in favor of the defense finding that the government had an obligation to preserve the video, and dismissed the case. The government filed a motion for review of my order to an associate judge pursuant of Super. Ct. Crim. R. 117(g)(1). Judge Cushenberry issued an opinion reversing my ruling.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

I have never been a candidate for an elected judicial or other public office.

21. Political activities and affiliations,

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None.

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

None.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all

proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

No.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?  
  
Yes, I will resign from any boards I currently sit on that would present conflicts of interests. My employer, the D.C. Superior Court would remain the same. I would continue to teach as an adjunct faculty member at American University.
2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.  
  
None.
3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.  
  
None.
4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.  
  
None.
5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.  
  
None.
6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.  
  
I intend to continue teaching as an adjunct faculty member at American University. I teach one class per semester at night, once a week.
7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.  
  
I would resolve any potential conflicts of interest pursuant to the District of Columbia Code of Judicial Conduct.

8. If confirmed, do you expect to serve out your full term?
- Yes.

## III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

#### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501 (b), as amended.

1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?  
Yes.
3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.  
Yes, I was admitted to practice in the District of Columbia on November 7, 2008.
4. If the answer to Question 3 is "no" --
  - A. Are you a professor of law in a law school in the District of Columbia?
  - B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  - C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  - D. Upon what grounds is that eligibility based?
5. Are you a bona fide resident of the District of Columbia?  
Yes.
6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

Yes, I have resided at the following addresses:



**REDACTED**



2010 – 2012  
4000 Massachusetts Avenue, NW, Apt. 1021  
Washington, DC 20016

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

Copies are attached.

## AFFIDAVIT

Rainey Brandt being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Rainey Brandt

SUBSCRIBED and SWORN TO before me this 14<sup>th</sup> day of September 2017.

[Signature]  
Notary Public



District of Columbia; SS  
Subscribed and Sworn to before me  
this 14<sup>th</sup> day of September, 2017  
[Signature]  
Rebecca Richards, Notary Public, D.C.  
My commission expires June 30, 2020

Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Rainey R. Brandt

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior Court of the District of Columbia**  
Tuesday, July 16, 2019

- 1) The position you are nominated for is critically important, especially given the ongoing high number of vacancies within the D.C. Superior Court.
  - a. What efforts, if any, have you made outside the courtroom to prepare yourself for the position for which you are nominated?

Response: In my current role as a magistrate judge I manage high volume courtroom assignments, and preside over numerous bench trials and motions hearings. I have to balance a daily schedule that includes hearing cases, attending committee meetings and chambers time. Chambers time is spent reviewing and signing orders, going over prep for the next day's cases with my law clerks, and reading case law. Those routines have served me well and will continue if I am fortunate to be confirmed as an associate judge. Additionally, I have attended and will continue to attend judicial continuing education sessions to familiarize myself with subjects that I will have jurisdiction over if confirmed. Most recently, I attended probate training.

- b. As we consider your nomination to be an Associate Judge, I want you to cast forward to the end of your career. What do you hope your legacy as a judge will be when you leave the bench?

Response: I hope to be remembered as a well prepared, fair, impartial judge, who treated everyone with respect. I hope my judicial colleagues would say that I always answered the call when there was a need to discuss a matter or handle a docket, or just provide support and guidance.

- 2) As a Magistrate Judge, there is a limited jurisdiction. Associate Judges have an opportunity to handle many more cases and more issues.
  - a. As such, how would you go about preparing yourself to successfully meet the expanded scope of your new position, while still handling the day-to-day challenges of your new position and serving the public?

Response: I would prepare the same way I do now when we transition to a new division. Each division at Superior Court has its own particularized set of practice rules; thus, first I read the court rules for the new division and relevant law. Second, I attend court training sessions. Third, I do courtroom observations for the new assignment, then speak to the judge(s) who are currently on that

assignment to gain insights on things like docket management. To date, I have served in the criminal, civil and domestic violence divisions. That experience has well prepared me to assume the additional responsibilities of an associate judge.

- 3) As a judge, you may have litigants appear before you who do not have attorneys and may not fully understand the law and procedure.
  - a. What do you believe the proper role is for a judge in helping litigants access information they may need to present their cases or obtain legal counsel?

Response: My most fundamental role as judge is to apply the law to the facts in each case. In my seven years as a magistrate judge, I handled thousands of cases where the litigants were *pro se*, when I presided in the civil and domestic violence divisions. In each case, I ensured litigants understood the process, and as needed, directed them to pro bono or low bono attorneys who assist the court. At DC Superior Court, we are fortunate that in four of our five divisions (civil, domestic violence, probate and family) we have attorneys who come to court daily to offer assistance to those individuals who have legal questions that cannot be asked of the judge. (The criminal division is different because all defendants are appointed a lawyer at their initial appearances.) Additionally, the Court has self help resource centers where litigants can seek assistance. Explaining the process and referring litigants to these resources helps them gain a better understanding of what to expect in court and be more prepared.



U.S. Department of Justice

Jessie K. Liu  
United States Attorney

*District of Columbia*

*Judiciary Center  
555 Fourth St., N.W.  
Washington, D.C. 20530*

July 9, 2019

The Honorable Ron Johnson  
Chairman  
Committee on Homeland  
Security and Governmental Affairs  
328 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Gary Peters  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
724 Hart Senate Office Building  
Washington, D.C. 20510

I am writing to express my support for the application of the Honorable Rainey Brandt for a position as a Superior Court judge. I am currently the Chief of the Sex Offense and Domestic Violence Section of the D.C. United States Attorney's Office. In 2013, I was the Deputy Chief of that Section, supervising new prosecutors, who handled misdemeanor domestic violence and sexual assault cases. In that role, in 2013, I observed Judge Brandt throughout her one year position as the Magistrate Judge presiding over Domestic Violence arraignments and detention hearings. I also had several conversations about her with the prosecutors who appeared in front of her day in and day out. In addition, I also knew her, and frequently relied on her with legal and procedural questions, when she was the Special Counsel to the Chief Judge. Although I have not been in as active touch with her since 2013, I remain familiar with her reputation and work. From this exposure, I can say with confidence that Magistrate Judge Brandt has the qualifications and temperament to be an outstanding Superior Court judge.

In my many experiences in Judge Brandt's courtroom I have been consistently impressed by the prevailing atmosphere of decorum, civility, and respect. That tone, essential in my view to the fair administration of justice, is set by Judge Brandt and reflects her strong commitment to treat everyone who comes into her courtroom fairly. That includes the lawyers, the witnesses,

the staff, the defendants, and the victims. The prosecutors I supervised in 2013 routinely reported that she managed her courtroom in a highly efficient manner and that she was always extremely courteous and treated all persons in her courtroom with respect. Part and parcel of that attitude is Judge Brandt's ever present desire to hear out both sides of an issue through robust debate. She listens thoughtfully to both sides of every case and issues prompt and sound rulings. She regularly outlines in detail the bases of her rulings. One prosecutor told me that often times when Judge Brandt ruled against him her reasoning was so persuasive that he found himself convinced that she had, in fact, arrived at the just resolution.

In my experience, and the uniform experience of the attorneys in my Section who appeared in front of her day in and day out in 2013, Judge Brandt takes an appropriate amount of time to issue her rulings. She elicits desired information from both sides, weighs the strengths and weaknesses of the arguments, and outlines the bases of her rulings. She does so without allowing either side to unnecessarily delay the proceedings. Further, she is not afraid to make a decision, even difficult ones. In short, her rulings are thorough, well-reasoned, and legally sound.

Judge Brandt also has a keen intellect and mastery of the law. For example, using a gentle but firm hand, she reigned in defense attorneys who tried (improperly) to use detention hearings to obtain pre-trial discovery. She also has a strong work ethic and remains impartial and objective at all times, even during highly emotional proceedings.

Judge Brandt is a pleasure to appear in front of. She has fulfilled her judicial duties at the highest level and has ideal judicial temperament. For these reasons, I strongly recommend her for a position as a Superior Court judge.

Please feel free to contact me if you have any additional questions. I can be reached at 202-252-7036.

Sincerely,



Sharon Marcus-Kurn  
Chief  
Sex Offense and Domestic Violence Section  
United States Attorney's Office  
555 4<sup>th</sup> Street, NW, Room 10-403  
Washington, D.C. 20530

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

PUBLIC SAFETY DIVISION CRIMINAL SECTION

July 7, 2019

The Honorable Ron Johnson  
Chairman, Committee on Homeland  
Security and Governmental Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

**Re: Magistrate Judge Rainey R. Brandt**

Dear Senator Johnson:


Throughout my almost two decades of practicing law, seldom have I seen a judge who is as dynamic as Magistrate Judge Brandt. She would be an outstanding asset to the Superior Court for the District of Columbia as an associate judge.

Magistrate Judge Brandt doesn't waver in her application of facts to law, and her ability to maintain impartiality and independence to ensure the most judicious outcomes are reached. Her rulings are thorough and complete, and she has an acute ability to piece together evidence that exceeds many. As well, Magistrate Judge Brandt holds everyone in her courtroom to the highest standards. Defendants are treated with respect and dignity in her courtroom while also being held strictly accountable for their actions. Attorneys know to come to her courtroom prepared and to conduct trials in a professional and competent manner.

Magistrate Judge Brandt is also a true leader and collaborator. The judiciary operates at the highest level when there exists communication and understanding among the various stakeholders. Despite the importance of this, there are few people who can bring these stakeholders together and encourage collaboration. Magistrate Judge Brandt has the leadership qualities needed. I have observed this first-hand as one of the stakeholders, being the prosecutor's office, and how she coordinated a more efficient and productive process in the magistrate courtrooms by bringing everyone together. Communication and productivity were at their height when she was a judge on our calendar.

I have the highest respect and confidence in Magistrate Judge Brandt. The judiciary needs leaders among its rank, balanced and responsible decision-makers, and accountability in courtrooms. Magistrate Judge Brandt delivers these qualities and outcomes. You may consider this my highest recommendation.

Sincerely,



Peter Saba  
Chief, Criminal Section  
Public Safety Division  
Office of the Attorney General for the  
District of Columbia  
441 4<sup>th</sup> St., NW, Suite 1060N  
Washington, DC 20001  
(202) 442-9827



**Offit Kurman**  
Attorneys At Law

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NEW YORK  
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WASHINGTON DC

Jon Thomas, Associate Attorney  
Direct Dial: 202-900-8592  
lthomas@offitkurman.com

July 6, 2019

Via Hand Delivery

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
328 Hart Senate Office Building  
Washington, D. C. 20510

The Honorable Gary Peters  
Ranking Member, Committee on Homeland Security and Governmental Affairs  
724 Hart Senate Office Building  
Washington, D. C. 20510

Re: Letter of Support for Magistrate Judge Rainey Brandt

Dear Senators Johnson and Peters:

I am writing in support of the nomination of Magistrate Judge Rainey Brandt ("Judge Brandt") to become an Associate Judge on the Superior Court of the District of Columbia. Based on my experience appearing before Judge Brandt as a Magistrate Judge, it is clear to me that she possesses the temperament, character, and legal mind to be a great judge in this jurisdiction for years to come.

For nine months I appeared before Judge Brandt on the residential foreclosure docket. This docket is difficult to manage. The majority of the defendants who appear are *pro se*, and in most instances they are faced with extremely difficult financial and personal circumstances that have resulted in their inability to make payments on their mortgage. As a result, successful management of this particular docket requires an abundance of patience and compassion to address the issues that many of the defendants are dealing with. At the same time, management of the docket also requires a dedication to the rule of law because the lending institutions that are pursuing these claims also have legal rights and are entitled to collect the monies that they are owed.

For almost a year I watched Judge Brandt successfully manage this delicate balance with upmost professionalism. She would take time each day to educate the *pro se* defendants about the process

**Offit | Kurman**  
Attorneys At Law

MARYLAND  
PENNSYLVANIA  
VIRGINIA  
NEW YORK  
NEW JERSEY  
FLORIDA  
WASHINGTON, DC

they are faced with so that the legal system would be less opaque. Similarly, she would provide leeway where appropriate, but would not allow litigants to take advantage of their *pro se* status, or the fact that their circumstances may be sympathetic. At the same time, Judge Brandt was always fair to the institutional plaintiffs as well. She would move cases along at a reasonable pace and was always conscious of their rights and any prejudice that they may suffer as a result of her case management decisions. Perhaps most important, Judge Brandt would always allow every party – represented or *pro se* – the opportunity to be heard and would treat each person with dignity and respect. Considering the difficulties of this docket, it is my opinion that Judge Brandt unquestionably has the character and temperament to be an Associate Judge on the Superior Court.

Through her work on this docket, I was also able to observe Judge Brandt work through complicated legal issues in a fair, logical, and empirical manner. The magistrate judge that presides over this docket is frequently confronted with complicated issues on a variety of legal subjects, from service of process and pleading standards to complex questions of contract and property law. On a weekly basis I watched Judge Brandt work through these types of legal issues, each time in a methodical, logical, and rational manner. To be clear, I did not always agree with the ultimate decision that she arrived at, but I took comfort in the fact that the decision was not based on whim or caprice, but rather the byproduct of intense thought and consideration of the relevant authorities that were presented to the Court. As an attorney who frequently litigates in the District of Columbia Superior Court, that is the type of judge I want presiding over my cases.

At bottom, I have always thought that Judge Brandt would be a fantastic addition to the bench in the District of Columbia Superior Court and I am glad she is presently under consideration for the position. I hold Judge Brandt in extremely high regard and it is my honor to submit this letter in support of her nomination.

Respectfully,



Ian G. Thomas, Esq.

**Opening Statement of Shana Frost Matini**  
**Nominee to be Associate Judge of the Superior Court of the District of Columbia**  
**July 16, 2019**

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today, and thank you for considering my nomination to be an Associate Judge of the Superior Court of the District of Columbia. I want to thank the Judicial Nomination Commission, and in particular the Commission's Chair, the Honorable Emmet G. Sullivan, for recommending me to the White House, and the President for nominating me. I also wish to recognize and thank Chief Judge Robert E. Morin, who is present today, for his support and leadership, and to thank the Committee staff for their hard work in preparing for this hearing.

I am pleased to be joined today by members of my family. My father, Robert, resides in California and could not be here today, but he is watching the hearing online with, no doubt, a great deal of pride. My mother, Lynda, traveled from her home in Florida to support me today, as she has done every day of my life. My husband, Ali, and our daughter, Sofia, are also present – their love and encouragement means the world to me and I am thankful to have them in my life. I am also joined by a number of friends and colleagues. I am grateful to each of them for their friendship.

It is a great honor to be considered for Associate Judge on the Court where my legal career began when the Honorable Richard A. Levie hired me to serve as his law clerk. I am forever indebted to Judge Levie, who is here today, for his guidance and unwavering support throughout my career. My clerkship also provided an opportunity to form long-term relationships with my fellow law clerks, including my friend and colleague Judge Rainey Brandt, who clerked the same year as I did.

Upon graduation from law school in the District and after my clerkship, I worked in both the private and non-profit sectors before joining the District of Columbia Office of the Attorney General, where I served the District and its citizens as an attorney in the Civil Litigation and Equity Divisions. As a litigation attorney for the Office of the Attorney General, I practiced regularly in the Superior Court, and always found the judges before whom I appeared to be thoughtful, fair and dedicated. Not only did I learn so much as a practitioner in Superior Court, but when I was appointed to serve as a magistrate judge, I was provided invaluable guidance from my Superior Court colleagues. Since my appointment as a magistrate judge, I have served the Court in the Civil, Criminal, and Family Divisions, and thoroughly enjoyed the challenges that each assignment presented and the ability to serve my community. I am humbled by this nomination and, if I am fortunate enough to be confirmed, the opportunity to continue serving the District of Columbia as an Associate Judge of the very Court where I started as a young lawyer and have learned so much. I look forward to answering any questions the Committee has for me.

**REDACTED**

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,  
UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**  
 Shana Lyn Matini (full legal name)  
 Shana Frost Matini (name used professionally)  
 Shana Lyn Frost (prior married name)  
 Shana Lyn Malinowski (maiden name)
2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**  
 I am a citizen of the United States.
3. **Current office address and telephone number.**  
 Superior Court of the District of Columbia  
 500 Indiana Avenue, NW Suite 4450  
 Washington, DC 20001  
 (202) 879-9962
4. **Date and place of birth.**  
 April 18, 1970; Vineland, NJ.
5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**  
 I am married to Ali R. Matini, Optometrist at Georgetown Optician, 1307 Wisconsin Avenue, N.W. Washington, D.C. 20007.
6. **Names and ages of children. List occupation and employer's name if appropriate.**  

**REDACTED**
7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**  
 Columbia University, New York, New York; approximately August 2000 – December 2000; no degree received.

District of Columbia School of Law (currently the University of the District of Columbia David A. Clarke School of Law), Washington, D.C.; August 1993 – May 1996; J.D. received in 1996.

George Washington University, Washington, D.C.; 1988 – 1992; B.A. received in 1992.

Birch Wathen School, New York, New York; 1984 – 1988; graduated in 1988.

8. **Employment record.** List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.

Fall 1992 – Spring 1993

Language Teacher's Training College (Address Unknown)

Stupsk, Poland

English Teacher

9. **Honors and awards.** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2014).

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2013)

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2012)

Office of the Attorney General for the District of Columbia, Exemplary Service Award (2008)

Recipient of the Office of the Attorney General for the District of Columbia, Extra Mile Award (approx. 2008 or 2012)

District of Columbia School of Law, Dean's Cup for Outstanding Service to the Law School (1996)

10. **Business relationships.** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

Board of Directors, Council for Court Excellence  
Judicial Member (2016 – present)

Clydesdale Cooperative Board  
Board Member (approx. 2003 – 2004)

Help DC Help DC  
Co-Founder and Member of Board of Directors (2001 – 2003)

Local 1403, American Federation of Government Employees, American Federation of  
Labor and Congress of Industrial Organizations  
President (2014 – 2015)  
Acting President (2012 – 2014)  
Secretary (2010 – 2012)  
Member (2005 – 2015)

11. **Bar associations.** List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

American Bar Association  
Past Member (cannot recall dates)

Women's Bar Association of the District of Columbia  
Member (2016 – present)

National Association of Women Judges  
Member (2018 – present)

12. **Other memberships.** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Delta Gamma Fraternity  
Member (1990 – 1992)

Friends of the National Zoo  
Member (approx. 2012 – 2015)

GoPink!DC  
Member (2013 – present)

Help DC Help DC

Co-founder and Member of Board of Directors (2001-2003)

Hyde-Addison Parent Teacher Association  
Member (approx. 2012 –2016)

Local 1403, American Federation of Government Employees, American Federation of Labor and Congress of Industrial Organizations

President (2014 – 2015)  
Acting President (2012 – 2014)  
Secretary (2010 – 2012)  
Member (2005 – 2015)

Smithsonian Associates  
Member (2017 – present)

None of these organizations formerly discriminated or currently discriminates based on race, sex or religion; Delta Gamma Fraternity is an international sorority and is one of the oldest women's sororities in the country, and as such, membership may be restricted to women.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

District of Columbia Bar  
Member (1998 – present)

Maryland State Bar  
Member (1996 – 1999)

U.S. Court of Appeals for the Fourth Circuit  
Member (1998 – present)

Virginia State Bar  
Member (1998 – 1999, inactive status and resigned voluntarily in 2016)

U.S. District Court for the District of Columbia, admitted May 5, 2001.

U.S. Court of Appeals for the Fourth Circuit, admitted June 1, 1998.

I was admitted to the Maryland Bar in December, 1996, and am currently an inactive member in good standing. I first went inactive with the Maryland Bar on February 6, 1997, and became active again September 4, 1997. I again went inactive on July 1, 1999 and have remained inactive since that time. I have always remained in good standing.

I was admitted to the Virginia State Bar in May, 1998. I became an inactive member in good standing of the Virginia State Bar in 1999, and remained inactive and in good standing until I requested to voluntarily resign from the Virginia State Bar in 2016. My request for voluntary resignation was granted on July 5, 2016.

My bar membership to the District of Columbia Bar has not lapsed.

I remained active on the U.S. District Court for the District of Columbia State Bar until July 1, 2013. At that time, I became a provisional member as I no longer practiced as an attorney in the U.S. District Court. I am currently a provisional member in good standing.

My membership to the U.S. Court of Appeals for the Fourth Circuit has not lapsed.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

Co-Author, *Genetics in the Courtroom: Science and Cases in Neuro and Behavioral Genetics*, The Einstein Institute for Science, Health and the Courts (1999).

Editor-in-Chief, *Symposium on Juvenile Detention in the District of Columbia*, District of Columbia Law Review (Fall 1995).

Author, *A Matter of Trust: Imposing Employer Vicarious liability for the Intentional Tort of Employees*, 3 D.C. Law Rev. 167 (Spring 1995).

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

16. **Legal career.**

- A. **Describe chronologically your law practice and experience after graduation from law school, including:**

- (1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I served as a law clerk to the Honorable Richard A. Levie (retired) on the Superior Court of the District of Columbia from September 1996 to September 1997.

- (2) **Whether you practiced alone, and if so, the addresses and dates;**



I have never practiced alone.

- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

September 1996 – September 1997  
The Honorable Richard A. Levie  
Superior Court of the District of Columbia  
500 Indiana Avenue, NW Suite 4450  
Washington, D.C. 20001  
Law Clerk

September 1997 – December 1998  
Russell & Russell, P.C.  
282 North Washington Street, Lower 100  
Falls Church, VA 22046  
Litigation Associate

February 1999 – January 2001  
Einstein Institute for Science, Health and the Courts (no longer operational)  
Legal Fellow

January 2001 – September 2004  
ADR Associates (now JAMS)  
1155 F Street N.W. Suite 1150  
Washington, D.C. 20004  
Associate

July 2003 – November 2003  
Office of Police Complaints  
1400 I Street N.W., Suite 700  
Washington, D.C. 20005  
Complaint Examiner

November 2004 – November 2015  
Office of the Attorney General for the District of Columbia  
441 Fourth Street, N.W.  
Washington, D.C. 20001  
Trial Attorney

November 2015 – present  
Superior Court of the District of Columbia  
500 Indiana Avenue, N.W.  
Washington, D.C. 20001  
Magistrate Judge

**B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

I began the practice of law with a focus on litigation through my work as a law clerk and a litigation associate. During my clerkship, I assisted the Honorable Richard A. Levie with cases on the complex civil litigation calendar and with his duties as Deputy Presiding Judge of the Civil Division and the Multi-Door Dispute Resolution Division. My duties involved researching and drafting Memorandum Opinions and Orders addressing numerous legal issues, including legal and medical malpractice, personal injury claims resulting from asbestos exposure, and tobacco use, contract disputes, and toxic torts.

Following my clerkship, I joined the firm of Russell & Russell, PC where I served as a litigation attorney and assisted in the firm's representation of a small college, advising and representing the college on issues involving higher education law, employment law, labor law, discrimination law, contract law, and general tort law. I also assisted in the defense of corporate clients in government investigations regarding alleged violations of health care law. In 1999, I was offered the opportunity to pursue an interest I had developed in the intersection of science with the law by working with the Einstein Institute for Science, Health and the Courts where I spent a great deal of time analyzing developments in genetics and the potential impact on scientific advancements on various areas of the law. I also assisted in the preparation and presentation of national and regional seminars to state, federal and foreign judges on science and the law.

In January 2001, I joined ADR Associates (which later merged with JAMS). While at ADR Associates, I assisted Judge Richard Levie with his duties as Special Master in *United States v. Philip Morris et al.*, C.A. No. 99-2496(GK), the largest civil RICO lawsuit ever brought by the United States. At that juncture, I refocused my practice from advocate to neutral lawyer assisting in the resolution of pre-trial motions addressing numerous discovery and privilege disputes. I also supervised two other full-time attorneys working for Judge Levie in his role as Special Master.

When the *Philip Morris* litigation advanced from the pre-trial stage to trial, I joined the Office of the Attorney General for the District of Columbia ("OAG"). From 2004 until 2015, my general practice was defensive civil litigation and largely consisted of defending constitutional and common law claims against the District and its employees. The vast majority of my cases involved the Metropolitan Police Department, and thus my primary clients were law enforcement officers and officials. I also served as Acting President and later President of Local 1403 of the American Federation of Government Employees, which represented approximately 300 attorneys in the OAG and in the Offices of General Counsel in the various executive agencies of the District of Columbia. From May 2015 until I left the OAG in November 2015, I was an Acting Section Chief. In that role, I supervised eight to ten trial attorneys and legal fellows, and was responsible for overseeing all litigation handled by the Section, including developing litigation and trial strategy and recommending and approving settlements.

In November 2015, I was appointed by former Chief Judge Lee F. Satterfield as a Magistrate Judge for the Superior Court of the District of Columbia. I was assigned to the Civil Division where I presided over matters on the Tax and Mortgage Foreclosure Dockets. In January 2017, I was assigned to the Criminal Division, where I currently preside over matters on the District of Columbia Traffic Docket.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

While at the Office of the Attorney General, my primary client was the District of Columbia. I practiced generally in all areas of civil defense, including defense against common law claims of intentional torts and negligence, and various constitutional claims brought against the District of Columbia and its employees throughout all the District's agencies. I developed a specialty in handling allegations of police misconduct, including common law and constitutional claims of false arrest, excessive force, and violation of constitutional rights. I represented numerous members of the Metropolitan Police Department, from patrol officers to various members of the command staff, including the Chief of Police. I was also assigned to lead the defense of all cases brought under the District of Columbia's Unjust Imprisonment Act, and handled several lawsuits mounting First Amendment challenges to law enforcement responses to various large and small protests and public assemblies.

**D. Describe the general nature of your litigation experience, including:**

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

During my time working for JAMS and the Einstein Institute for Science, Health and the Courts, I never appeared in court. During my first five years at the Office of the Attorney General of the District of Columbia ("OAG"), I appeared in court frequently. During my last five years at the OAG, I appeared in court somewhat less frequently, as I became acting president of the Local 1403 Union, which represented all bargaining union employees from OAG. During this time, I maintained a 50% caseload in order to complete my union duties. I appeared in court infrequently during my time at Russell & Russell P.C.

- (2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.):  
65%

- (b) State courts of record (excluding D.C. courts);  
0%
  - (c) D.C. courts (Superior Court and D.C. Court of Appeals only);  
35%
  - (d) other courts and administrative bodies.  
0%
- (3) What percentage of your litigation has been:
- (a) civil;  
100%
  - (b) criminal.  
0%
- (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.
- I have tried nine matters to verdict in Federal or Superior Court. I served as lead counsel or co-counsel in seven of these matters, and was associate counsel in the remaining matters.
- (5) What percentage of these trials was to
- (a) a jury;  
78%
  - (b) the court (include cases decided on motion but tabulate them separately).  
12%

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

1. Hector Molina-Aviles v. District of Columbia, et al. C.A. No. 10-953 (consolidated with nineteen other cases); Carl Jones v. District of Columbia, C.A. No. 2010 CA 6401 (consolidated with twenty-nine other cases) (Honorable Anita Josey-Herring, Presiding Judge).

These consolidated cases were brought by thirty individuals. All the cases arose from the Metropolitan Police Department's discovery in 2010 that the Department's breathalyzer instruments appeared to have been improperly calibrated for approximately 17 months. Each Plaintiff had been convicted of driving under the influence during the time period the instruments were believed to be affected. The cases in U.S. District Court asserted claims of violations of substantive due process against the District and the Metropolitan Police Department officer responsible for overseeing the calibration of the instruments. The cases in Superior Court primarily asserted claims of negligence against the same defendants. I was lead counsel for the District of Columbia in all cases. The cases of ten individuals were dismissed outright, others were dismissed without prejudice and re-filed. After responses to written discovery were filed, most Plaintiffs accepted offers of judgment, and the remainder settled their claims soon thereafter. The twenty remaining claims were resolved before any District employee was deposed. The cases were significant for the District insofar as the potential for liability was great in light of the fact that the convictions of hundreds of individuals were called into question, and the cost for defense would have been significant. I and my team were able to resolve relatively quickly the cases that were filed, and allow the District, the Metropolitan Police Department, and the Office of the Chief Medical Examiner to focus on improving the District's impaired driving program.

Dates of Representation:

2010 to 2012

Co-Counsel:

Robert DeBerardinis  
Office of the Attorney General for the District of Columbia  
441 Fourth Street, NW  
Washington, D.C. 20001  
(202) 724-6642

Chad Naso  
Office of the Attorney General for the District of Columbia  
441 Fourth Street, NW  
Washington, D.C. 20001  
(202) 724-7854

Opposing Counsel:

Jeffrey Hord

Paley Rothman  
4800 Hampden Lane, 6th Floor  
Bethesda, Maryland 20814  
(301) 968-1648

David Oblon and Jeffrey Rhodes  
Albo & Oblon, LLP  
2200 Clarendon Boulevard, Suite 1201  
Arlington, Virginia  
(703) 312-0410

2. Christol English v. District of Columbia, C.A. No. 08-1337; U.S. District Court for the District of Columbia (Hon. James Robertson, Presiding Judge).

This matter was brought by the personal representative of Jason Taft, an individual fatally shot in the back by Metropolitan Police Department Detective Kevin McConnell while fleeing from an altercation between him and Detective McConnell. According to witnesses, Mr. Taft was behaving belligerently. Detective McConnell was driving by at the time and intervened. Some witnesses stated that Detective McConnell, who was not in uniform, identified himself as a police officer; others said he did not. A physical fight between Taft and Detective McConnell ensued. During the altercation, the decedent began to choke Detective McConnell, who reached for his service weapon and fired a shot. Mr. Taft began to flee the scene, and Detective McConnell fired several more shots, one of which was fatal. At trial, I was co-counsel with Assistant Attorney General Robert DeBerardinis, with whom I shared the defense of the matter equally. At the close of all the evidence, the jury returned a verdict for the Defendants. The case was significant for the District and Detective McConnell because the Defendants faced the prospect of a significant judgment including attorneys' fees.

Dates of Representation:  
2008 to 2009

Co-Counsel:  
Robert DeBerardinis  
Office of the Attorney General for the District of Columbia  
441 Fourth Street, NW  
Washington, D.C. 20001  
(202) 724-6642

Opposing Counsel:  
Gregory L. Lattimer  
Law Offices of Gregory L. Lattimer, PLLC  
1200 G Street, NW, Suite 800  
Washington, D.C. 20005  
(202) 638-0095

3. Kirk L. Odom v. District of Columbia, C.A. No. 2013 CA 3239; Superior Court of the District of Columbia (Hon. Neal Kravitz, Presiding Judge).

On September 9, 1981, a D.C. Superior Court jury found Mr. Kirk Odom guilty of burglary and armed rape. Mr. Odom was sentenced to twenty to twenty-six years in prison, and his conviction was affirmed on appeal. Mr. Odom served over twenty-two years in prison, followed by eight years on parole as a registered sex offender before DNA evidence exonerated him at the age of fifty. Mr. Odom brought suit against the District of Columbia pursuant to the District of Columbia Unjust Imprisonment Act, D.C. Code § 2-421, *et seq.* Mr. Odom's lawsuit was one of several cases assigned to me filed in the District of Columbia by a group of lawyers who specialized in unjust imprisonment litigation. I had primary responsibility for conducting discovery, briefing and arguing issues of first impression, and trying the case. Given that the plaintiffs each suffered an extraordinary loss from decades of incarceration for crimes that they did not commit, the case was important to the District, as the potential liability for the District was massive. On February 27, 2015, Judge Kravitz issued findings of facts and conclusions of law in which he rejected the District's arguments that any damages award should be limited to time of actual incarceration and be subject to a set-off from Mr. Odom's settlement with the federal government, and awarded Mr. Odom damages in the amount of \$1000 per day for each day of incarceration, \$250 per day for each day of parole, and \$200 per day for each day between the period of exoneration and trial. Judge Kravitz later amended his award to include damages for future injuries that he had found Mr. Odom would suffer.

Dates of Representation:

2013 to 2015

Co-Counsel:

Rick Ferrini  
(Deceased)

Opposing Counsel:

Nick Brustin and Peter Neufeld  
Neufeld, Scheck & Brustin  
99 Hudson Street, 8th Floor  
New York, New York 10013  
(212) 965-9081

Jeffrey S. Gutman  
The George Washington University School of Law  
2000 G Street, NW  
Washington, D.C. 20052  
(202) 994-7463

4. Jerome Vorus v. District of Columbia, et al., C.A. No. 11-1219; U.S. District Court for the District of Columbia (Hon. Beryl Howell, Presiding Judge).

Mr. Vorus alleged that he came upon officers conducting a traffic stop and began to photograph them when the officers told him that he could not photograph police officers without their consent, and that he needed to obtain permission to do so from the MPD's Public Information Office. Mr. Vorus further alleged that the officers asked for his identification, and appeared to run his name through a database in a mobile data terminal. Mr. Vorus asserted claims of violation of his First and Fourth Amendment rights. This case was significant to the District as, at the time, no formal policy had been issued on the manner in which photographing and video and audio recording could be regulated by police officers. Because Mr. Vorus highlighted in his amended complaint apparently inconsistent positions taken by MPD officials, the District sought his consent to stay the litigation, and endeavored to work with Mr. Vorus's counsel to develop a new MPD General Order that would clarify for members the law and the Department's policy. The District and the ACLU worked together to craft a general order that would address the rights of citizens not only in photographing and recording the public activities of police officers, but also to define procedures to seize such recording devices when there was reason to believe that the device contained evidence of criminal activity. As a result of the efforts of the District and the ACLU, MPD issued a new General Order and the *Vorus* litigation was settled for a reasonable monetary amount with no significant litigation.

Dates of Representation:

2011 to 2012

Opposing Counsel:

Arthur B. Spitzer and Frederick V. Mulhauser  
American Civil Liberties Union of the Nation's Capital  
4301 Connecticut Avenue, NW, Suite 434  
Washington, D.C. 20008  
(202) 457-0800

5. RayMing Chang, et al. v. United States, et al., C.A. No. 02-2010; U.S. District Court for the District of Columbia (Hon. Emmet G. Sullivan, presiding judge and Hon. John M. Facciola, Special Master).

I was assigned to the *Chang* case, as well as the companion case of *Barham v. Ramsey*, in October, 2009. At that time, the case had already been litigated for many years, and the trial team was reconstituted when allegations of discovery problems arose. This case, and the *Barham* case, arose from the arrests of more than 300 individuals in Pershing Park on September 27, 2002 during protests against the World Bank and International Monetary Fund. While the *Barham* case settled in 2010, the four remaining *Chang* Plaintiffs continued to litigate their claims. During my time on the case, I assisted with investigations to locate outstanding evidence, defended numerous depositions, responded to several sets



of discovery, participated in part in proceedings before the Honorable John M. Facciola who was designated as Special Master by the Honorable Emmet G. Sullivan, drafted several motions, and participated in the pretrial proceedings by working with Assistant Attorney General Causey to draft the joint pretrial statement, jury instructions, *voir dire*, pretrial motions in *limine* and prepare the case for trial. The case was set for trial on several occasions in 2015, but continued and eventually settled in April, 2016 after I left the Office of the Attorney General. This matter was significant to the District of Columbia as it, along with *Barham* and the case of *Benjamin Becker, et al. v. District of Columbia, et al.*, C.A. No. 01-0811 (PLF), substantially contributed to many policy and procedural changes in the District in the management of First Amendment assemblies and mass demonstration activity. It was also significant to the District in terms of the allegations as to how the District has managed evidence and its duties in defending litigation brought against it.

Dates of Representation:

2009 to 2015 (with some periods of inactivity during the Special Master investigation)

Co-Counsel:

William Causey  
(retired)

Jonathan Pittman  
Associate Judge, Superior Court of the District of Columbia  
500 Indiana Avenue, NW  
Washington, D.C. 20001  
(202) 879-1920

Opposing Counsel:

Marina Braswell and Brian Hudak  
United States Attorney's Office for the District of Columbia  
555 Fourth Street, NW  
Washington, D.C. 20530  
(202) 252-2549

Lauren Curry  
IBM  
1 North Castle Drive  
Armonk, N.Y. 10504  
(914) 417-7696

Robert Deso  
Deso & Buckley  
1776 K Street NW, Suite 830  
Washington, D.C. 20006

(202) 822-6333

Alex Francuzenko  
Cook Craig & Francuzenko  
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Fairfax, VA 22030  
(703) 865-7480

Daniel Schwartz, Heather Goldman & Jacob Kramer  
Bryan Cave LLP  
1155 F Street, NW, Suite 700  
Washington, D.C. 20004  
(202) 508-6000

Jonathan Turley  
2000 H Street, NW  
Washington, D.C. 20052  
(202) 994-7001

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to the matters addressed above, from January 2001 until September 2004, I participated in the matter of *United States v. Philip Morris, et al.*, which was a civil RICO action brought by the U.S. Department of Justice against nine major cigarette manufacturers and two tobacco industry trade associations. The Justice Department alleged that the Defendants engaged in a fifty-year conspiracy to deceive the public about the health effects of smoking and the addictive qualities of nicotine by engaging in knowingly false and deceptive advertising and publications. It was the largest RICO action that had ever been brought by the United States government. Now-retired Judge Richard A. Levie was appointed to be Special Master in the case by U.S. District Court Judge Gladys Kessler, who presided over the matter in U.S. District Court for the District of Columbia. As Special Master, Judge Levie was responsible for developing a case management plan and overseeing all aspects of discovery, including resolution of discovery and privilege disputes. Soon after his appointment as Special Master, Judge Levie hired me to assist him full time. Judge Levie and I conducted several meetings with counsel for all parties to develop a case management plan, which I assisted in drafting. Thereafter, I worked full time on the *Phillip Morris* matter for over three years, reviewing all motions filed by the parties, and preparing draft Special Master reports and recommendations for Judge Levie's review. In preparing draft reports and recommendations, I researched numerous legal issues related to pretrial discovery, including various privileges such as attorney-client privilege, the work product doctrine, and deliberative process and other executive privileges. My work also required me to review all documents claimed privileged by the

producing party that were the subject of a privilege challenge by an opposing party. Due to the voluminous work generated by the litigation, Judge Levie hired two additional attorneys, both of whom I supervised. My role in the *Phillip Morris* matter concluded once the non-jury trial began before Judge Kessler in September 2004.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I am currently a Magistrate Judge at the Superior Court of the District of Columbia. I was appointed by former Chief Judge Lee F. Satterfield for a four-year term as a Magistrate Judge in November 2015, and was sworn in as a Magistrate Judge on January 4, 2016. From January 2016 through December 2016, I was assigned to the Civil Division. While in the Civil Division, I was responsible for the Tax and Mortgages Foreclosure Calendar, where my overall case load averaged approximately 2400 cases. In January 2017, I was reassigned to the Criminal Division and assigned to preside over one of the three DC/Traffic Calendars. In this assignment, I preside over criminal matters, including non-jury trials, for criminal traffic and other quality of life offenses including driving under the influence of alcohol or drugs, driving without a valid permit or after suspension or revocation, public consumption of marijuana, and indecent exposure. My average caseload in this assignment is about 560 cases, and since beginning the assignment I have conducted many non-jury trials.

Given the nature of the calendars to which I was assigned, I have had limited opportunity to issue written opinions. In my current criminal assignment, most rulings and all verdicts I have issued have been oral. I have attached the one memorandum opinion and order I issued in the matter of *District of Columbia v. Peter Lintault*, 2017 CDC 002190, denying the defendant's motion to withdraw his guilty plea. In my prior assignment on the mortgage foreclosure calendar, I issued numerous written orders pertaining to basic motions including motions to extend time, deem a defendant served by publication, and substitute a party. Likewise, on the tax foreclosure calendar, I issued many basic written orders granting judgment in favor of a tax certificate holder. These were rote orders finding that the plaintiffs had satisfied their burden without legal analysis.

- A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

I am not aware of any decisions which I have made which have been reversed or otherwise criticized on appeal.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

## 21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

I have not held membership or office in any political party or election committee during the last ten years. In the spring of 2015, I assisted my neighbor, Leon T. Andrews, Jr. in obtaining signatures to be on the ballot for the Ward 4, District of Columbia City Council 2015 special election for councilmember.

- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.

Friends of Leon Andrews, Jr.  
\$100  
January 17, 2015  
Ward 4 City Council

Weaver 2014  
\$50  
July 31, 2013  
District of Columbia City Council

## 22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

During the background investigation of me conducted by the Judicial Nomination Commission (JNC) in the summer of 2017, the JNC informed me, by way of a letter dated August 15, 2017, of the following information the JNC received from the FBI:

The FBI advises that in 1990, the FBI Los Angeles initiated an investigation for possible check kiting, based on your deposit of three checks, drawn on your personal account at the National Bank of Washington, to your account at Wells Fargo. All checks were returned "Non-Sufficient Funds." The FBI advises that federal prosecution was declined due to guidelines, and that the matter was referred to local authorities for further investigation.

The JNC asked whether I was aware of this investigation and requested that I provide an explanation of the facts and circumstances surrounding the investigation.

As I explained to the JNC, I was not aware that I was ever the subject of an FBI investigation until I received the correspondence from the JNC. I also was never informed that I was ever the subject of investigation by any local law enforcement authorities. I was particularly surprised to learn that there was such an investigation given that, in approximately 2002, the FBI conducted a background investigation of me for a top-secret security clearance to allow me to work with the Honorable Richard A. Levie.

In the absence of any personal knowledge, I speculate that the 1990 investigation may have been part of a broader investigation of my stepfather, Martin Silvestri, who was convicted in 1992 in U.S. District Court in Los Angeles of wire fraud and served a sentence for his conviction. To the best of my recollection, I believe, but am not sure of the precise time frame, that the incident involving the checks occurred in approximately the summer of 1989. I came to Los Angeles for the summer of 1989 after my freshman year of college and soon found two summer jobs. Although I had a bank account in Washington, DC where I resided most of the year for school, my stepfather encouraged me to also open a bank account in California so that I could easily deposit the money that I earned during the summer. At some point, my stepfather asked me to write some checks from my Washington bank account to deposit into my Los Angeles bank account. He told me that he needed me to be able to write checks for some work-related expenses that he had, as well as for household expenses, and assured me that he was expecting substantial payments from royalties for his music to cover the checks. It did not occur to me that he might not deposit money to cover the checks. I later learned that there were no funds to cover the checks that I wrote. At the same time, I began to have significant credit card issues resulting from the fact that my stepfather had asked me to make him a signatory to the credit card accounts that I had at that time. He also gave me a credit card that he asked that I only use in an emergency, explaining he wanted to be able to help me as I had helped him. I did not realize that the account was actually in my name and opened by him without my knowledge until I began to receive calls from the credit card company indicating that the account was in my name and significantly in default. At the age of twenty, I owed more money than I could imagine ever being able to repay. Over the years that followed, I worked very hard with the creditors to pay off as much of the debt that I could. I was able to re-establish myself and eventually rebuild my credit. I completed both college and law school with only my own student loans and grants that I earned. I disclosed the credit issues to the three Bars to which I applied (Virginia, Maryland, and the District of Columbia), and was admitted to practice in each.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which**

you appeared as a witness.

Shana Frost v. Eric Frost, 2011 DRB 2310 (D.C. Super. Ct.) and Shana Frost v. Eric Frost, 2011 LTB 23891 (D.C. Super. Ct.).

I was the petitioner in an uncontested divorce proceeding. I had also been advised to file the landlord/tenant action as I was the sole owner of the house in which I resided with my husband, but he soon agreed to leave the home and I was able to voluntarily dismiss the landlord/tenant action. I filed the action for divorce on July 22, 2011, and the judgment of absolute divorce was entered on February 16, 2012. I filed the landlord/tenant proceeding on August 30, 2011, and voluntarily dismissed it on September 20, 2011. My request for a divorce was granted, and I was awarded sole physical custody of our minor child with joint legal custody, and also awarded child support. Both parties were self-represented.

RayMing Chang, et al. v. United States, et al., 02-2010 (EGS/JMF).

During the course of the Special Master proceedings, I was called as a witness to testify on January 10-11, 2013 before Special Master John Facciola regarding the investigation into the alleged loss or destruction of evidence and the efforts made to retrieve missing evidence.

In June, 2013, I was called to testify, in my capacity as Acting President of AFGE Local 1403, at an administrative hearing before the Public Employees Relations Board pertaining to a recognition petition filed on behalf of a group of District of Columbia administrative law judges seeking to organize a bargaining unit. My testimony focused on the duties and responsibilities of bargaining unit attorneys at Office of the Attorney General, and was offered in the proceedings as a comparison to the work performed by administrative law judges.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

I have never been disciplined or cited for breach of ethics for unprofessional conduct. I have had two complaints made against me during my career.

In the Special Master proceedings in RayMing Chang, et al. v. United States, et al., C.A. No. 02-2010 (EGS/JMF), the plaintiffs' lawyers alleged that I violated D.C. Bar Rule of Professional Conduct 3.7, and requested that Special Master Facciola refer me and other District of Columbia lawyers to Bar Counsel. Plaintiffs' lawyers also alleged that I and other lawyers for the District of Columbia engaged in witness tampering and should be referred for criminal investigation. After several hearings, the Special Master issued a lengthy report of factual findings on December 16, 2013. Chang, et al. v. United States, et al., C.A. No. 02-2010 (EGS/JMF), Report and Recommendation of the Special Master, Dkt. 982 (D.D.C. Dec. 16, 2013). The Special Master's Report did not conclude that any

evidence was lost or destroyed, or that there was any attempt to destroy evidence.

In July 2008, I learned that a witness (and former police officer with the Metropolitan Police Department) in the consolidated cases of *Ian Preddie v. District of Columbia*, 2004 CA 4583 and *Rebecca Smith v. District of Columbia*, 2004 CA 4555, tried before Judge Robert Morin in the Superior Court for the District of Columbia referred me to the Inspector General, asserting that I had shared confidential information regarding him with my former husband, who was also a member of the Metropolitan Police Department. The allegations were referred to an investigator at the Office of the Attorney General, who found the allegations to be unfounded.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

None.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

I am not aware of any investments, obligations, liabilities or other relationships which could involve potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

I have not, in my personal capacity, engaged in any activity during the last ten years for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy. In my capacity as Acting President and later President of Local 1403, American Federation of Government Employees, the Union that represents the approximately 300 (non-management level) attorneys within both the Office of the Attorney General for the District of Columbia and the Offices of General Counsel for the various agencies subordinate to the Mayor of the District of Columbia, I often advocated for or against legislation that impacted the members of Local 1403's collective bargaining unit.

I specifically recall offering testimony before the District of Columbia City Council, Committee of the Whole in July 2013 in support of PR-20-330 and in June 2014 in support of PR-20-795, both of which addressed different Compensation Agreements between the District of Columbia Office of the Attorney General and the American Federation of Government Employees Local 1403, AFL-CIO (Compensation Unit 33). These resolutions



were required for the District of Columbia to formally accept and implement two collective bargaining compensation agreements negotiated by the Office of the Attorney General and Local 1403, which were ratified by Local 1403's membership and approved by its officials. I also provided testimony at an oversight hearing for the Office of the Attorney General conducted by the District of Columbia City Council Committee on the Judiciary in February, 2014.

Also in my role as Acting President of AFGE Local 1403, in March 2013 I offered testimony before the District of Columbia City Council, Committee on the Judiciary, in opposition to Bill 20-134, the Elected Attorney General Implementation and Legal Services Act. It was the position of Local 1403, as well as at least one former Councilmember, a former Attorney General for the District of Columbia, and various public interest groups, that the proposed legislation would adversely impact the provision of legal services in the District of Columbia by bifurcating the attorneys providing legal service to the District into two separate chains of command and threaten the legal autonomy of the Attorney General of the District of Columbia.

Also on behalf of AFGE Local 1403, in February, 2013 I participated in a public oversight roundtable sponsored by the District of Columbia City Council related to the Prohibition on Government Employee Engagement in Political Activity Act of 2010 in light of the passage of the federal Hatch Act Modernization Act of 2012.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I am not aware of any current potential conflicts of interest. If I become aware of a conflict of interest, or if any conflict of interest arises in the future, I will resolve it in accordance with the Code of Judicial Conduct.

8. If confirmed, do you expect to serve out your full term?

Yes.

**III. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

## IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501(b), as amended.

1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?  
Yes.
3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.  
Yes, July 10, 1998.
4. If the answer to Question 3 is "no" —
  - A. Are you a professor of law in a law school in the District of Columbia?
  - B. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  - C. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  - D. Upon what grounds is that eligibility based?
5. Are you a bona fide resident of the District of Columbia?  
Yes.
6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.  
Yes. Since April 2014, I have lived at [REDACTED]  
From January 2004 to April 2014, I lived at [REDACTED]  
**REDACTED**
7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

Please see attached.

## AFFIDAVIT

I, Shana Lyn Matini, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.



SUBSCRIBED and SWORN TO before me this 30th day of March 2018.

State of Florida  
County of St. Lucie

  
Notary Public



**Senator Kyrsten Sinema  
Post-Hearing Questions for the Record  
Submitted to Shana Frost Matini**

**Nominations of Ann C. Fisher and Ashley E. Poling to be Commissioners, Postal  
Regulatory Commission; Catherine Bird to be General Counsel, Federal Labor Relations  
Authority; and Rainey R. Brandt and Shana Frost Matini to be Associate Judges, Superior  
Court of the District of Columbia  
Tuesday, July 16, 2019**

- 1) The position you are nominated for is critically important, especially given the ongoing high number of vacancies within the D.C. Superior Court.
  - a. What efforts, if any, have you made outside the courtroom to prepare yourself for the position for which you are nominated?

Response: Prior to serving as a Magistrate Judge, I served as a trial attorney at the Office of the Attorney General for the District of Columbia. While there, I handled a heavy caseload of civil cases, and litigated a wide variety of issues. That position required me to regularly learn new subject matters, statutes, and regulations, and I became adept at quickly developing expertise in different areas of the law. Similarly, for each calendar to which I was assigned as a Magistrate Judge, I spent considerable time outside the courtroom learning the applicable law necessary to successfully handle my assignments. I also regularly attend trainings offered by the Court that address legal issues that arise before the different divisions of the Court.

- b. As we consider your nomination to be an Associate Judge, I want you to cast forward to the end of your career. What do you hope your legacy as a judge will be when you leave the bench?

Response: I hope the community remembers me as a thoughtful, hardworking and fair judicial officer who treated the litigants, attorneys, and courthouse staff with respect. I would like my colleagues to remember me as someone that they could rely on to assist when needed, and offer guidance when asked.

- 2) As a Magistrate Judge, there is a limited jurisdiction. Associate Judges have an opportunity to handle many more cases and more issues.
  - a. As such, how would you go about preparing yourself to successfully meet the expanded scope of your new position, while still handling the day-to-day challenges of your new position and serving the public?

Response: If I am confirmed to be an Associate Judge, I pledge to the Committee that I will continue to do what I have done throughout my career: work as hard as I can to learn areas of the law that are new to me. Since I joined the Superior Court as a Magistrate Judge, I have been assigned to two divisions of the Court (the Criminal Division and the Family Division) to preside over cases regarding

matters previously unfamiliar to me. In preparation for each new assignment, I reviewed relevant case law, observed proceedings before my colleagues, and attended training specific to the new subject matter. While preparing for the new assignment, I continued to preside over the cases in my current assignment, while also assisting to train the judge taking over the calendar that I was leaving. I will make these same efforts to prepare for new challenges that will be presented to me as an Associate Judge.

- 3) As a judge, you may have litigants appear before you who do not have attorneys and may not fully understand the law and procedure.
- a. What do you believe the proper role is for a judge in helping litigants access information they may need to present their cases or obtain legal counsel?

Response: It is essential that individuals before the Court have a firm understanding of the process, and a judge should ensure that the process is explained to unrepresented individuals. While serving as a magistrate judge, I have regularly referred *pro se* litigants to resources available both at the Superior Court, including the self-help centers, as well as outside organizations and law schools that provide legal assistance to unrepresented individuals.

William F. Causey  
2737 Devonshire Place, N.W.,  
Apartment 411  
Washington, D.C. 20008

June 21, 2019

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security  
and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on  
Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

Re: Nomination of Shana Frost Matini to the Superior Court of the District of Columbia

Dear Chairman Johnson and Ranking Member Peters:

I write in strong support of the nomination of Shana Frost Matini for the position of Associate Judge of the Superior Court of the District of Columbia. Magistrate Judge Matini would make an excellent member of the Superior Court bench.

I worked with Shana when I served as an Assistant Attorney General for the District of Columbia in the Public Interest Division from 2011 to 2015. During that time, Shana was an Assistant Attorney General of the Civil Litigation Division of the Office. Together, Shana and I represented the District of Columbia and the Metropolitan Police Department in litigation filed in federal court arising out of the largest public demonstration in recent memory in the District. The case involved the arrest of over 400 people at Pershing Park in 2002 for unlawfully demonstrating during the World Bank-IMF Conference in the District. Dozens of law enforcement entities were sued, and case took over eight years to resolve. We handled dozens of depositions, numerous court hearings, oversaw the production of thousands of documents, and finally obtained a successful settlement for our clients in mediation before a former federal judge.

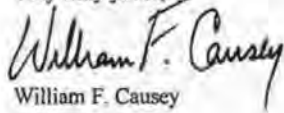
Shana's work during the case was exemplary. She had a mastery of the facts and the legal issues involved, wrote cogent, well-supported, and persuasive briefs, and worked efficiently with our Office staff to organize the case and keep it manageable. She always was courteous with opposing counsel and treated the court with appropriate deference and respect. Despite the



magnitude and sensitivity of the case, Shana always remained calm and level-headed. I was honored to work with her. Shana epitomized the best in a government lawyer.

Having worked closely with Shana on this case and other matters in the Office, I can state unequivocally that she was an outstanding attorney. I have no doubt she will be an outstanding Superior Court Judge.

Very truly yours,

A handwritten signature in cursive script that reads "William F. Causey". The signature is written in dark ink and is positioned above the printed name.

William F. Causey

2737 Devonshire Place, N.W.  
Apartment 411  
Washington, D.C. 20008

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security  
and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on  
Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

June 7, 2019

Re: Nomination of Magistrate Judge Shana Frost Matini for the Superior Court of the District of Columbia

Dear Chairman Johnson and Ranking Member Peters:

I write in strong support of the nomination of Magistrate Judge Shana Frost Matini to become an Associate Judge on the Superior Court of the District of Columbia. Judge Matini possesses the intellect, temperament, legal experience and writing skills to be a truly outstanding Associate Judge, as she already has demonstrated during her service as a Magistrate Judge on the Superior Court.

I was privileged to be one of Judge Matini's supervisors in the Civil Litigation Division of the Office of the Attorney General for the District of Columbia (OAG) from 2011 to 2016. She was a gifted attorney whose writing was clear, concise and persuasive and whose courtroom advocacy skills were outstanding. Judge Matini was the "go to" Assistant Attorney General in OAG for the large and sensitive litigation the office handled. Not only did Judge Matini distinguish herself with her legal skills, she litigated her cases with the highest degree of professionalism, often in the face of unscrupulous opponents. Her integrity garnered respect for the work of OAG.

Judge Matini also played a significant role in the union that represented attorneys in OAG. Requiring a deft hand and an ability to find compromises, Judge Matini was able to ensure a positive working relationship with the management of OAG while retaining the trust of her colleagues. Her involvement in non-litigation issues demonstrated her ability to be a good listener to many points of view and to fashion resolutions to what otherwise often appeared to be intractable problems. Judge Matini always was even-tempered and respectful in her dealings with others regardless of what job position they held in OAG. She was widely admired by all with whom she worked.

Because of her intellect, integrity, legal experience, and commitment to the District of Columbia, Judge Matini will make an excellent Associate Judge. Having practiced law for over 47 years as an attorney with the United States Justice Department, an Assistant United States Attorney, a District of Columbia law firm partner and a Deputy Attorney General in the OAG, and having litigated and appeared before hundreds of federal and state court judges, including many on the Superior Court, I believe I am uniquely well-suited to recognize the attributes of a good judge. Judge Matini possesses the essential qualities—intellect, experience in the courtroom, cogent writing, patience, the ability to listen, the wisdom to rule fairly, unimpeachable integrity and dedication to the community she serves—to be an outstanding jurist. She will elevate the reputation of the Court.

I also have had the pleasure of being Judge Matini's teammate on the GoPink!DC dragon boat team that paddles out of the Anacostia Boathouse and competes around the Mid-Atlantic region. The team is made up of breast cancer survivors and their supporters. Judge Matini is one of the team's biggest supporters (and one of its most awesome paddlers). (Her young daughter Sofia also is our unofficial mascot.) We are a group of diverse women with the goals of recovering from breast cancer and maintaining our health with the support our teammates. Judge Matini quickly became a leader on the team, not because of her title but because of her commitment to the women on the team. Thus, even in non-legal settings, Judge Matini is a natural leader to whom others are drawn for guidance and example. This simply is who she is regardless of the setting.

In sum, you have the opportunity to confirm a truly well-qualified nominee to be an Associate Judge on the District of Columbia Superior Court. The residents of the District of Columbia will be the grateful beneficiaries of your action.

Very truly yours,

  
Elizabeth Sarah Gere

May 20, 2019

The Honorable Ron Johnson, Chairman  
Committee on Homeland Security and Government Affairs  
328 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Gary Peters, Ranking Member  
Committee on Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member Peters:

I write in unreserved support of the nomination of Magistrate Judge Shena Matini to be an Associate Judge on the Superior Court for the District of Columbia. As I explain below, Judge Matini embodies the qualities that are critical to being an effective judge, and I have no doubt that if confirmed, she will serve with great distinction.

I first met Judge Matini on the day I began work as Assistant Deputy Attorney General for Civil Litigation for the District of Columbia Office of the Attorney General. I served in that position from 2007-2011, at which point I rejoined Boies Schiller Flexner LLP where I have been a partner since 2012. My responsibilities as Assistant Deputy included supervision of the work of the four General Litigation sections of the Civil Division, which represent the District of Columbia in lawsuits for damages. I also directly participated in cases of particular significance to the District of Columbia.

Judge Matini was a trial attorney in one of the General Litigation sections throughout my tenure as Assistant Deputy. Each section was led by a section chief, but there were two extended periods of time when Judge Matini's section had no section chief, one because the position was vacant and the other during an extended absence of the section chief. During this period, I directly supervised the section, including review of all written work product. I also worked closely with Judge Matini on other major cases. As an example, I served as co-counsel with her on a major wrongful-death case brought against the District of Columbia. As another example, I worked with her co-counsel and her on a difficult police shooting case and observed much of the trial.

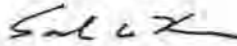
I therefore had ample opportunity to form an opinion of Judge Matini's legal and communication skills, considerable civil litigation experience (including many trials), work ethic, temperament, knowledge of the law, professionalism, collegiality, innate sense of fairness and commitment to civility, and ability to handle pressure. All are first rate. She is a clear and effective writer and oral advocate with excellent analytical abilities. She also has a demonstrated ability to handle many different responsibilities at the same time while producing high-quality work and maintaining an even disposition. Attorneys in the General Litigation sections have large caseloads, and on top of the typical caseload, Judge Matini handled many of the most important and sensitive cases in the Division. She also was the primary caregiver during my tenure to her

daughter Sofia who was between the ages of 1 to 5 while I was Assistant Deputy. Despite these considerable personal and professional responsibilities, she always displayed an unflappable demeanor while operating according to the highest standards of professionalism and vigorous advocacy.

Judge Matini also has the precise combination of personal qualities that are important to a high quality judicial temperament. She is an inherently fair-minded person who marries a basic sense of kindness and diplomacy with a steely toughness, commitment to the law, and sense of conviction. She is confident with a firm sense of self without a trace of arrogance. The result was that she was universally well-liked and respected by all of her peers and supervisors, as well as by clients and witnesses. This included in particular the attorneys in the Office of General Counsel at the Metropolitan Police Department as well as the officers and expert witnesses with whom she worked on her police cases. Judge Matini also was invariably a vigorous advocate for her clients while always showing respect for opposing counsel and litigants. It is entirely predictable to me that Judge Matini has, as I understand it, earned uniformly positive feedback while serving as a Magistrate Judge for the Superior Court of the District of Columbia. She would make an excellent Associate Judge.

Should you have any questions or if I can be of any assistance, please do not hesitate to contact me at [skaplan@bsllp.com](mailto:skaplan@bsllp.com) or 202-274-1163.

Very sincerely yours,



Samuel C. Kaplan

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security  
and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on  
Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

June 4, 2019

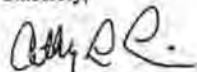
Dear Chairman Johnson and Ranking Member Peters:

As a former Chief of Police for the District of Columbia Metropolitan Police Department ("MPD"), I write to you and the Committee on Homeland Security and Government Affairs to offer my support of the nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia. Based upon my knowledge of her work through her representation of MPD during the time I served as Chief of Police from 2007 until 2016, I believe she possesses the skill, temperament and intellect to be an excellent judicial officer.

During the time I served as Chief of Police, Shana was an Assistant Attorney General with the Office of the Attorney General for the District of Columbia in the Civil Litigation Division. She handled numerous matters on behalf MPD; her hard work and diligence were well-known throughout MPD. I and other members of the command staff appreciated her professionalism and dedication. During Shana's work on several class actions involving MPD, I had the opportunity to work personally with her prior to trial. Because of Shana's expertise in legal issues involving First Amendment assemblies, she was asked to provide training to newly-appointed MPD officials on the District's laws governing the right to peaceably assemble.

I highly recommend that the Committee confirm Shana's nomination to be an Associate Judge of the Superior Court of the District of Columbia. Her commitment to the District of Columbia as exemplified by her work with the Office of the Attorney General and her strong legal skills make her well-qualified for the position.

Sincerely,



Cathy L. Lanier

**RICHARD A. LEVIE**  
2809 University Terrace, N.W.  
Washington, D.C. 20016

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security  
and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on  
Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

Re: Judicial Nomination of the Hon. Shana Frost Matini

I write to support with the highest recommendation the nomination of the Honorable Shana Frost Matini for a position as an Associate Judge on the Superior Court of the District of Columbia.

I am a Senior Judge at the Superior Court, having been appointed in 1985 by President Reagan. Until March 2000 I was an Associate Judge at the Superior Court, commencing in April 2000 I took senior status. Since April 2000 I also have been involved in dispute resolution as a mediator, arbitrator and special master.

From September 1996 through September 1997 Judge Matini\* was my law clerk at a time when I was on a Civil I calendar (complicated and protracted cases) and when I became the Deputy Presiding Judge of the Civil Division. Of my 15 law clerks, she was, without question, the best. Her analytical and writing skills were superb, and her judgment and insight into legal issues and people were well beyond her chronological years.

During Judge Matini's tenure as my law clerk, and again from February 1999 through January 2001, I worked with her in connection with the Einstein Institute for Science, Health and the Courts (EINSHAC) where she was a Legal Fellow and I was a member of the Board of Directors. In her role as a Legal Fellow, Judge Matini worked on the preparation and presentation of courses for federal and state judges on the handling of scientific issues in the courtroom. This project was funded by the Human Genome Project of the U.S. Department of Energy. In her duties at EINSHAC she worked closely with scientists and federal and state judges from throughout the country drafting course materials and preparing scenarios for teaching purposes.

In January 2001 I began work as the Special Master in the RICO case brought by the Department of Justice against the tobacco companies. (*United States v. Philip Morris et al.*, D.D.C.). My work with Judge Matini on the tobacco and other special master cases occurred from January 2001 through September 2004.

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\* I use the title "Judge" in this recommendation as a reflection of the nominee's current position, not in any presumptive manner.

In the role of special master, I handled development of case management orders and decided a broad array of discovery issues and privilege disputes. In the course of 4 years as Special Master in the *Philip Morris* case alone, I issued over 200 Reports and Recommendations, including a number which were several hundred pages in length. I had three attorneys who worked full time on the case. From the beginning of my work as Special Master, Judge Matini was the lead attorney assisting me. She was responsible for analyzing parties' arguments, reviewing documents for privilege (including highly sensitive Presidential communications) and work product, drafting memoranda for me and drafting Reports and Recommendations setting out the rulings. In addition to performing her own work, Judge Matini reviewed and supervised the work of the other two attorneys.

The *Philip Morris* case afforded her the opportunity to interact with outstanding attorneys from law firms throughout the United States and work on issues involving all of the governmental privileges, as well as the attorney client privilege, the work product doctrine and the application of the laws of foreign countries and treaties. Discovery in the case involved over forty million pages of documents, hundreds of depositions and many thousands of exhibits. Judge Matini's work in the *Philip Morris* case was exemplary in terms of analysis, research and drafting. She also demonstrated the ability to organize and deal with large amounts of material and complex legal arguments expeditiously and efficiently.

In addition to the *Philip Morris* case, she worked as my legal associate on two other special master cases: *APCC Services et al. v. AT&T, Sprint and Qwest* (D.D.C.) and *U.S. v. McDonnell Douglas* (D.D.C. – a criminal case).

In working with Judge Matini as a law clerk and as an associate on my special master cases, she always remained calm under stress, worked efficiently and effectively with time constraints, ably supervised other attorneys and retained her sense of humor. As the one ultimately responsible for the work, I always felt that I could (and did) trust Judge Matini's work product and advice.

In her work with the Office of the Attorney General of the District of Columbia, I know from speaking with judges before whom she appeared that her work product was highly respected. I believe it is fair to conclude that routinely assigning her complex and difficult cases reflected the confidence of that office in her work. Moreover, the fact that she handled a number of cases brought against the Court and its judges was another indicator that the OAG had a great deal of trust and confidence in her abilities.

Since she became a Magistrate Judge in November 2015, I have observed Judge Matini in court more than a dozen times in her work in the Civil, Criminal and Family Court Divisions of the Court. In each instance, I saw her treat litigants and attorneys with respect and dignity. In carrying out her judicial duties and making decisions required by the law and facts of particular cases, she always showed an appreciation that there were real people with real problems before her. Judge Matini, at appropriate times and in dignified ways, demonstrated a sense of humor in a very human way and never at the expense of any litigant or attorney. She did not hesitate to make hard decisions, including incarceration, consistent with the law and the facts of the particular case.

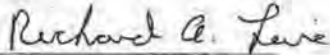


All of Judge Matini's assignments as a Magistrate Judge have involved high volume courts. In each instance, she has run her courtroom with efficiency, but without compromising the dignity of the courtroom and without ever appearing to rule before affording all parties the opportunity to be heard.

Judge Matini has the intellect, common sense, instincts, intellectual curiosity, personality and senses of perspective, balance and humor to be an outstanding Associate Judge. She is very much a team player working in the best interest of the court and prepared to spend the time necessary to do a first rate job in any assignment and to assist other judicial officers to make sure litigants have their cases adjudicated in a timely manner.

Knowing that a Magistrate Judge is often the only judicial officer with whom members of the public come in contact, my observations of her in court show her to be a judicial officer who conducts herself in a manner that deals with litigants and counsel with dignity and respect, so that all parties appeared to leave the courtroom with the feeling that they had been heard. Watching her as a Magistrate Judge I am confident that, as an Associate Judge, she will reflect well on the Court, its role in serving the citizens of the District and the White House for having nominated her.

Please do not hesitate to contact me with any questions - [ralevie@gmail.com](mailto:ralevie@gmail.com) or 202-253-9251.



Hon. Richard A. Levie  
Senior Judge

# Arnold & Porter

Irvin B. Nathan

+1 202.942.6267 Direct  
 irv.nathan@arnoldporter.com

May 7, 2019

The Honorable Ron Johnson  
 Chairman, Committee on Homeland Security  
 and Government Affairs  
 328 Hart Senate Office Building  
 Washington, DC 20510

The Honorable Gary Peters  
 Ranking Member, Committee on  
 Homeland Security and Government Affairs  
 725 Hart Senate Office Building  
 Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

As a former Attorney General for the District of Columbia and someone deeply committed to the improvement of the administration of justice in the District, I enthusiastically recommend that the Committee confirm the nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia.

When I served as Attorney General for the District of Columbia from 2011 until the end of 2014, I dealt with Shana in two capacities. First, she was a trial lawyer in our civil litigation sections, and second she served as President of the labor union, Local 1403 of the American Federation of Government Employees, that represented all of our staff attorneys. In both capacities, she served with distinction, using her excellent legal skills and superb judgment to help the District prevail in difficult legal cases and to improve the working conditions and morale of our dedicated legal staff.

Prior to becoming Attorney General, I had been told by those who had worked with Shana, including a Superior Court judge with whom she had worked closely, about

## Arnold Porter

May 7, 2019

Page 2

her excellent analytical and people skills. Once in office, I soon observed those skills directly. Because Shana handled a number of high profile and complex cases in both the Civil Litigation and Equity Divisions of the Office of the Attorney General, I often met with her and other lawyers on her litigation teams to discuss defense and trial strategy. Shana always was well prepared for our meetings and was able to discuss the nuances of the various legal issues presented. I found her recommended strategies to be well reasoned, as borne out by the positive outcomes in her cases. I found her written work to be coherent, concise and persuasive. It was clear to me that Shana worked very hard to provide the best possible defense for the District of Columbia in all her cases.

As noted, during my tenure as Attorney General, Shana also served as President of the AFGE Local, the union that represents over 300 lawyers serving the District of Columbia. Shana met with me regularly in her union capacity to discuss concerns and issues raised by her colleagues, as well as issues of policy within the Office of the Attorney General. In her role as President, Shana advocated for better compensation, equipment, and support for the attorneys so that they, in turn, would be able to provide the highest level of legal service to the District of Columbia and its citizens. Shana was very involved in negotiating the successful collective bargaining agreement that the union and management reached while I served as Attorney General. Although we did not agree on every issue, Shana was respectful of my opinion and the opinion of others, and was well reasoned, sensible, and persuasive in her advocacy. We shared the focus and desire to make the Office of the Attorney General a top-notch law firm and a good place to work. Because Shana's mission was to improve the Office of the Attorney General overall, we were able to reach agreement on most issues and, as a result, improve the quality of the working conditions in the Office and the legal services provided.

After leaving the Office of Attorney General, I continued to interact with Shana when she joined the Council on Court Excellence (CCE), on which I serve as President of the Board of Directors. CCE is a non-profit organization, made up of lawyers, judges and lay people, dedicated to improving the administration of justice in the District. Shana joined the Board of Directors as a Judicial Director Member and currently serves on the organization's Justice Education Committee, which strives to educate the District of Columbia community about local justice issues and sponsors legal training for attorneys and judges. I continue to be impressed with Shana's skills and dedication to the District of Columbia.

As you know, Shana currently serves as a Magistrate Judge for the Superior Court of the District of Columbia. I have had a chance to observe her work and have been advised by other lawyers who have similarly had an opportunity to assess her performance as Magistrate Judge. In that role, she has demonstrated that her sound legal

**Arnold & Porter**

May 7, 2019  
Page 3

knowledge, work ethic, integrity, and temperament make her an excellent judicial officer. If she is confirmed, I have no doubt that Shana will continue to work hard to serve the citizens of the District of Columbia and will make a solid contribution to the administration of justice in the District as she has done throughout her career.

Thank you for your consideration.

Sincerely,  
  
Irvin B. Nathan



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

May 9, 2019

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

RE: Nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia

Dear Chairman Johnson and Ranking Member Peters:

As Chief of Police for the District of Columbia Metropolitan Police Department ("MPD"), I write to you and the Committee on Homeland Security and Government Affairs to offer my strong support of the nomination of Shana Frost Matini to be an Associate Judge of the Superior Court of the District of Columbia. I believe she possesses the skill and intellect to be an excellent judicial officer.

I first met Shana when I was called as a witness for a deposition in the case of *Towhanna Boston et al. v. District of Columbia*, C.A. No. 05-7232 (D.C. Super.), involving the death of two children who were struck by a driver fleeing from MPD officers. At the time, I was an Assistant Chief of Police, and Shana met with me to prepare me for my deposition and to discuss the pursuit case. I found her to be well-prepared and quite knowledgeable about the law and MPD's General Orders governing pursuits. Her extensive knowledge of this area of law led Shana to be assigned to several cases involving the defense of police pursuits, including *Greer Hodges, et al. v. District of Columbia*, C.A. 07-2091, in which she and her co-counsel obtained a directed verdict at trial in the U.S. District Court for the District of Columbia.

Because Shana was assigned to defend many other high-profile MPD matters, I had the opportunity to observe her work often, and was impressed by her litigation skills, negotiation skills, and her work ethic. She worked with several other members of MPD's command staff who were likewise impressed by Shana's skill and her wide-range of knowledge with respect to MPD's operations, policies, and procedures. Because of her demonstrated ability to defend difficult matters involving MPD, she was assigned to work on some of the more challenging cases, including class actions such as *Carr v. District of Columbia* and the matters of *Jeffrey Barham, et al. v. District of Columbia, et al.* and *RayMing Chang, et al. v. Charles Ramsay, et al.* (in which she represented me in my professional capacity). Shana was asked to join the defense team in the *Barham/Chang* matters after issues with the discovery process arose. As a

The Honorable Ron Johnson  
 The Honorable Gary Peters  
 Re: Nomination of Shana Frost Matini  
 Page 2

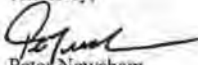
result of the claims of discovery violations, Shana worked to ensure that thorough searches for potentially responsive materials were conducted in all possible locations of the Department. She conducted numerous interviews with employees at all levels of the Department and defended the District and its employees in countless depositions. Even when faced with accusations against her and others at the Office of the Attorney General that later were deemed to be meritless, Shana continued to perform her job diligently and to provide the best possible defense for the District. She also trained newly-appointed officials with respect to the laws in the District governing First Amendment assemblies.

Shana also developed an expertise in the area of use of force by law enforcement officers by working with members of the training staff and outside experts to understand how officers are trained on the use of force. With this expertise, she successfully handled many cases involving alleged excessive force where she obtained a number of favorable decisions on motions to dismiss or for summary judgment. She also obtained a notable defense jury verdict in the case of *Derrek Arrington v. U.S. Park Police, et al.*, C.A. 01-1391, tried in December 2008 in the U.S. District Court for the District of Columbia. There, the jury returned a verdict in favor of an off-duty MPD officer who was accused of using excessive force in the arrest of an individual who the MPD officer had just observed shoot a U.S. Park Police officer in the face. Because the MPD officer was off-duty at the time, he did not have his service weapon on him when he intervened to assist the officer who had been shot, but was able to physically restrain the shooter while a Park Police canine was brought in to assist in disarming the perpetrator. Shana argued to the jury that the force used by the officer was reasonable under the extremely stressful circumstances of the situation. Also in the U.S. District Court for the District of Columbia, Shana and her co-counsel obtained a defense verdict in November 2009 in the case of *Chistol English v. District of Columbia, et al.*, C.A. 08-1337. In that case, the plaintiff asserted that the MPD officer used unreasonable and excessive force when he shot plaintiff's decedent after an altercation where the decedent had resisted the officer in the course of an arrest and tried to choke the officer.

Shana also agreed to take on a series of challenging and previously unprecedented unjust imprisonment cases brought by individuals who had been convicted of serious felonies and were later exonerated by DNA evidence after serving lengthy terms of incarceration. Due to the age of the original criminal prosecutions, the cases required Shana to locate and search through very old homicide files in storage, locate and interview individuals who had retired from the Department, and research policies and procedures that the Department had in place in the early to mid 1980s.

In short, I highly recommend that the Committee vote to confirm Shana's nomination to be an Associate Judge of the Superior Court of the District of Columbia. Shana's commitment to the District of Columbia as exemplified by her work with the Office of the Attorney General and her strong legal skills make her well-qualified for the position. I thank the Committee for its consideration of my recommendation.

Sincerely,

  
 Peter Newsham  
 Chief of Police

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

PUBLIC SAFETY DIVISION CRIMINAL SECTION

May 21, 2019

The Honorable Ron Johnson  
Chairman, Committee of Homeland  
Security and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on Homeland  
Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

**Re: The Honorable Shana Frost Matini**

Dear Chairman Johnson and Ranking Member Peters:

Magistrate Judge Shana Matini has served the District of Columbia with the utmost competence and professionalism during her career. I have had the opportunity to work with her both at the Office of the Attorney General for the District of Columbia ("DCOAG") and during her tenure as a magistrate judge for the D.C. Superior Court.

Magistrate Judge Matini was one of the most respected attorneys to have ever worked for the DCOAG. Her name was known among everyone in the agency for her outstanding civil litigation on behalf of the District. Magistrate Judge Matini was the pinnacle of how an Assistant Attorney General should conduct litigation, carry themselves professionally, and serve the community. Magistrate Judge Matini brought these same qualities to the bench. My prosecutors practiced before her daily for two years in 2017 – 2018. They describe her as fair, thorough, and diligent in all aspects of her judgeship. She administrated efficient court dockets, consistently made sound legal rulings, and ensured fair trials were conducted in her courtroom. My prosecutors further reported that Magistrate Judge Matini had the proper temperament for a judge and treated everyone in her courtroom with respect and professionalism.

I often met with Magistrate Judge Matini, in her capacity as a judge, to discuss court procedures, attorney performance, and important initiatives. Magistrate Judge Matini was always thoughtful, engaged, and active in determining ways to improve the judicial system. I strongly believe that she possesses the temperament necessary to be a balanced and fair judge at the D.C. Superior Court. Magistrate Judge Matini would be a huge asset to the court and would be able to immediately assist the bench with any area of law due to her vast experience and thoroughness in analyzing legal issues, learning the law, and most importantly applying the law in a fair and just manner.

In conclusion, Magistrate Judge Matini is an ideal candidate for associate judgeship at the D.C. Superior Court. My recommendation is based from nearly twenty years as an attorney and having practiced before many judges both in the District and the State of Maryland. A judge who has proper temperament, makes balanced and fair rulings, and whom is thorough in their understanding and application of law are needed in the judicial system. Magistrate Judge Matini is that type of judge.

Thank you, and feel free to contact me with any further questions.

Sincerely,



Peter Saba  
Chief, Criminal Section  
Office of the Attorney General for the  
District of Columbia  
441 4<sup>th</sup> St., NW, Suite 1060N  
Washington, DC 20001  
(202) 442-9827



May 13, 2019

The Honorable Ron Johnson  
Chairman, Committee on Homeland Security  
and Government Affairs  
328 Hart Senate Office Building  
Washington, DC 20510

The Honorable Gary Peters  
Ranking Member, Committee on  
Homeland Security and Government Affairs  
725 Hart Senate Office Building  
Washington, DC 20510

Re: Support for judicial nominee Shana Frost Matini

Dear Senators Johnson and Peters:

I provide my enthusiastic and unqualified support for the Senate's confirmation of Shana Frost Matini as an Associate Judge on the Superior Court of the District of Columbia. Her experience, intellect, and temperament make her exceptionally well-qualified for this important position.

I am able to speak knowledgeably about Shana's qualifications because I am an attorney who worked with her professionally for many years at the Office of the Attorney General for the District of Columbia ("OAG"), before she became a Magistrate Judge at Superior Court. I also know her personally, as we are teammates on a competitive canoe team in the District of Columbia.

Shana has all the characteristics necessary to be an outstanding Associate Judge. At the OAG, she demonstrated a calm, reflective demeanor. She respects and listens to opinions from all others. She holds herself to the highest ethical standards. She has a strong intellect and has shown a mastery of the law. In addition, she possesses common sense and good judgment that earned her the trust and respect of her peers and OAG management.

At the OAG, Shana was adept at unraveling cases involving complex constitutional, statutory, and common law issues. She will be able to readily

analyze whatever issues come before her as an associate judge and efficiently enter her ruling and explain it to the parties.

In addition, Shana and I paddle together on a competitive "dragon boat" canoe team on the Anacostia River in the District of Columbia. She is a consummate team player and always treats her teammates and coaches with respect.

In short, I give my strong and enthusiastic support for Shana's confirmation. She will be an outstanding Associate Judge on the Superior Court.

Sincerely yours,

/s/ Mary L. Wilson

MARY L. WILSON  
1812 Kenyon Street N.W.  
Washington, D.C. 20010  
(202) 320-5400


**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**Dr. Everett B. Kelley**  
*National Secretary-Treasurer*

**J. David Cox, Sr.**  
*National President*

**Jeremy A. Lannan**  
*NVP for Women & Fair Practices*

July 12, 2019

Honorable Ron Johnson  
Chairman  
Senate Committee on  
Homeland Security and  
Governmental Affairs  
Washington, DC 20510

Honorable Gary C. Peters  
Ranking Member  
Senate Committee on  
Homeland Security and  
Governmental Affairs  
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 federal and District of Columbia government employees who serve the American people in 70 different agencies, I urge you to oppose the confirmation of Catherine Bird as General Counsel to the Federal Labor Relations Authority (FLRA) when it comes before the Homeland Security and Governmental Affairs Committee for a vote.

The job of the FLRA Office of General Counsel, by its own description, is to promote effective labor-management relations by investigating and prosecuting allegations of unfair labor practices, determining union representation matters, providing guidance and training to managers and unions and providing alternative dispute resolution services. The role of the General Counsel requires an objective, unbiased individual with an impeccable record of impartiality and independence from the Administration's political influence. This is not a responsibility Ms. Bird is qualified to fulfill.

Ms. Bird has repeatedly played a biased and politically-driven role in labor contract negotiations at her employing agency, the Department of Health and Human Services, which has resulted in multiple Unfair Labor Practices charges for refusing to bargain in good faith. This alone should disqualify her from holding the top job tasked with adjudicating those charges.

Additionally, she has provided unauthorized counsel to at least one other agency, the Department of Veterans Affairs, as they are currently engaged in negotiating a new collective bargaining agreement with AFGE. While the agency representatives removed her from the bargaining room when her presence was questioned, she remained on site at two significant intervals of bargaining and was observed providing direction to agency representatives. Agency representatives were observed seeking her counsel before refusing to continue bargaining. The agency told union officials Ms. Bird instructed the agency not to make any movement in negotiations.

By refusing to bargain in good faith and intervening in at least one agency's bargaining under dubious circumstances, Ms. Bird has shown herself to either be above the rules or simply contemptuous of labor law. If she were to hold the position of FLRA General Counsel, she would not only have to recuse herself from cases in which she is directly named, but she would

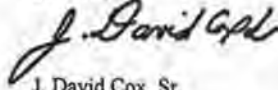


not be qualified to issue an objective ruling in any collective bargaining case before the Authority. Ms. Bird has an inherent conflict in every case that is before or may come before her as FLRA General Counsel that deals with unlawful bargaining by any agency. Decisions she would make involving the prosecution of an agency for bad faith bargaining could absolve Ms. Bird of responsibility for her own unlawful behavior while she was at HHS.

The General Counsel demonstrate impartiality toward federal collective bargaining rights and procedure and should be above reproach with respect to fostering an apolitical civil service.

For these reasons, AFGE does not believe that Catherine Bird's professional career demonstrates the appropriate experience and temperament to serve as General Counsel for the FLRA. I urge you to oppose her confirmation.

Sincerely,



J. David Cox, Sr.  
President



July 12, 2019

Senator Ron Johnson  
Chairman  
Homeland Security and  
Governmental Affairs Committee  
340 Dirksen Senate Office Building  
Washington, DC 20510

Senator Gary Peters  
Ranking Member  
Homeland Security and  
Governmental Affairs Committee  
442 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

As National President of the National Treasury Employees Union, representing 150,000 federal employees in 33 agencies, I am writing to share my concerns with the nomination of Catherine Bird to be the General Counsel of the Federal Labor Relations Authority (FLRA) and to urge you to oppose her nomination. Ms. Bird is unqualified for this position.

Over the course of the past year, as NTEU attempted to work with the Department of Health and Human Services (HHS) to develop a new collective bargaining agreement (CBA) for our members, Ms. Bird, a political appointee at HHS, played an instrumental role in the negotiations and repeatedly engaged in bad faith bargaining -- eagerly championing a scheme to weaken federal-sector unions and strip employees of long-standing collective bargaining rights by minimizing any collective bargaining with NTEU to ensure that the dispute would promptly be sent to the Federal Services Impasses Panel (FSIP), where management's proposals to gut much of the contract would be imposed.

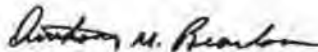
Federal law expressly states that collective bargaining is in the public interest and the General Counsel of the FLRA makes decisions on whether to issue unfair labor practice (ULP) complaints for violations of the Federal Service Labor-Management Relations Statute based on charges filed by unions and agencies. ULPs could involve issues related to the duty to bargain and bargaining in good faith, failure to respond to information requests, interfering with the rights of bargaining unit employees to collectively bargain or exercise their other statutory rights, discrimination based on bargaining unit status, and other matters related to the collective bargaining process. Throughout the negotiations with HHS, Ms. Bird repeatedly demonstrated a fundamental lack of understanding of that Statute. She is new to federal sector labor law, and her actions at the HHS table do not give NTEU any confidence that she will make impartial or legally correct decisions about whether to issue complaints or dismiss unfair labor practice

charges filed by unions. In fact, throughout the course of our recent negotiations with HHS, NTEU filed an ULP against the agency as well as five national grievances. These filings concern HHS's bad faith bargaining, including failing to discuss contract language at all; ignoring and failing to respond to NTEU's information requests on issues that were open at the table; and the unprecedented request by the agency for mediation assistance after one day of bargaining and then its request for assistance from the FSIP when no impasse had been reached and the parties had not even discussed 32 of the 34 contract articles open for negotiation. Given Ms. Bird's central role in these actions and continued efforts at HHS to undermine collective bargaining rights, it is highly likely that if she is confirmed, the FLRA General Counsel will be weaponized to continue to further weaken union rights and protections by failing to prosecute union-filed charges of statutory violations.

During NTEU's engagement with HHS on a new CBA, HHS was clear in its intent to severely limit employee and union rights and eliminate more than 41 issues from the grievance process. Important employee benefits like telework and leave, for example, have become essentially discretionary, meaning supervisors would have the ability to allow or disallow it without any consistency or justification and employees would be nearly powerless to object when they are treated unfairly. HHS is also trying to undermine the ability of the union to assist employees when they are mistreated by, for example, limiting the time that union leaders are given to provide such assistance. In nearly every instance, HHS' intent was to weaken the employees' voices in the workplace and undermine collective bargaining altogether. And despite NTEU's numerous attempts to discuss the proposed contract changes, seek information on HHS' concerns, and develop possible alternative proposals that the parties could agree on, HHS forced the term contract through the statutory impasse process to have its proposals imposed. HHS's conduct, led in part by Ms. Bird, is antithetical to the statutory obligation of both parties to bargain in good faith and to make a sincere effort to reach an agreement.

The actions of Catherine Bird throughout her tenure at HHS demonstrates her lack of qualifications to be the General Counsel of the FLRA, including her lack of knowledge of the Federal Service Labor-Management Relations Statute and her dogged efforts to undermine union rights. NTEU strongly opposes her nomination and urges you to do the same.

Sincerely,



Anthony M. Reardon  
National President

# TOP FLRA MANAGEMENT CHALLENGES FACING NEW LEADERSHIP

## 1. Return-to-Office Strategies/New Approaches to Telework

Although employees are currently permitted to work at the office, most employees are making use of the availability of 100% telework, as well as other pandemic-related flexibilities such as the elimination of core hours. Leadership may need to ensure safety protocols are communicated and followed as increasing numbers of employees return to the office. If in-person filing has not already resumed, leadership must determine whether and when the Agency might resume acceptance of in-person filing.

## 2. Unfair Labor Practice Case Backlog

Because the FLRA has been without either a General Counsel or acting General Counsel since November 17, 2017, there is a growing mountain of unfair labor practice cases and appeals awaiting the review of a confirmed GC. Once a GC is confirmed, leadership will need to ensure that the OGC is adequately staffed and possibly explore novel strategies in order to expedite case processing. Similarly, as those ULPs make their way through the process and are tried before the FLRA's Administrative Law Judges, leadership will need to ensure that the OALJ have the staffing, resources, and strategies in place for efficient processing of the backlog.

## 3. Member Office Backlog

Due to a staffing shortage in 2019, and an approximately 28 percent increase in filing rates, the Authority's pending inventory has increased even as its closure rates improve. Although the Members are currently exploring strategies for increasing case processing speed, including new case-assignment techniques and the use of contract attorneys/law clerks, this issue will probably require continued attention and innovation.

## 4. FSIP Case Trends

Due to a substantial increase in case complexity, a tripling of issues per case, and an increase in decisions due to fewer settlements, the FSIP workload is up.

## 5. New Strategic Plan

To meet the requirements of the GPRA Modernization Act of 2010, agencies published an updated Strategic Plan concurrent with the publication of the FY 2019 President's Budget in February 2018.

Per Section 230 of OMB Circular No. A-11 (2020) (<https://www.whitehouse.gov/wp-content/uploads/2018/06/s230.pdf>), agencies must next issue a new Strategic Plan in February, 2022, covering FYs 2022-2026. Agencies should prepare the FYs 2022-2026 Strategic Plan by applying information learned from strategic reviews and other data-driven performance reviews as they are conducted, as well as reflect organizational plans and learning related to the agency's evidence and evaluation building efforts.

Agencies will prepare the FYs 2022-2026 Strategic Plan initial draft by June 4, 2021, in order to inform the development of the FY 2023 budget submission and FY 2023 Annual Performance Plan, which will also include FY 2022-2023 Agency Priority Goals. Continued refinements to the initial draft Strategic Plan will be expected prior to publication in February, 2022. Agencies may work with OMB to adjust the Strategic Plan draft submission if needed.

Additionally, the FYs 2022-2026 Strategic Plan will also include a separate section on evidence-building and capacity, implementing requirements aimed at advancing agency evaluation and evidence-building activities identified in the Evidence Act.





*Forty years promoting and protecting labor-management relations for effective, efficient government.*

**FINAL**

**U.S. FEDERAL LABOR RELATIONS AUTHORITY  
CONGRESSIONAL BUDGET JUSTIFICATION**

Decisions of the  
FEDERAL  
LABOR  
RELATIONS  
AUTHORITY

20  
19

[WWW.FLRA.GOV](http://WWW.FLRA.GOV)





**UNITED STATES  
FEDERAL LABOR RELATIONS AUTHORITY**



**Congressional Budget Justification  
Fiscal Year 2019**



# **TABLE OF CONTENTS**

<b>U.S. FEDERAL LABOR RELATIONS AUTHORITY.....</b>	<b>1</b>
Background and Mission .....	1
Organizational Structure .....	1
Agency Trends and Challenges .....	4
<b>BUDGET JUSTIFICATION .....</b>	<b>13</b>
Appropriations Language.....	13
FY 2019 Funding Request .....	13
Change from FY 2018 .....	14
Program and Financing Schedule .....	15
Object Classification Schedule .....	16
Employment Summary Schedule.....	16
Inspector General Resources.....	17
<b>ANNUAL PERFORMANCE PLAN.....</b>	<b>20</b>
Strategic and Performance-Planning Framework .....	21
Goal 1.1.1: Produce Timely Review and Disposition of Unfair-Labor-Practice Cases .....	27
Goal 1.2.1: Resolve Overage Unfair-Labor-Practice Cases in a Timely Fashion .....	29
Goal 1.1.2: Produce Timely Review and Disposition of Representation Cases .....	30
Goal 1.2.2: Resolve Overage Representation Cases in a Timely Fashion.....	31
Goal 1.1.3: Produce Timely Review and Disposition of Arbitration Cases .....	32
Goal 1.2.3: Resolve Overage Arbitration Cases in a Timely Fashion .....	33
Goal 1.1.4: Produce Timely Review and Disposition of Negotiability Cases .....	33
Goal 1.2.4: Resolve Overage Negotiability Cases in a Timely Fashion.....	34
Goal 1.1.5: Produce Timely Review and Disposition of Bargaining-Impasse Cases.....	35
Goal 2.1.1: Provide Targeted Access to Training, Outreach, and Facilitation Activities within the Labor-Management Community.....	36
Goal 2.2.1: Successfully Resolve a Significant Portion of FLRA Cases through ADR.....	37
Goal 3.1.1: Recruit, Retain, and Develop a Highly Talented, Motivated, and Diverse Workforce to Accomplish the FLRA's Mission.....	40
Goal 3.2.1: Improve Use of Existing Technology and Deploy New IT Systems to Streamline and Enhance Organizational Operations .....	47



# U.S. FEDERAL LABOR RELATIONS AUTHORITY

## BACKGROUND AND MISSION

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The U.S. Federal Labor Relations Authority (FLRA) is responsible for establishing policies and guidance regarding the labor-management-relations program for 2.1 million non-Postal Federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. The FLRA was created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the Statute). The agency's genesis dates from the issuance of [Executive Order 10988](#) by President Kennedy in 1962. In 2012, the FLRA celebrated the 50th anniversary of the Order, which established the first Government-wide, labor-management-relations program within the Federal Government. In 1970, President Nixon established the Federal Labor Relations Council, by [Executive Order 11491](#), to administer the Federal labor-management-relations program and to make final decisions on policy questions and major disputes arising under Executive Order 10988. Executive Order 11491, as amended, was the basis for President Carter's proposal to the Congress to create the FLRA as an independent agency.

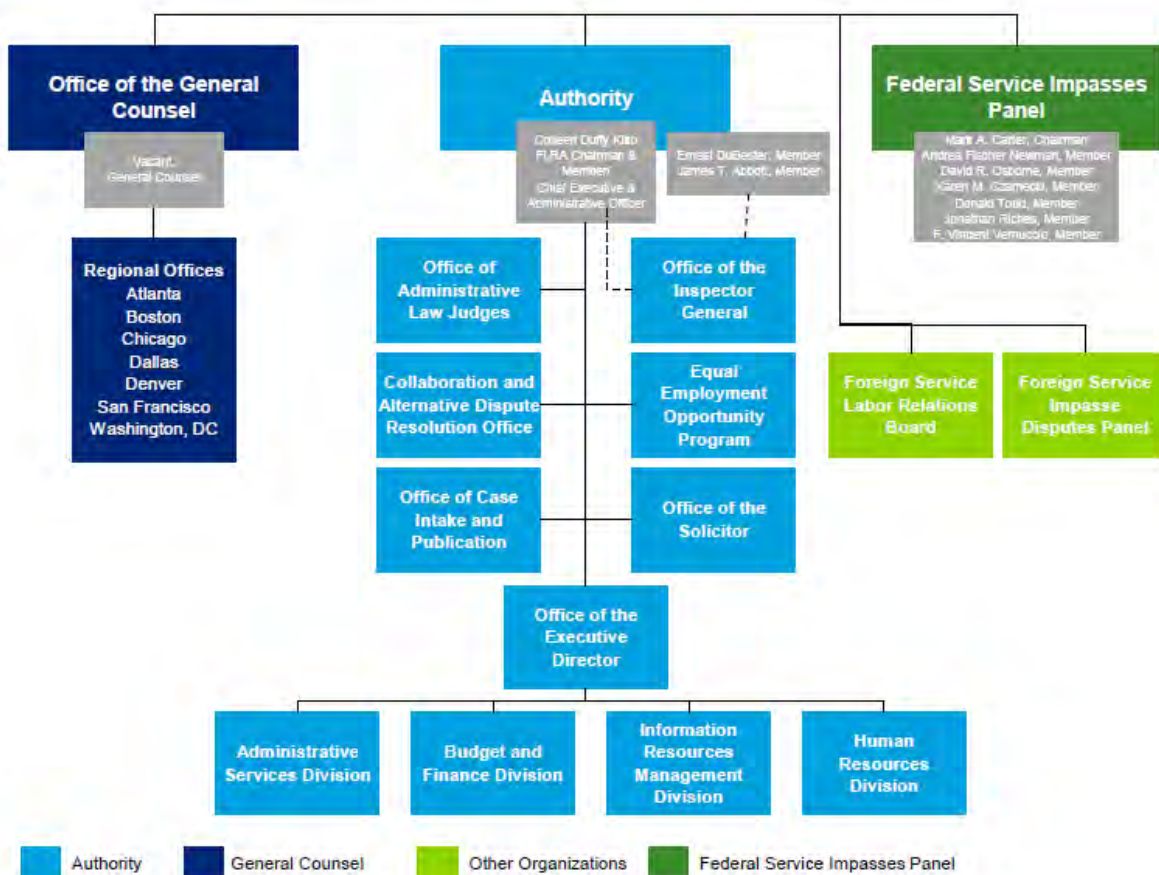
The Statute establishes management's rights, employees' rights, and union rights. For example, the Statute sets forth the authority of agency management to determine, among other things, the agency's mission, budget, organization, number of employees, and internal security practices. It also establishes the rights of Federal employees to form, join, or assist a labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal. It is the role of the FLRA to provide leadership in establishing policies, guidance, and case law relating to all of these statutory rights and responsibilities.

The mission of the FLRA is to promote stable, constructive labor-management relations through the timely resolution and prevention of labor disputes in a manner that gives full effect to the collective-bargaining rights of employees, unions, and agencies. Although the FLRA is a small agency, accomplishing its mission – including timely, quality, and impartial resolution of labor-management disputes – is essential to and promotes the effectiveness and efficiency of program performance Government-wide.

## ORGANIZATIONAL STRUCTURE

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The FLRA is organized into three statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (FSIP) – each with unique adjudicative or prosecutorial roles. The agency also provides full program and staff support to two other organizations – the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel.



## The Authority

The Authority comprises three full-time, presidentially nominated and Senate-confirmed Members who are appointed for fixed, five-year, staggered terms. The President designates one Member to serve as Chairman. The Chairman acts as the agency's chief executive and administrative officer.

The Authority is responsible for adjudicating unfair labor practice (ULP) complaints, ruling on exceptions to arbitrators' awards, resolving disputes over the negotiability of collective-bargaining proposals and provisions, and deciding applications for review of Regional Directors' decisions in representation disputes.

Other program offices under the jurisdiction of the Authority include the Office of the Solicitor, the Office of Administrative Law Judges (OALJ), the Office of Case Intake and Publication (CIP), and the Collaboration and Alternative Dispute Resolution Office (CADRO).

The Office of the Solicitor represents the FLRA in court proceedings before all U.S. courts, including the U.S. Supreme Court, the U.S. Courts of Appeals, and the Federal District Courts. In this connection, parties aggrieved by certain Authority orders may institute an action for judicial review within 60 days after the order issues. The Authority may also seek enforcement

of its orders, temporary relief, or restraining orders in the appropriate U.S. Courts of Appeals or Federal District Courts. The Office of the Solicitor also serves as the agency's in-house counsel, providing legal advice to all FLRA components, and performs various functions under the Freedom of Information Act and the Privacy Act. The Solicitor also serves as the Designated Agency Ethics Official.

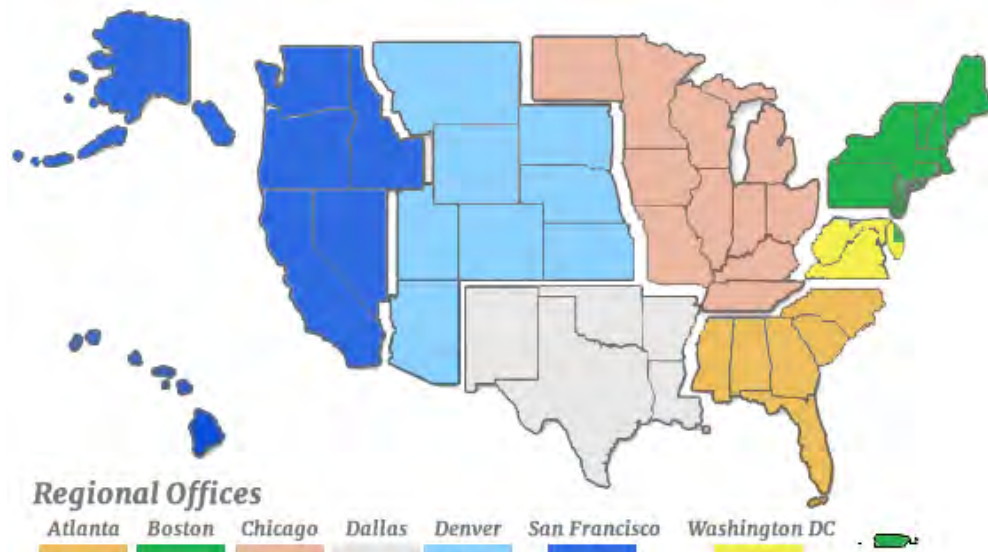
The Authority Members appoint Administrative Law Judges (ALJs) to hear and prepare recommended decisions in cases involving ULP complaints, as well as decisions involving applications for attorney fees filed pursuant to the Back Pay Act or the Equal Access to Justice Act. The OALJ – through its Settlement Judge Program – also provides ADR services in all ULP cases. Recommended decisions of the ALJs may be appealed to the Authority.

## **The Office of the General Counsel**

The General Counsel, who is appointed by the President with the advice and consent of the Senate, has separate and independent responsibilities from the Authority. Under the Statute, the General Counsel has sole responsibility over the investigation and prosecution of ULP cases. The General Counsel's determinations in these matters are final and unreviewable. The General Counsel has direct authority over, and responsibility for, all employees in the OGC, including those in the FLRA's Regional Offices. Approximately 50 percent of the entire FLRA staff is employed in the regions, where all ULP charges and representation petitions are filed and investigated. The Regional Offices, on behalf of the General Counsel, investigate and resolve alleged ULP charges, file and prosecute ULP complaints, effectuate compliance with settlement agreements and Authority Orders, and provide training and ADR services. In addition, through delegation by the Authority, the Regional Offices investigate and resolve representation cases and conduct secret-ballot elections.

The General Counsel has a small staff at FLRA Headquarters, located in Washington, D.C. Headquarters management provides administrative oversight; develops policies, guidance, procedures, and manuals that provide programmatic direction for the Regional Offices and training and education for the parties; and processes appeals from the Regional Offices' dismissals of ULP charges. Each Regional Office is headed by a Regional Director who provides leadership and management expertise for the respective region. Collectively, the Regional Directors work with senior management throughout the FLRA to develop and implement policy and strategic initiatives to accomplish the FLRA mission.





## **The Federal Service Impasses Panel**

The FSIP resolves impasses between Federal agencies and unions representing Federal employees arising from collective-bargaining negotiations over conditions of employment under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act. The FSIP comprises seven part-time Presidential appointees – a Chairman and six other Members – who are appointed to fixed, five-year, staggered terms.

If bargaining between the parties, followed by mediation assistance, does not result in a voluntary agreement, then either party or the parties, jointly, may request the FSIP's assistance. Following a preliminary investigation by its staff, the FSIP may determine to assert jurisdiction over the request. If the FSIP asserts jurisdiction, then it has the authority to recommend or direct the use of various ADR procedures, including informal conferences, additional mediation, fact-finding, written submissions, and mediation-arbitration by FSIP Members, the FSIP's staff, or private arbitrators. If the parties are still unable to reach a voluntary settlement, then the FSIP may take whatever action it deems necessary to resolve the dispute, including imposition of contract terms through a final action. Parties may not appeal the merits of the FSIP's decision to any court.

## **AGENCY TRENDS AND CHALLENGES**

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The FLRA's mission is to promote stable, constructive labor-management relations through the timely and effective resolution and prevention of labor disputes in a manner that gives full effect to the collective-bargaining rights of employees, unions, and agencies. It carries out its mission in a manner that meets the special obligations and needs of the Federal Government and is consistent with the requirement of an effective and efficient Government.

## ***Mission – Case Processing & ADR***

With respect to mission accomplishment, the FLRA as a whole has shown tremendous ability to provide its customers with timely and quality adjudication and dispute-resolution services, while adapting to fluctuations in the number of case filings that it receives. And it has done so against a backdrop of relatively flat funding and staffing levels. In FY 2017, the FLRA met or exceeded nearly every mission-related performance goal, as it did in FY 2016.

- ***Authority***

Consistent with the FLRA’s 2015-2018 Strategic Plan, the Authority changed its performance measures beginning in FY 2017 to shorten case-processing times – from 180 days to 150 days in 75 percent of non-representation cases. In FY 2017, the Authority also implemented measures for ensuring that the cases not “captured” by those 75 percent targets do not go significantly overage. The new measure is to ensure that 95 percent of all cases issue within 365 days.

The Authority’s FY 2016 performance successes placed it in a position to more efficiently and expeditiously process all of its cases in FY 2017 – and continuing into FY 2018.

In FY 2017, the Authority met its new target of 150 days in 79 percent of arbitration cases, 50 percent of ULP cases, and 75 percent of negotiability cases. And it is meeting its 365-day target in 100 percent of all cases. Further, as in previous years, the Authority continued to meet the statutory requirement of addressing 100 percent of representation cases within 60 days of an application for review from a Regional Director’s determination.

It is important to note that, for nearly a full year beginning on January 3, 2017, the Authority had only two of its three presidentially appointed, Senate-confirmed Members in place. Although Member staffs continued to prepare draft decisions, when the two current Members were unable to reach consensus on the disposition of a case, no decision could issue. Those cases were held in “abeyance” until the new Members of the Authority were confirmed by the Senate and sworn in on December 11, 2017. Accordingly, the Authority began FY 2018 with a significant backlog of cases – 60 percent of its inventory – in contrast to the beginning of FY 2017, which the Authority began with no backlog and only one “overage” case.

In FY 2017, the Authority continued to demonstrate its commitment to fulfilling its statutory mission of providing guidance to the labor-management-relations community. To that end, the Authority continued to review and make regular updates to its Comprehensive Arbitration Training and Comprehensive Negotiability Training programs, including instructional slides, interactive exercises, and other handouts. Of note, the Authority divided the Negotiability Training into two separate full-day sessions – *Navigating the Negotiability Process* and *Negotiability In Depth: Management Rights and Beyond* – to very positive reviews. Moreover, in FY 2018, the Authority will continue to update its other educational tools, specifically, its comprehensive *Guide to Arbitration under the Statute*, which provides guidance to arbitrators and parties to arbitration cases – the most common case type filed with the Authority.

The OALJ – also part of the Authority – met or exceeded all of its performance goals in FY 2017. The OALJ encourages Federal unions, agencies, and OGC representatives to utilize its

Settlement Judge Program, which has been historically successful in resolving cases without the need for costly litigation involving a hearing or written decisions. In FY 2017, the Settlement Judge Program offered settlement assistance to 100 percent of the parties involved in ULP cases. And, of the cases in which the parties accepted settlement assistance, nearly 95 percent were resolved without a hearing. This reduced the number of adversarial hearings needed to 14. In addition, the OALJ resolved 93 percent of all ULP cases, including those that required an adversarial hearing, within 180 days. As a result, Federal agencies and unions received timely resolution of their labor disputes, which facilitates and improves employee performance and creates a more effective and efficient Federal Government. Further, the OALJ issued decisions on 98 percent of ULP cases within 365 days of the complaint being issued.

CADRO is also part of the Authority, and it primarily assists Federal agencies, and the unions that represent Federal employees, in resolving negotiability disputes. Once again in FY 2017, 100 percent of negotiability cases in which the parties mutually agreed to use CADRO resulted in full or partial resolution of the underlying dispute and closure of the pending case – exceeding the goal of 90 percent in that category. CADRO helped parties in more than 30 cases resolve more than 200 distinct negotiability questions (proposals or provisions).

Almost all of the cases that CADRO resolves would have otherwise required decisions by the Authority. For example, during FY 2017, a union representing thousands of public-safety-related employees in a cabinet-level agency presented CADRO with 15 separate cases containing 119 negotiability and bargaining-obligation disputes. CADRO not only helped the parties resolve every individual dispute and complete their underlying collective-bargaining agreements, but also supported the parties at the national level as they constructed global solutions to ultimately prevent similar disputes from arising in the future. As a result, the parties averted additional costly litigation, implementation delays, and associated adverse impact on mission and quality of work life.

- *OGC*

The OGC continued delivering strong results in FY 2017. The OGC met its strategic performance goals for the timely resolution of ULP and representation cases (resolving 73 percent or 2,984 of all ULP cases within 120 days of the filing date and 68 percent or 179 representation cases within 120 days of filing) and continued closing cases at increased rates.

In conjunction with the OGC's emphasis on resolving cases in a timely and high-quality manner, the OGC has continued to offer voluntary ADR services to resolve cases. This is particularly important as the OGC has the largest case intake among all of the FLRA components (handling over three quarters of the FLRA's total case intake) and is the FLRA component with which the parties have the most direct contact. The beneficial effects of voluntary resolutions are obvious, and they advance the effective and efficient utilization of Government resources.

In FY 2017, the OGC resolved over 780 ULP cases by voluntary settlement during the investigative process. In addition, the OGC resolved 100 percent of the ULP cases and over 98 percent of the representation cases in which the parties agreed to use the OGC's ADR

services. These successful voluntary ADR efforts resulted in significant savings of Governmental staff and budgetary resources. For example, during FY 2017, the OGC successfully employed ADR to resolve several clarification-of-unit petitions involving over 300 positions. The parties in these cases requested that the OGC provide ADR services with an eye toward avoiding the formal hearing process (on-the-record hearing, followed by briefing, and issuance of a formal decision with appeal rights). The OGC met with the parties involved in these cases and through a combination of educating the parties on the applicable legal standards, obtaining information concerning the duties and responsibilities of the positions in dispute and facilitating a constructive dialogue and review of the positions at issue, the parties were able to consensually resolve all of the positions in dispute. By working cooperatively with the parties in these cases, the OGC was able to use ADR to resolve these cases quickly and efficiently sparing the parties and the agency the expense and time of the formal adjudication process.

- ***FSIP***

In FY 2017, the FSIP again exceeded all of its timeliness goals for assisting parties in resolving their bargaining-impasse disputes. The most common types of impasses involved impact-and-implementation negotiations over changes in agency policies or procedures, as well as negotiations over successor collective-bargaining agreements, which arise when the current collective-bargaining agreement has expired, or is about to expire. Both types of disputes are critical and time-sensitive. Impact-and-implementation-bargaining disputes often involve negotiations over agency changes to policy or procedure to improve efficiency in the delivery of its mission. Successful and timely resolution of the impasse allows the parties to move forward in implementing the proposed change.

Both the number and types of issues presented in requests for FSIP assistance can vary greatly from case to case. But the most common issues that the parties asked the FSIP to assist with in FY 2017 involved work schedules, including the establishment and termination of compressed and alternative work schedules. Other common issues included negotiations over personnel policies and matters, and office-space-related matters: how much work space will be allocated to employees; office layout; and equipment.

The FSIP is free to use whatever methods and procedures it considers appropriate for quickly and effectively resolving the dispute. The FSIP most commonly resolved impasse disputes using mediation-arbitration proceedings or informal conferences conducted by FSIP Members. Mediation-arbitrations and informal conferences are processes that allow the assigned FSIP Member to begin work on the case as a neutral mediator seeking to help the parties reach voluntary resolution of their dispute – meeting with parties, conveying proposals and counterproposals, suggesting compromises, and otherwise seeking to bridge the gap between the parties. But if those mediation efforts are not successful in achieving a voluntary settlement, then, in the Mediation-Arbitration procedure, the FSIP Member takes on the mantle of an arbitrator, conducting a hearing and issuing a final and binding Arbitration Opinion and Decision that resolves the bargaining impasse. In the Informal Conference procedure, if voluntary settlement is not achieved, the full FSIP Panel considers the recommendation of the Panel member and issues a written decision resolving the outstanding issues.

In cases where the FSIP used Mediation-Arbitration or Informal Conferences to resolve Federal-sector impasses, it obtained complete, voluntary settlements over 85 percent of the time. As a result of this high percentage of voluntary settlements, in FY 2017, the FSIP Members imposed contract terms on the parties in only 7 cases – approximately 7 percent of the FSIP’s caseload. The remainder of the FSIP’s cases where the Panel determined to assert jurisdiction were voluntarily withdrawn or settled by the parties – achieving the most ideal solution.

### ***Mission Accomplishment – Providing Training and Education across the Federal Government***

Consistent with its strategic goals, in FY 2017, the FLRA continued to promote stability in the Federal labor-management community by providing leadership and guidance through education and reference resources, including the launch of its redesigned website ([www.FLRA.gov](http://www.FLRA.gov)), web-based and in-person trainings, and the release and update of substantive guides and manuals.

With the launch of its redesigned website last year – including improvements to the site’s appearance, organizational structure, and revision of all substantive content – the FLRA now provides a truly user-friendly, empowering resource for parties to FLRA cases and the broader Federal-sector labor-management community. Addressing feedback from both internal and external customers that they were often unable to locate the case-related information that they were seeking or that it took too many mouse clicks to access, the FLRA developed a more intuitive, user-friendly, and accessible organizational structure based on the case types that the various program offices within the FLRA process. That is, rather than site visitors having to know which office does what and at which particular stage during a case, now they have only to search by the case type, and they will find descriptions of each office’s unique functions in that context. The new site is fully “integrated”: Every FLRA training opportunity, written guide, or manual is now available on one centralized page, rather than on office-specific pages. And there is even an online tool that allows customers, for the first time, to register for all FLRA training events directly through the website. Additionally, as part of this initiative, the FLRA made electronically available to its customers relevant “archival” and other materials (e.g., decisions of predecessor agencies, legislative history of the agency’s implementing Statute, decisions of the Foreign Service Labor Relations Board) that had previously been unavailable outside of the FLRA’s physical library location. Feedback on the new site is universally positive, and the agency and its customers have reaped – and will continue to reap – dividends from the improvement to the overall customer experience for years to come.

The FLRA continued to provide web-based and in-person training nationwide to members of the Federal-sector labor-management community – union representatives, agency representatives, and neutrals – in all aspects of its case law and processes. In FY 2017, the FLRA, as a whole, provided nearly 275 training, outreach, and facilitation sessions to over 8,100 participants. Just over the last 5 years, the FLRA has provided nearly 1,400 such sessions to nearly 36,000 participants worldwide. The Authority, the OGC, and the FSIP provided training at several nationwide, annual conferences, including the Society of Federal Labor and Employee Relations Professionals (SFLERP) symposium and the Federal Dispute Resolution (FDR) conference.

These sessions included presentations of newly prepared materials of current relevance, as well as updated materials for more standard sessions.

In addition, the Authority delivered its own training programs to approximately 300 Federal-sector union representatives, agency representatives, neutrals, and new Authority attorneys in FY 2017. This included several, full-day sessions of Comprehensive Arbitration Training and Comprehensive Negotiability Training using, as noted above, updated training materials (including instructional slides, interactive exercises, and other handouts). In particular, because negotiability cases have the highest rate of procedural dismissals of any type of case filed with the Authority, the negotiability training is intended to meet the goals of helping the parties to: comply with the Authority's regulatory procedural requirements (thus reducing case-processing time); file their cases in a different, appropriate forum when necessary; and use ADR to avoid costly litigation. The overwhelmingly positive feedback received from participants in these sessions indicates that these trainings produced the desired results and will further the above goals in future cases. Moreover, the Authority Members all personally conducted various training sessions on arbitration cases and other topics of interest to the Federal-sector labor-management community, including in conjunction with SFLERP, FDR, the FMCS, and the National Academy of Arbitrators.

The OGC continued to focus its training efforts on the front lines, where the work is done and where its efforts can have immediate and lasting effect. By bringing its training services directly to the parties, the OGC educates management and labor representatives on their rights and responsibilities under the Statute, thereby empowering them to more effectively and efficiently avoid – and if necessary, resolve – workplace disputes at the lowest level.

In FY 2017, the OGC conducted over 70 training sessions reaching over 3,600 managers and employees. The OGC also continued providing the parties with up-to-date and topical web-based resources, including revisions to its *Representation Case Law Outline*, *ULP Case Law Outline* and *Guidance on Meetings*, which are the “go-to” resources for the Federal-sector labor-management relations community and have elicited much favorable feedback.

### ***Executive Branch Reform and Workforce Reshaping***

Consistent with Executive Order 13781, [Comprehensive Plan for Reorganizing the Executive Branch](#), and Office of Management and Budget (OMB) Memorandum M-17-22, [Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce](#), the FLRA developed agency reform proposals and a long-term workforce plan focused on improving the agency's efficiency, effectiveness, and accountability.

- ***Executive Branch Reform***

Executive Order 13781 and the OMB guidance provided the agency with a real opportunity to take a close look at its structure and operations, and to implement solutions for streamlining and reducing costs across the FLRA.

The FLRA has already reduced its agency-wide travel budget by 25% – across the board. With increased technology, especially video conferencing (VTC), the agency expects to be able to maintain and even further reduce this expense without any adverse effect on the mission.

The agency has also reduced its employee-training budget by 25% – across the board. The FLRA is committed to working internally, and partnering with its sister agencies, to provide employees with relevant, mission-related training and to maximize training opportunities for employees. Further, as succession planning was a priority for the agency's previous leadership due to retirements in many high-level positions that have since been filled, and given the relative junior status of the current workforce, there is a reduced need to obtain expensive executive-level training.

In addition, the FLRA will continue its ongoing efforts to implement fully electronic case files throughout the agency by the end of FY 2019, which will enable it to complete a number of other initiatives that will reduce costs and make the FLRA more efficient. Once electronic case files are in place, the FLRA: (1) will be able to reduce its U.S. Mail costs agency-wide by implementing electronic service of case-related documents *by the FLRA* on the parties; (2) plans to reduce FedEx shipping costs associated with transferring hard-copy case files across the Regions and HQ; (3) will launch a pilot program – and eventually mandate (with only very limited exceptions) – to require that FLRA parties file all case documents with the agency electronically.

Further, in the Authority Component, the Members have already permanently implemented electronic voting on cases, which reduced the burden on administrative staff and allows votes to be shared immediately.

The agency has also committed to other administrative efforts. For example, rather than outsourcing, the FLRA successfully used its own in-house IT staff to develop a new agency intranet site – saving a \$65,000 one-time cost and \$10,000 annually. Where appropriate, the agency will continue to tap existing government-wide shared-services solutions, like those that it already uses for payroll, financial services, and travel. It will continue to seek out and utilize existing government-wide procurement solutions and contracting flexibilities. These include using a General Services Administration (GSA)-approved vendor that the agency otherwise would not have found for its eFiling and Case Management projects, and piggybacking on the Library of Congress's FEDLINK contracting tool to procure Westlaw services more easily. The FLRA is engaging in more effective property and records management. This includes regularly and routinely taking inventory of all of its equipment and building a robust records-management program, that will, among things, ensure that the agency is not spending more than it needs to store equipment or archived hard-copy case files.

Another reform that the FLRA is committed to implementing is a consolidation of its existing OGC Regional Office structure and a reorganization of its OGC staff and workload. Currently, the OGC comprises a headquarters location in Washington, D.C., and seven Regional Offices in Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Denver, Colorado; San Francisco, California; and Washington, D.C. (co-located with OGC HQ). By regulation, the Authority Members have to vote on any decision to close Regional Offices [Appendix B to](#)



[5 C.F.R. Chapter XIV](#) (“the establishment, transfer, or elimination of any Regional Office or non-Regional Office duty location may be accomplished only with the approval of the Authority”).

Consistent with Government-wide mandates and the agency’s own ongoing efforts to reduce or eliminate rental costs since 2010, the agency’s physical footprint and its OGC Regional Office structure were logical places to look for additional cost savings. The FLRA has already systematically “reduced its footprint” in recent years by reducing the size of its Headquarters (HQ) by approximately 12,000 square feet in FY 2014, and its Boston, Chicago, San Francisco, Denver, and Dallas Regional Offices over the last four years – as those leases expired. These reductions in space have either reduced annual rent costs or allowed the FLRA to avoid the costs of what would have otherwise been fairly significant rent increases.

After reviewing potential costs and efficiencies, the FLRA reduced its Regional Office structure in the 1990s – consolidating 9 Regional Offices into 7 – by closing Regional Offices in New York, New York and Los Angeles, California. Again, based on workload, costs, and operating efficiencies gained from technological advances, a majority of the Authority Members has voted to further consolidate its Regional Office structure by reducing the number of Regional Offices from the current 7 to 5 located in: Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C. This would result in closure of the FLRA’s Boston and Dallas Regional Offices, and it would directly affect 16 employees – 9 in Boston and 7 in Dallas – and result in the abolishment of 5 positions. However, *all* directly affected employees will be offered reassignment within the agency – either to another Regional Office or to Headquarters.

Based on 5-year averages, Boston and Dallas currently have the lowest case intake. Rent for the Boston Regional Office is significantly higher per square foot than all of the FLRA’s other Regional Offices, and, for this reason, the FLRA has previously contemplated closing this office in past years. And, as a practical matter, closure of that office will result in displacement of, and relocation payments for, fewer employees.

In addition to offering reassignments to directly affected employees, the agency will also be offering Voluntary Early Retirement Authority (VERA) – which OPM has already approved – in order to maximize relocation opportunities for the directly affected employees. That is, vacancies that arise from VERA may create additional slots for Boston and Dallas employees to land. Because the agency is not attempting to reduce employees from its rolls through this reorganization, it has determined that Voluntary Separation Incentive Payment (VSIP) authority is not appropriate, and it will not be requesting that authority.

Anyone who accepts VERA will be expected to retire by September 30, 2018. The Boston and Dallas physical office spaces will also be closed by September 30, 2018. But actual employee relocations may spill over into FY 2019 depending on funding. Procedural amendments will need to be made to the FLRA’s regulations in order to adjust the geographic jurisdiction of each of the remaining 5 Regional Offices. This will be initiated no later than July 30, 2018.



- ***Workforce Reshaping***

The mission accomplishments cited above are particularly noteworthy because the FLRA operated with 20 vacant positions throughout most of FY 2016 and FY 2017. Eighteen of those positions were career positions, with the majority resting within the Office of the Executive Director.

Consistent with the Administration's goal of comprehensive Government reform and workforce reshaping, the agency has undertaken a thorough evaluation and prioritization of every vacancy that it has filled since the Government-wide hiring freeze was lifted. When the President implemented the freeze in January 2017, the agency had 20 vacant positions. During the freeze, agency leadership took a hard look at every vacancy. It identified 9 critical positions that should be filled, and it decided not to fill 12 unfilled positions and permanently took them "off the books." Most of those "lost" positions were within the Authority Component – the Office of the Executive Director, the Member Staffs, Case Intake & Publication, and CADRO. The Federal Service Impasses Panel has also lost a position.

In FY 2018, the agency expects to operate with 128 FTEs, reflecting a total decrease of 12 FTEs from its FY 2016 anticipated staffing level of 140 FTEs – or a nearly 10 percent reduction of its already small workforce. In FY 2019, the agency plans to operate with 125 FTEs, and it expects to eliminate those 3 additional positions through attrition. This is a reduction of 10 FTEs from the agency's actual on-board count of 135 FTEs in FY 2015. FLRA leadership is confident that it can continue to meet mission and operational needs at this staffing level.

# BUDGET JUSTIFICATION

## APPROPRIATIONS LANGUAGE

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### FEDERAL LABOR RELATIONS AUTHORITY SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and including official reception and representation expenses (not to exceed \$1,500) and rental of conference rooms in the District of Columbia and elsewhere, \$26,200,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further*, That, notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

## FY 2019 FUNDING REQUEST

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The FLRA requests \$26,200,000 in FY 2019 to fund employee salaries and related operating expenses necessary to meet its annual performance targets. The agency's FY 2019 request will fund 125 full-time equivalents (FTEs).

(In thousands of dollars)

Program Activity	FY 2017 Actual	FY 2018 Estimated	FY 2019 Request	Change from FY 2018
Authority	\$14,581	\$14,281	\$14,395	\$114
Office of the General Counsel	10,794	10,676	10,749	\$73
Federal Service Impasses Panel	843	1,065	1,056	-\$9
<b>Direct Obligations</b>	<b>\$26,218</b>	<b>\$26,022</b>	<b>\$26,200</b>	<b>\$178</b>
<b>FTEs</b>	<b>119</b>	<b>128</b>	<b>125</b>	<b>(3)</b>

The requested FY 2019 funding level incorporates cost-savings measures initiated over the past several years to increase program effectiveness and to reduce fragmentation, overlap, and duplication. For example, when the previous FLRA Headquarters lease in Washington, D.C. expired in FY 2013, and, in response to growing participation in the agency telework program, the FLRA reduced the size of its Headquarters location by approximately 12,000 square feet, commencing with the new lease term. It has continued to do so as each of its leases expire. In addition, the initial launch of the FLRA's modernized website in 2009, and continual enhancements to the site, including a 2016 redesign, have allowed the agency to provide timely and accurate information to its customers – other Federal agencies, Federal unions, Federal employees, and neutrals – including FLRA decisions, legal guidance and memorandums, policy documents, legal training and resources, and difficult-to-find archival materials.

The 125 FTE that the requested FY 2019 funding level will fund reflects a net loss of 3 FTE over FY 2018, which is anticipated to be achieved through a combination of attrition and voluntary early retirements. As noted above on page 5, consistent with the Administration's goal of comprehensive Government reform and workforce reshaping, the agency has undertaken a thorough evaluation and prioritization of every vacancy that it has filled since the government-wide hiring freeze. Although there were 140 positions on the books in FY 2017 that the agency anticipated filling, it operated with only 119 of them filled throughout most of FY 2017. That is, the agency carried over 20 vacant positions and expected employees to "do more with less" during that time. The agency identified 9 critical positions that should be filled, and it eliminated the remaining positions. It is therefore planning to operate with 128 FTEs in FY 2018, reflecting a total decrease of 12 FTEs – or nearly 10 percent of its already small workforce.

## **CHANGE FROM FY 2018**

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The requested funding level for FY 2019 includes no increase over FY 2018.

### **Personnel Compensation and Benefits**

The FY 2019 request foregoes a pay increase in calendar year 2019.

## PROGRAM AND FINANCING SCHEDULE

(In thousands of dollars)

	FY 2017 Actual	FY 2018 Estimate	FY 2019 Request
<b>Budgetary resources:</b>			
Unobligated balance (total)	1,245	1,341	1,341
Appropriation, discretionary (total)	26,200	26,022	26,200
Spending authority from offsetting collections, discretionary (total)	27	100	0
Total budgetary resources	27,472	27,463	27,541
<b>Status of budgetary resources:</b>			
Direct obligations (total)	26,191	26,022	26,200
Reimbursable obligations (total)	27	100	0
New obligations and upward adjustments (total)	26,218	26,122	26,200
Unobligated balance, end of year	1,254	1,314	1,314
Total budgetary resources	27,472	27,436	27,514
<b>Change in obligated balance:</b>			
Obligated balance, start of year	3,132	3,132	3,132
Obligated balance, end of year	3,727	3,132	3,132
<b>Budget authority and outlays, net:</b>			
Budget authority, gross	26,227	26,022	26,200
Outlays, gross (total)	25,492	26,022	26,000
Offsets against gross budget authority and outlays (total)	(33)	(31)	0
Additional offsets against budget authority only (total)	61	10	0
Budget authority, net (discretionary)	26,200	26,022	26,200
Outlays, net (discretionary)	26,458	26,000	26,000

## OBJECT CLASSIFICATION SCHEDULE

(In thousands of dollars)

	FY 2017 Actual	FY 2018 Estimate	FY 2019 Request
Direct obligations:			
Personnel compensation:			
Full-time permanent	\$14,723	\$14,254	\$14,415
Other than full-time permanent	198	532	571
Other personnel compensation	<u>11</u>	<u>380</u>	<u>407</u>
Total personnel compensation	14,932	15,166	15,393
Civilian personnel benefits	4,717	4,732	4,771
Travel and transportation of persons	107	165	165
Transportation of things	11	12	12
Rental payments to GSA	2,573	2,662	2,662
Communications, utilities, and misc. charges	403	322	325
Printing and reproduction	7	14	14
Other services from non-federal sources	1,839	1,800	1,655
Other goods and services from Federal sources	867	845	895
Operation and maintenance of facilities	1	4	4
Operation and maintenance of equipment	422	89	93
Supplies and materials	222	121	121
Equipment	<u>90</u>	<u>90</u>	<u>90</u>
Direct obligations	\$26,191	\$26,022	\$26,200
Reimbursable obligations:			
Travel and transportation of persons	<u>27</u>	<u>100</u>	<u>      </u>
Reimbursable obligations	<u>27</u>	<u>100</u>	<u>      </u>
Total new obligations	\$26,218	\$26,122	\$26,200

## EMPLOYMENT SUMMARY SCHEDULE

	FY 2017 Actual	FY 2018 Estimate	FY 2019 Request
Direct civilian full-time equivalent employment	119	128	125

## **INSPECTOR GENERAL RESOURCES**

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The Office of the Inspector General (OIG) provides independent and objective assessments of the FLRA's efficiency, effectiveness, and compliance with laws and regulations. This is accomplished through proactive evaluations of agency operational processes. In addition to striving to prevent and detect fraud, waste, and abuse of the FLRA's resources and operations, a key goal of the Inspector General (IG) is to serve as a catalyst for improving operations and maximizing the efficiency and integrity of agency programs.

In fulfilling these responsibilities and objectives, the IG conducts and supervises investigations, internal reviews, audits, and evaluations of the programs and operations of the agency. The IG communicates the results of investigations and assessments to FLRA management, the Congress, other oversight entities, and the public, as appropriate. Generally, the IG communicates results in formal reports that contain findings and recommendations aimed at correcting any deficiencies identified and promoting efficiency and effectiveness in agency programs and operations. The IG also manages a hotline to provide employees and the public with a direct means for confidentially communicating information on potential fraud, waste, or abuse.

The FLRA's FY 2019 funding request includes \$626,961 for the OIG. The funding level requested by the IG, including \$8,000 for training and \$1,876 to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has been funded in total. The IG has certified that the FLRA's funding request for the OIG satisfies all training requirements for FY 2019.



INSPECTOR GENERAL

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

August 4, 2017

The Inspector General Reform Act (Pub. L. 110-149) was signed by the President on October 14, 2008. Section 6(f) (1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year (FY).

Each inspector general (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- The aggregate amount of funds requested for the operations of the OIG,
- The portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for the fiscal year, and
- The portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget to the President for approval, shall include:

- An aggregate request for the OIG,
- The portion of this aggregate request for OIG training,
- The portion of this aggregate request for support of the CIGIE, and
- Any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress.

- A separate statement of the budget estimate submitted by each IG,
- The amount requested by the President for each OIG,
- The amount requested by the President for training of OIGs ,
- The amount requested by the President for support of the CIGIE, and
- Any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing duties of the OIG.

Following the requirements as specified above, the Federal Labor Relations Authority Inspector General submits the following information relating to the OIG's requested budget for FY 2019:

- The aggregate budget request for the operations of the OIG is \$626,961,
- The portion of this amount needed for OIG training is \$8,000, and
- The portion of this amount needed to support the CIGIE is \$ 1,876.

I certify as the IG of the Federal Labor Relations Authority that the amount I have requested for training satisfies all OIG training needs for FY 2019.



Inspector General  
Federal Labor Relations Authority



# ANNUAL PERFORMANCE PLAN

## STRATEGIC AND PERFORMANCE-PLANNING FRAMEWORK

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Through comprehensive review of its operations, staffing, work processes, resource allocations, and performance, the FLRA has established strategies and goals that are designed to maximize the delivery of agency services throughout the Federal Government. The FLRA engages in continuous strategic assessment of performance and other data to ensure that it is accomplishing its mission effectively and efficiently.

The FLRA's FY 2019 strategic performance-planning framework is currently based on the agency's FY 2015 - 2018 Strategic Plan, and it is supported by the agency's Annual Performance Plan, which establishes the agency's annual performance goals and measures. The Annual Performance Plan reflects the agency's commitment to establishing meaningful metrics that will assist in assessing performance outcomes, aligning resources, and effectively identifying staffing and training needs. Consistent with the Government Performance and Results Act (GPRA) Modernization Act of 2010, the FLRA has begun development of a new strategic plan – that will run at least through 2022. Until that new plan is finalized, the FLRA's FY 2015 - 2018 Strategic Plan will remain in effect.

Consistent with ongoing Government-wide efforts to leverage data to facilitate agencies' programmatic work, the FLRA continually and strategically monitors its progress in accomplishing the goals and measures set forth in the Annual Performance Plan. This ongoing, agency-wide review is conducted on a monthly basis with distribution of the Monthly Analysis of Performance and Status (MAPS) Report, which contains statistical case and performance data derived from the FLRA's Case Management System (CMS) and agency management. The agency examines the data contained in the MAPS Report in a variety of forums. At the component and office levels, there are also daily performance assessments using a variety of reports, including: case-filing reports, which track the number and age of cases; case-status reports, which track the status of all assigned *pending* cases within the Authority, the OGC, and the FSIP; and monthly disposition reports, which track the number, age, and resolution type of every *closed* case within the Authority and the OGC.

The analysis and assessment of these reports drive, among other things: decisions to target services (including training, facilitations, and on-site investigations) to certain parties or geographical locations; adjustments in workload through case transfers at the national, regional, and office levels; and reallocation of resources, including use of details, contract support, and temporary hires.



**Mission:** The FLRA promotes stable, constructive labor-management relations through the resolution and prevention of labor disputes in a manner that gives full effect to the collective-bargaining rights of employees, unions, and agencies.

### Strategic Goals

**Goal 1:** We will resolve disputes under the Federal Service Labor-Management Relations Statute in a timely, high-quality, and impartial manner

**Goal 2:** We will promote stability in the federal labor-management community by providing leadership and guidance through Alternative Dispute Resolution and education

**Goal 3:** We will manage our resources effectively and efficiently in order to achieve organizational excellence

### Strategic Objectives

**Objective 1.1:** Achieve or exceed case-resolution timeliness measures, as established by each component

**Objective 1.2:** Set a high standard of quality for the case-resolution process

**Objective 2.1:** Offer high-quality outreach and prevention services, as well as reference resources, to promote more effective labor-management relations across the federal government

**Objective 2.2 :** Maximize the use of Alternative Dispute Resolution practices in case resolution

**Objective 3.1:** Recruit, retain, and develop a highly talented, motivated, and diverse workforce to accomplish the FLRA's mission

**Objective 3.2:** Improve usage of existing technology and deploy new IT systems to streamline and enhance organizational operations

**Objective 3.3:** Act as an effective steward of agency resources

The FLRA seeks to achieve its strategic goals primarily through the timely, high-quality, and impartial review and disposition of cases. The agency supplements these efforts with a focus on reducing litigation and its attendant costs by helping parties to resolve their own disputes through collaboration, ADR, education, and labor-management-cooperation activities. Further supporting these efforts is the FLRA's focus on internal improvements in IT and more effective and efficient use of human capital.

## **FY 2019 Performance Goals**

**1.1.1:** Produce timely review and disposition of unfair-labor-practice cases.

**1.2.1:** Resolve overage unfair-labor-practice cases in a timely fashion.

**1.1.2:** Produce timely review and disposition of representation cases.

**1.2.2:** Resolve overage representation cases in a timely fashion.

**1.1.3:** Produce timely review and disposition of arbitration cases.

**1.2.3:** Resolve overage arbitration cases in a timely fashion.

**1.1.4:** Produce timely review and disposition of negotiability cases.

**1.2.4:** Resolve overage negotiability cases in a timely fashion.

**1.1.5:** Produce timely review and disposition of bargaining-impasse cases.

**2.1.1:** Provide targeted access to training, outreach, and facilitation activities within the labor-management community.

**2.2.1:** Successfully resolve a significant portion of FLRA cases through ADR.

**3.1.1:** Recruit, retain, and develop a highly talented, motivated, and diverse workforce to accomplish the FLRA's mission.

**3.1.2:** Improve use of existing technology and deploy new IT systems to streamline and enhance organizational operations.

## **Timeliness and Quality**

Continued improvements in the timeliness of case disposition further the FLRA's critical role in contributing to orderly, effective, and efficient change within the Federal Government. In large part, the FLRA exists to promote effective labor-management relations that, in turn, permit improved employee performance and Government operations. Timely resolution – or avoidance – of FLRA cases is critical to this endeavor. And effective case resolution includes not only timeliness, but also: effective process execution; clear communication with the parties around case processes; and the issuance of well-written and understandable decisions that provide deliberate, impartial, and legally sound analyses and consideration of the issues in dispute.

Unless management and labor can collaboratively resolve their disputes and avoid litigation or – failing that – have their disagreements adjudicated expeditiously by the FLRA, mission performance will suffer. This is particularly relevant now as Federal agencies are making significant adjustments and changes in how they perform their missions in response to the budgetary and policy challenges that they are facing.

## **Alternative Dispute Resolution and Education**

Throughout the years, the Authority, the OGC, and the FSIP have not only recognized the many benefits associated with using ADR to resolve workplace disputes, but they have also integrated ADR techniques into all aspects of case processing. Put simply, offering ADR services in every case results in faster, more effective outcomes for the parties and the FLRA. For this reason, the

agency continues to leverage existing staff and resources to increase its ADR reach. This includes partnering with other agencies and entities – such as the Federal Mediation and Conciliation Service (FMCS), the Federal Executive Boards, and the General Services Administration (GSA) – to train large numbers of practitioners.

In addition, the FLRA’s training initiatives are intended to make case processing more effective and efficient, and to better serve the FLRA’s customers by providing meaningful and clear guidance on statutory rights and responsibilities. Timely and efficient case processing is furthered by FLRA customers being knowledgeable about their rights and obligations under the Statute, as well as FLRA case law, regulations, and case-processing procedures. The FLRA delivers its educational materials through a variety of means, such as: in-person training sessions; comprehensive, web-based training modules; and case outlines, manuals, and subject-matter guides that are easily accessible on [www.FLRA.gov](http://www.FLRA.gov). All of these materials have been developed to assist members of the Federal labor-management-relations community with issues and cases arising under the Statute. Using collaboration and ADR techniques – alone or in conjunction with other training, outreach, and facilitation services – to assist parties in minimizing or resolving labor-management disputes significantly reduces the need for litigation and its attendant costs, and it gets the parties back to work accomplishing their missions and delivering effective and efficient Government services.

## **Information Technology (IT)**

Consistent with the FLRA’s Strategic Plan, IT and automation of agency processes continue to be key areas of focus for the agency. Both are fundamental for ensuring the cost effectiveness and efficiency of the FLRA, as measured by the agency’s ability to meet its annual performance goals. The agency continues to improve its overall effectiveness and efficiency, as well as the customer-service experience, by engaging in new and innovative ways to conduct business, such as through electronic case filing (eFiling). In addition, the agency has placed significant emphasis on IT modernization to ensure that its IT equipment and infrastructure enable it to maximize gains in efficiency that can be achieved through use of technology.

In FY 2017, the FLRA also continued to work towards its long-term goal of implementing end-to-end electronic case files throughout the FLRA and complying with the OMB-mandated target of having fully electronic files by 2019. Increasing eFiling is critical to achieving this goal. In this regard, the more case-related information that the FLRA receives electronically – rather than in hard copy – from the outset, the easier it is to convert that information into an electronic case file, without the need for FLRA staff to manually scan documents. In recognition of this, the agency continues to execute the multi-year, four-phase plan that it initially developed and launched in FY 2015 to accomplish the transition to fully electronic case files.

Phase 1 was completion of the initial implementation of an eFiling System – eFiling 1.0 – for all FLRA offices that accept case filings, and the refinement and improvement of that system – based on user experience and feedback – through implementation of eFiling 2.0 and 3.0 with a more user-friendly interface. The agency will implement eFiling 3.0, which is currently being tested, no later than the first quarter of FY 2018. Phase 2 is to provide a similar, more user-friendly and intuitive interface for the agency’s internal electronic Case Management System. Phase 2 also includes implementation of an agency-wide Document Management

System – an electronic, cloud-based “filing cabinet” that provides a framework for organizing digital and paper documents. The latter has already been completed, and the former should be implemented by the end of FY 2018. The Document Management System replaces all existing network drives and folders, and it allows for quick access to any document, file, or email through use of sophisticated search engines. It also provides the necessary storage capacity and technological platform for the eventual integration of all electronic case-processing systems so that the agency can realize its vision of having fully electronic case files. Phase 3 is the integration of the automated connection between the Case Management System, the eFiling System, and the Document Management System. This is currently underway, and project planning has begun. Phase 3 is scheduled to be completed by the 2nd quarter of FY 2019. And Phase 4 is the transition to 100 percent electronic case files throughout the agency, with a goal of September 30, 2019, for completion.

Implementation of fully electronic case files throughout the agency will allow the FLRA to operate more efficiently and more effectively by: allowing for implementation of additional external and internal case-processing improvements that will further maximize the use of technology; eliminating many of the labor-intensive, manual case processes that are currently in place; and increasing overall efficiency and effectiveness. These case-processing improvements include: electronic voting by the Authority Members, which the agency already implemented in FY 2017; reduction of U.S. Mail costs by implementing electronic service of case-related documents by the FLRA on the parties; reduction – or elimination – of Fed Ex costs for transferring paper case files between FLRA offices; implementation of a pilot program that would mandate FLRA parties to file all case-related documents electronically, and the eventual mandate of eFiling for all FLRA case filings. The greatest benefit will be that staff hours currently used to perform manual administrative tasks will be freed up to perform other mission-critical functions – or eliminated, if warranted.

In addition, the FLRA will continue making improvements through smaller-scale projects. For example, the agency plans to transition to a cloud email solution in FY 2018. This is another long-term, “cloud-first” strategy that the agency has been working towards to move all of its critical system to the cloud. Once email has been transitioned, all agency critical systems – Case Management, eFiling, Document Management, and email – will all be in the cloud, offering better redundancy and backups that can be leveraged to improve the overall agency Continuity of Operations Plan (COOP). The agency also continues to leverage the Video Teleconferencing (VTC) System that it implemented in FY 2015 to save reduce travel expenditures and offer alternative methods for achieving agency-wide training, outreach, and intervention goals. In FY 2017, the agency also completed its transition to business cable in all 6 of its Regional Office outside of Washington, D.C. In addition to increasing network connections for the FLRA’s Regional Offices by 50 to 80 percent, the agency was also able to reinvest the 5 to 10 percent annual savings in network services that it achieved to provide a back-up, secondary system for the Regional Office networks. All of these initiatives are key components in the agency’s efforts to achieve efficiencies through use of innovative technology.

## Human Capital

In FY 2017, the FLRA continued its overall success as measured by the Federal Employee Viewpoint Survey (FEVS), leaving no doubt that the FLRA's investments in the recruitment, retention, and skills and leadership development of its employees continues to produce a highly engaged workforce that is dedicated to the accomplishment of its mission. The results of the 2017 survey reflect that the FLRA has 55 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). Compared to 2016, the FLRA increased its positive ratings for 15 questions, experienced no change in its positive ratings for 4 questions, and decreased its positive ratings for 52 questions. The agency outperformed the Government-wide average in 70 out of 71 questions. And the FLRA continues to rank in the top ten among small agencies (those with 100-999 employees) in two important indices – Employee Engagement and New IQ – with #6 and #5 rankings, respectively. With an Employee Engagement Index score of 77 percent and a New IQ Index score of 71 percent, the FLRA exceeds the Government-wide average for each index, as well as for every sub-category of each index. In addition, the FLRA's Global Satisfaction index score of 72 percent – well above the Government-wide average of 64 percent – is a positive indicator of employees' overall workplace satisfaction.

As to the agency's 55 identified strengths, of particular note is that: 99 percent of FLRA respondents indicate that they are willing to put in extra effort to get a job done; 98 percent positively rate the overall quality of work done by their work unit; 97 percent report that they are held accountable for achieving results; 95 percent know how their work relates to the agency's goals and priorities; and 92 percent say that they are constantly looking for ways to do their jobs better. These results show that employees understand the FLRA's mission, understand their role in achieving it, and see themselves as an integral part of achieving agency-wide success.

Consistent with Executive Order 13781 and OMB M-17-22, which, among other things, provides agencies with guidance on developing reform plans that "align[] . . . the Federal budget and performance planning processes," in FY 2017 the FLRA adjusted its annual performance year to align with the fiscal year. This alignment directly links every employee's individual performance to the FLRA's overall strategic and performance goals, as well as to the agency's annual budget and funding requests. It will provide a more accurate measurement of each employee's contribution towards achievement of agency-wide performance goals, greater accountability, and better data regarding resource needs.

The FLRA also engaged in an in-depth review of its personnel files. In this connection, it undertook a thorough review of every Electronic Official Personnel Folder (eOPF) to: ensure proper retirement coverage (CSRS or FERS); verify the accuracy of service computation dates for both leave and retirement purposes; and examine all folders for missing or undocumented prior service. It also conducted an agency-wide review of every agency position description (PD) to ensure that all PDs reflect actual duties and that accompanying cover sheets are accurate. This has been critical in conducting "need-to-fill" evaluations.

Further, in FY 2017, the agency continued to develop capacity for shared administrative staff across several offices by utilizing administrative staff within the Authority Component –

particularly those who are in “confidential” positions to agency leadership – to provide administrative assistance to the HR, Budget & Finance, and Equal Employment Opportunity (EEO) Offices, which perform sensitive work. Not only does this provide administrative staff with a developmental opportunity, but it also allows for greater flexibility, relieves high-graded managerial staff from having to perform lower-graded administrative tasks, and avoids the need to hire additional FTEs when workloads increase within the component. And, again in FY 2017, internal developmental details have accomplished two strategic objectives: (1) development of future leaders to facilitate succession planning; and (2) cross-training to allow for the reassignment of employees to positions that are more closely matched to their career interests – and to the agency’s needs.

In order to further fulfill the FLRA’s mission, the agency focuses on succession planning by identifying its future human-resources needs, potential organizational and skills gaps, and vulnerabilities, and then setting goals to address them. With respect to succession planning, in FY 2017, the FLRA continued a training initiative designed to assist senior, high-potential employees identify and strengthen critical leadership skills in preparation for eventually transitioning to formal leadership positions. To strengthen and support the FLRA’s new cadre of first-time managers and supervisors, the agency identified a series of trainings geared towards developing strategic thinking and other critical skills in preparation for effective leadership at the FLRA. And the FLRA continued to develop and provide high-level, mission-based training for its attorneys – nearly 20 percent of whom are new to the FLRA – that built upon their existing legal, technical, and ADR skills to improve and maximize performance. These training initiatives crossed components, bringing together future agency leaders from all offices to enhance their skills and encourage ongoing collaboration among peers.

The FLRA is committed to fostering a workplace where employees from all backgrounds are recruited, retained, and developed for successful performance and career progression. Since FY 2014, and continuing throughout FY 2017, the agency achieved greater diversity in its workforce by increasing strategic and targeted recruitment and posting job opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. And the FLRA has consistently used data to help identify and eliminate barriers to recruiting and hiring the diverse talent that it needs. In this respect, the FLRA’s ongoing focus on increasing ethnic and gender diversity in its Senior Executive Service corps yielded small, but meaningful, gains in FY 2016 and FY 2017. The FLRA also continued to utilize both Student Pathways and summer-externship programs to accomplish mission-related initiatives throughout the agency. Finally, serving as one of three Small Agency Council (SAC) representatives on the Diversity and Inclusion in Government Council (DIG), the FLRA is participating in Government-wide discussions aimed to create and foster a Federal workforce that includes and engages Federal employees and reflects all segments of society.



***STRATEGIC GOAL 1: WE WILL RESOLVE DISPUTES UNDER THE  
STATUTE IN A TIMELY, HIGH-QUALITY, AND IMPARTIAL MANNER***

**PERFORMANCE GOAL 1.1: PRODUCE TIMELY REVIEW AND  
DISPOSITION OF *UNFAIR-LABOR-PRACTICE* CASES.**

The General Counsel has independent responsibility for the investigation, settlement, and prosecution of ULP charges. ULP cases originate with the filing of a charge in a Regional Office by an employee, a labor organization, or an agency. Once a charge has been filed, the Regional Office will investigate the charge to determine whether it has merit. If the Regional Director determines that the charge has merit, then he or she will, absent settlement, issue and prosecute a complaint before an ALJ. If the Regional Director determines that the charge lacks merit, then the charging party is entitled to a written explanation, and, if not satisfied, may appeal that decision to the General Counsel in Washington, D.C. If the General Counsel upholds the dismissal, then the case is closed. The Authority has appointed ALJs to hear ULP cases prosecuted by the General Counsel. The OALJ transmits recommended decisions of the ALJs to the Authority, which may affirm, modify, or reverse them in whole or in part on exceptions. If no exceptions are filed to an ALJ's decision, then the Authority adopts the decision without precedential significance.

OGC	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	1,570	1,425	1,178	1,333	882	952
Charges filed	<u>4,696</u>	<u>4,418</u>	<u>4,345</u>	<u>3,655</u>	<u>4,000</u>	<u>4,000</u>
<b>Total caseload</b>	<b>6,266</b>	<b>5,843</b>	<b>5,523</b>	<b>4,988</b>	<b>4,882</b>	<b>4,952</b>
Charges withdrawn/settled	3,779	3,662	3,268	3,130	3,000	3,000
Charges dismissed	809	800	749	786	750	750
Complaints issued	<u>253</u>	<u>203</u>	<u>173</u>	<u>190</u>	<u>180</u>	<u>180</u>
<b>Total cases closed</b>	<b>4,841</b>	<b>4,665</b>	<b>4,190</b>	<b>4,106</b>	<b>3,930</b>	<b>3,930</b>
<b>Cases pending, end of year</b>	<b>1,425</b>	<b>1,178</b>	<b>1,333</b>	<b>882</b>	<b>952</b>	<b>1,022</b>
OALJ	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	120	105	62	60	57	57
Cases received from the OGC	<u>260</u>	<u>222</u>	<u>179</u>	<u>197</u>	<u>200</u>	<u>200</u>
<b>Total caseload</b>	<b>380</b>	<b>327</b>	<b>241</b>	<b>257</b>	<b>257</b>	<b>257</b>
Settlements before hearing	245	187	130	176	170	170
Cases closed by decision	<u>30</u>	<u>78</u>	<u>51</u>	<u>24</u>	<u>30</u>	<u>30</u>
<b>Total cases closed</b>	<b>275</b>	<b>265</b>	<b>181</b>	<b>200</b>	<b>200</b>	<b>200</b>
<b>Cases pending, end of year</b>	<b>105</b>	<b>62</b>	<b>60</b>	<b>57</b>	<b>57</b>	<b>57</b>



Authority	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	12	13	24	24	23	23
Exceptions filed	<u>27</u>	<u>62</u>	<u>45</u>	<u>23</u>	<u>25</u>	<u>25</u>
<b>Total caseload</b>	<b>39</b>	<b>75</b>	<b>69</b>	<b>47</b>	<b>48</b>	<b>48</b>
Cases closed procedurally	18	37	51	22	20	20
Cases closed based on merits	<u>8</u>	<u>14</u>	<u>14</u>	<u>2</u>	<u>5</u>	<u>5</u>
<b>Total cases closed</b>	<b>26</b>	<b>51</b>	<b>51</b>	<b>24</b>	<b>25</b>	<b>25</b>
<b>Cases pending, end of year</b>	<b>13</b>	<b>24</b>	<b>24</b>	<b>23</b>	<b>23</b>	<b>23</b>

**Measure 1.1:** The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 120 days of filing of the charge.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
67%	72%	71%	73%	70%	70%

**Measure 1.2:** The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued within 60 days of the date filed, and in no case more than 120 days.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
98%/100%	98%/100%	100%/100%	96%/100%	95%/100%	95%/100%

**Measure 1.3:** The percentage of ULP complaints issued by the General Counsel resolved or decided in the OALJ within 180 days of the complaint being issued.

Results		
FY 2014	FY 2015	
91%	77%	

**Measure 1.3:** The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 180 days of the complaint being issued.\*

Results		Targets		*New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
80%	93%	80%	90%	

**Measure 1.4:** The percentage of ULP cases decided within 180 days of assignment to an Authority Member.

Results			
FY 2013	FY 2014	FY 2015	FY 2016
100%	50%	57%	89%

**Measure 1.4:** The percentage of ULP cases decided within 150 days of assignment to an Authority Member.\*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
50%	75%	75%	

## **PERFORMANCE GOAL 2.1: RESOLVE OVERAGE UNFAIR-LABOR-PRACTICE CASES IN A TIMELY FASHION.**

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.1:** The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 240 days of filing of the charge.\*

Results		Targets		*New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
95%	95%	95%	95%	

**Measure 2.2:** The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 365 days of the complaint being issued.\*

Results		Targets		*New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
89%	98%	98%	98%	

**Measure 2.3:** The percentage of ULP cases decided within 365 days of assignment to an Authority Member.\*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
100%	95%	95%	

## PERFORMANCE GOAL 1.2: PRODUCE TIMELY REVIEW AND DISPOSITION OF *REPRESENTATION* CASES.

The Statute sets out a specific procedure for employees to petition to be represented by a labor union and to determine which employees will be included in a “bargaining unit” that a union represents. Implementing this procedure, the FLRA conducts secret-ballot elections for union representation and resolves a variety of issues related to questions of union representation of employees. These issues include, for example, whether particular employees are managers or “confidential” employees excluded from union representation, whether there has been election misconduct on the part of agencies or unions, and whether changes in union and agency organizations affect existing bargaining units. Representation cases are initiated when an individual, a labor organization, or an agency files a petition with a Regional Office. After a petition is filed, the Regional Director conducts an investigation to determine the appropriateness of a unit or other matter related to the petition. After concluding such investigation, the Regional Director may conduct a secret-ballot election or hold a hearing to resolve disputed factual matters. After a hearing, the Regional Director issues a Decision and Order, which is final unless an application for review is filed with the Authority.

OGC	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	89	65	70	112	58	38
Petitions filed	<u>235</u>	<u>225</u>	<u>265</u>	<u>208</u>	<u>210</u>	<u>210</u>
<b>Total caseload</b>	<b>324</b>	<b>290</b>	<b>335</b>	<b>320</b>	<b>268</b>	<b>248</b>
Petitions withdrawn	118	95	112	130	110	110
Cases closed based on merits	<u>141</u>	<u>125</u>	<u>111</u>	<u>132</u>	<u>120</u>	<u>120</u>
<b>Total cases closed</b>	<b>259</b>	<b>220</b>	<b>223</b>	<b>262</b>	<b>230</b>	<b>230</b>
<b>Cases pending, end of year</b>	<b>65</b>	<b>70</b>	<b>112</b>	<b>58</b>	<b>38</b>	<b>18</b>
Authority	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	9	7	2	0	6	6
Applications for review	<u>13</u>	<u>16</u>	<u>6</u>	<u>12</u>	<u>12</u>	<u>12</u>
<b>Total caseload</b>	<b>22</b>	<b>23</b>	<b>8</b>	<b>12</b>	<b>18</b>	<b>18</b>
Cases closed procedurally	2	2	0	1	1	1
Cases closed based on merits	<u>13</u>	<u>19</u>	<u>8</u>	<u>5</u>	<u>11</u>	<u>11</u>
<b>Total cases closed</b>	<b>15</b>	<b>21</b>	<b>8</b>	<b>6</b>	<b>12</b>	<b>12</b>
<b>Cases pending, end of year</b>	<b>7</b>	<b>2</b>	<b>0</b>	<b>6</b>	<b>6</b>	<b>6</b>

**Measure 1.5:** The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 120 days of the filing of a petition.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
66%	72%	73%	68%	70%	70%

**Measure 1.6:** The percentage of representation cases in which the Authority issued a decision whether to grant review within 60 days of the filing of an application for review.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
100%	100%	100%	100%	100%	100%

## **PERFORMANCE GOAL 2.2: RESOLVE OVERAGE REPRESENTATION CASES IN A TIMELY FASHION.**

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.3:** The percentage of cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 365 days of the filing of a petition.\*

Results		Targets		* New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
98%	95%	95%	95%	

**Measure 2.4:** The percentage of representation cases in which the Authority grants review, where the Authority will issue a decision on review, or reach other final resolution of the case, within 365 days of the filing of the application for review.\*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
100%	95%	95%	

### PERFORMANCE GOAL 1.3: PRODUCE TIMELY REVIEW AND DISPOSITION OF *ARBITRATION* CASES.

Either party to grievance arbitration may file with the Authority an exception to (or an appeal of) an arbitrator's award. The Authority will review an arbitrator's award to which an exception has been filed to determine whether the award is deficient because it is contrary to any law, rule, or regulation, or on grounds similar to those applied by Federal courts in private-sector, labor-management relations.

Authority	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	123	90	50	40	71	80
Exceptions filed	89	99	86	103	94	94
<b>Total caseload</b>	<b>212</b>	<b>189</b>	<b>136</b>	<b>143</b>	<b>165</b>	<b>144</b>
Cases closed procedurally	16	15	21	16	17	17
Cases closed based on merits	106	124	75	56	68	68
<b>Total cases closed</b>	<b>122</b>	<b>139</b>	<b>96</b>	<b>72</b>	<b>85</b>	<b>85</b>
<b>Cases pending, end of year</b>	<b>90</b>	<b>50</b>	<b>40</b>	<b>71</b>	<b>80</b>	<b>59</b>

**Measure 1.7:** The percentage of arbitration cases decided within 180 days of assignment to an Authority Member.

Results			
FY 2013	FY 2014	FY 2015	FY 2016
91%	34%	40%	79%

**Measure 1.7:** The percentage of arbitration cases decided within 150 days of assignment to an Authority Member.

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
79%	75%	75%	

## PERFORMANCE GOAL 2.3: RESOLVE OVERAGE *ARBITRATION* CASES IN A TIMELY FASHION.

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

<b>Measure 2.5:</b> The percentage of arbitration cases decided within 365 days of assignment to an Authority Member *			
<b>Results</b>	<b>Targets</b>		<b>*New measure beginning in FY 2017</b>
<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	
100%	95%	95%	

## PERFORMANCE GOAL 1.4: PRODUCE TIMELY REVIEW AND DISPOSITION OF *NEGOTIABILITY* CASES.

A Federal agency bargaining with a union may claim that a particular union proposal cannot be bargained because it conflicts with Federal law, a Government-wide rule or regulation, or an agency regulation for which there is a compelling need. In both of these situations, a union may petition the Authority to resolve the negotiability dispute. In addition, agency heads may disapprove collective-bargaining agreements if those agreements are contrary to law, and a union may petition the Authority to resolve the negotiability dispute.

<b>Authority</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 Est.</b>	<b>2019 Est.</b>
Cases pending, start of year	9	17	23	27	11	11
Petitions filed	43	54	55	40	48	48
<b>Total caseload</b>	<b>52</b>	<b>71</b>	<b>78</b>	<b>67</b>	<b>59</b>	<b>59</b>
Cases closed procedurally	29	40	47	52	40	40
Cases closed based on merits	6	8	4	4	8	8
<b>Total cases closed</b>	<b>35</b>	<b>48</b>	<b>51</b>	<b>56</b>	<b>48</b>	<b>48</b>
<b>Cases pending, end of year</b>	<b>17</b>	<b>23</b>	<b>27</b>	<b>11</b>	<b>11</b>	<b>11</b>

**Measure 1.8:** The percentage of negotiability cases decided within 180 days of assignment to an Authority Member.

Results			
FY 2013	FY 2014	FY 2015	FY 2016
80%	60%	50%	75%

**Measure 1.8:** The percentage of negotiability cases decided within 150 days of assignment to an Authority Member.\*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
75%	75%	75%	

## **PERFORMANCE GOAL 2.4: RESOLVE OVERAGE *NEGOTIABILITY* CASES IN A TIMELY FASHION.**

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.6:** The percentage of negotiability cases decided within 365 days of assignment to an Authority Member.\*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
100%	95%	95%	

## PERFORMANCE GOAL 1.5: PRODUCE TIMELY REVIEW AND DISPOSITION OF *BARGAINING-IMPASSE CASES*.

In carrying out the right to bargain collectively, it is not uncommon for a union representative and a Federal agency to simply not agree on certain issues, and for the bargaining to reach an impasse. Several options are available by which the parties may attempt to resolve the impasse. The parties may: decide, on their own, to use certain techniques to resolve the impasse, but may proceed to private, binding arbitration only after the FSIP approves the procedure; seek the services and assistance of the FMCS; or seek the assistance of the FSIP in resolving the negotiation impasse, but only after the previous options have failed.

FSIP	2014	2015	2016	2017	2018 Est.	2019 Est.
Cases pending, start of year	40	28	33	41	14	7
Impasses filed	<u>134</u>	<u>139</u>	<u>142</u>	<u>98</u>	<u>128</u>	<u>128</u>
<b>Total caseload</b>	<b>174</b>	<b>167</b>	<b>175</b>	<b>139</b>	<b>142</b>	<b>135</b>
<b>Cases closed</b>	<b><u>146</u></b>	<b><u>134</u></b>	<b><u>134</u></b>	<b><u>125</u></b>	<b><u>135</u></b>	<b><u>135</u></b>
<b>Cases pending, end of year</b>	<b>28</b>	<b>33</b>	<b>41</b>	<b>14</b>	<b>7</b>	<b>0</b>

**Measure 1.9:** The percentage of bargaining-impasse cases in which jurisdiction is declined closed within 140 days of the date filed.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
89%	100%	100%	93%	80%	80%

**Measure 1.10:** The percentage of bargaining-impasse cases voluntarily settled after jurisdiction has been asserted within 160 days of the date filed.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
68%	100%	100%	93%	70%	70%

**Measure 1.11:** The percentage of bargaining-impasse cases resolved through a final action closed within 200 days of the date filed.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
61%	100%	100%	77%	70%	70%



***STRATEGIC GOAL 2: WE WILL PROMOTE STABILITY IN THE  
FEDERAL LABOR-MANAGEMENT COMMUNITY BY PROVIDING  
LEADERSHIP AND GUIDANCE THROUGH ADR AND EDUCATION***

Key to the FLRA's ADR objectives is to offer high-quality outreach and preventive services, as well as resources, to promote more effective labor-management relations across the Federal Government. In furtherance of that objective, the FLRA has integrated voluntary ADR and consensus decision-making into virtually all of its processes, and it has significantly expanded its training, outreach, and facilitation activities. ADR is an informal, voluntary process that allows parties to discuss and develop their interests in order to resolve the underlying issues and problems in their relationships. This includes interest-based conflict resolution and intervention services in pending ULP cases, representation cases, arbitration cases, negotiability appeals, and bargaining-impasse disputes. The agency also provides facilitation and training to help labor and management develop collaborative relationships. Many of the FLRA's training programs are now available as web-based training modules, bringing educational tools and resources directly to agency customers at their desks to further assist them in resolving labor-management disputes. The FLRA's goals include delivering outreach, training, and facilitation services that significantly contribute to the mission of the FLRA, and ensuring that training participants evaluate FLRA training as highly effective.

**PERFORMANCE GOAL 1.1: PROVIDE TARGETED ACCESS TO  
TRAINING, OUTREACH, AND FACILITATION ACTIVITIES WITHIN  
THE LABOR-MANAGEMENT COMMUNITY.**

**Measure 1.1:** The number of training, outreach, and facilitation activities conducted.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
225	306	280	273	275	275

**Measure 1.2:** The number of participants involved in training, outreach, and facilitation activities.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
5,114	8,294	8,440	8,122	7,000	7,000

## PERFORMANCE GOAL 2.1: SUCCESSFULLY RESOLVE A SIGNIFICANT PORTION OF FLRA CASES THROUGH ADR.

The FLRA has integrated voluntary ADR and consensus decision-making into virtually all of its case processes, and it has significantly expanded its training, outreach, and facilitation activities since FY 2011. ADR is an informal, voluntary process that allows parties to discuss and develop their interests in order to resolve the underlying issues and problems in their relationships. This includes interest-based conflict resolution and intervention services in pending ULP cases, representation cases, arbitration cases, negotiability appeals, and bargaining-impasse disputes.

**Measure 2.1:** The percentage of appropriate ULP cases in the OGC in which ADR services are offered. \*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
100%	90%	90%	

**Measure 2.2:** The percentage of ULP cases in the OGC in which an offer of ADR services is accepted that are partially or totally resolved.\*\*

**Renumbered measure beginning in FY 2017; previously Measure 2.1					
Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
98%	96%	97%	100%	95%	95%

**Measure 2.3:** The percentage of appropriate ULP cases in the OALJ in which Settlement-Judge Services are offered.\*

Results	Targets		*New measure beginning in FY 2017
FY 2017	FY 2018	FY 2019	
100%	90%	90%	

**Measure 2.4:** The percentage of ULP cases in the OALJ in which an offer of Settlement-Judge services is accepted by the parties that are partially or totally resolved.

**\*\*Renumbered measure beginning in FY 2017; previously Measure 2.2**

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
96%	87%	74%	93%	85%	90%

**Measure 2.5:** The percentage of REP cases in the OGC in which an offer of ADR services is accepted by the parties that are partially or totally resolved.

**\*\*Renumbered measure beginning in FY 2017; previously Measure 2.3**

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2018
100%	96%	100%	100%	95%	95%

**Measure 2.6:** The percentage of appropriate arbitration cases in the Authority in which ADR services are offered.\*

Results		Targets		*New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
100%	100%	100%	100%	

**Measure 2.7:** The percentage of arbitration cases in the Authority in which an offer of ADR services is accepted by the parties that are partially or totally resolved.

Results				Targets	
FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
80%	43%	79%	80%	50%	50%

**Measure 2.8:** The percentage of appropriate negotiability cases in the Authority in which ADR services are offered.\*

Results		Targets		*New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
100%	100%	100%	100%	

**Measure 2.9:** The percentage of proposals or provisions – in negotiability cases in which an offer of ADR services is accepted by the parties – that are partially or totally resolved.

Results		
FY 2013	FY 2014	FY 2015
100%	100%	100%

**Measure 2.9:** The percentage of negotiability cases in the Authority in which ADR services are provided that are partially or totally resolved.\*

Results		Targets		*New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
100%	100%	90%	90%	

**Measure 2.10:** The percentage of bargaining-impasse cases in the FSIP in which an offer of ADR services is accepted by the parties that are partially or totally resolved.

Results		
FY 2014	FY 2015	
27%	39%	

**Measure 2.10:** The percentage of bargaining-impasse cases in the FSIP in which parties' disputes are totally resolved voluntarily.\*

Results		Targets		* New measure beginning in FY 2016
FY 2016	FY 2017	FY 2018	FY 2019	
27%	30%	30%	30%	

### ***STRATEGIC GOAL 3: WE WILL MANAGE OUR RESOURCES EFFECTIVELY AND EFFICIENTLY IN ORDER TO ACHIEVE ORGANIZATIONAL EXCELLENCE***

The FLRA's ability to fulfill its core mission under the Statute depends on excellent management of the organization and its resources. The organizational-excellence goal emphasizes how the agency's employees, IT infrastructure, and allocation of resources are central to achieving all of the strategic goals and objectives outlined in the strategic plan.

The landscape of the Federal workplace and workforce continues to evolve, as do the needs of the parties that the FLRA serves. Approximately 40 percent of the FLRA's workforce has been with the agency for five years or less, and many of the agency's most experienced employees are currently eligible to retire. In light of these facts, it is crucial for the FLRA to simultaneously focus on developing the workforce of the future, while retaining valuable institutional knowledge.

The agency is prepared to meet ever-changing business demands through the innovative use of IT to best manage the workload and interact with parties. The FLRA continues to be an effective steward of taxpayer dollars, with a renewed focus on maximizing the use of data to inform decision making. The agency's future operational approaches are designed to foster nimble and seamless deployment of resources coupled with cost-avoidance strategies to support productive labor-management relations across the Federal Government. And, consistent with the PMA, the FLRA has a comprehensive, forward-looking plan to increase quality and value in its administrative functions, continue efforts to enhance productivity and achieve cost savings, unlock the full potential of its workforce, and build the FLRA's workplace and workforce for the future.

#### **PERFORMANCE GOAL 1.1: RECRUIT, RETAIN, AND DEVELOP A HIGHLY TALENTED, MOTIVATED, AND DIVERSE WORKFORCE TO ACCOMPLISH THE FLRA'S MISSION.**

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Over the last eight and a half years, the FLRA has demonstrated significant and marked improvement in its performance and service delivery, and it has continued to rank among the top ten small agencies in the *Best Places to Work in the Federal Government* rankings. These results demonstrate the agency's commitment to empowering and developing a highly engaged and effective workforce. The success of FLRA employees is instrumental to its success as an agency. It is within this spirit that the FLRA actively manages its human-capital programs.

**Measure 1.1:** Program managers ensure that the right employees are in the right place to achieve results.

FY 2014	Results	Focused on succession planning by increasing targeted attorney recruitment. Renewed agreement with the University of Maryland for discounted tuition for agency employees. Increased agency resources through recruitment, staffing, and placement. Utilized the Student Pathways and Summer Externship programs
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		<p>to increase resources for casework and administrative initiatives throughout the agency. Realigned functions within the agency's Office of the Executive Director to allow for improved efficiencies and customer service to agency employees. Worked extensively with managers to hold employees accountable for performance and development. Updated Attorney Recruitment Policy in order to allow managers greater hiring flexibility of the agency's mission-critical occupation and to streamline the recruitment process. In collaboration with the Partnership for Public Service's Excellence in Government Fellows program, developed and piloted an Employee Onboarding Handbook to improve the onboarding process and increase employee engagement.</p>
<b>FY 2015</b>	<b>Results</b>	<p>Implemented a fully automated and integrated electronic system for personnel actions. Developed a more robust onboarding process through increased use of technology and piloted implementation of an Employee Onboarding Handbook. Updated certain human-resources policies and procedures. Continued to build internal capacity for handling the major human-resources functional areas. Position descriptions continued to be updated and now allow for greater growth and advancement opportunities within the agency, and employees readily volunteered for collateral-duty assignments, new initiatives, and projects. The agency also renewed its agreement with a local university to offer discounted tuition to FLRA employees for self-directed study. Improved office customer service by improving the quality of advice provided to managers and employees. Worked with managers to educate them about and increase diversity and inclusion when seeking new agency talent. The agency achieved greater diversity in its workforce in FY 2015 by increasing strategic and targeted recruitment and posting job opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. With respect to succession planning, the FLRA continued to offer cross-component developmental details and its training initiative designed to assist higher-graded employees identify and strengthen critical leadership skills in preparation for eventually transitioning to formal leadership positions. To strengthen and support the FLRA's new cadre of first-time managers and supervisors, the agency identified a series of trainings geared towards developing strategic thinking and other critical skills in preparation for executive leadership at the FLRA. These training initiatives crossed components, bringing together future agency leaders from all offices to enhance their skills and encourage collaboration among peers.</p>

**Measure 1.1:** Demonstrate strong recruitment and retention practices.

**\*New measure beginning in FY 2016**

<b>FY 2016</b>	<b>Results</b>	<p>Strengthened the agency’s diversity and inclusion recruitment efforts, establishing and implementing a process for sharing job announcements with relevant affinity groups. The FLRA is continuing to enhance its strategic and targeted recruitment and posting job opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. The FLRA is also using data to help identify and eliminate barriers to recruiting and hiring the diverse talent that it needs.</p> <p>The FLRA is working to strengthen its operational offices, seeking feedback through semi-annual and point-of-service surveys. Efforts are underway to revise and implement a robust agency-wide onboarding program, which will include briefings and continuing educational opportunities for employees to strengthen their knowledge of the FLRA.</p> <p>The FLRA strengthened its recognition and promotion of cultural-based celebrations, establishing an employee-driven initiative to develop and promote events and activities. The FLRA targeted efforts to educate managers about, and increase diversity and inclusion when, seeking new agency talent, and it continued efforts to train agency staff at all levels on key diversity and inclusion issues. And manager performance plans have been revised to include diversity-and- inclusion-focused metrics. Much of the FLRA’s success is reflected in its #1 small-agency ranking in terms of the “New IQ” Index, which provides insights into employee perceptions of the inclusiveness of the agency by looking at twenty questions that measure the five “Habits of Inclusion” – Fair, Open, Cooperative, Supportive, and Empowering. The FLRA is the top-ranking small-agency for <i>each</i> of the five habits of inclusion, with scores averaging 15 percent – and as much as 21 percent – higher than the average scores for all small agencies. And in the 2015 <i>Best Places to Work in the Federal Government</i> rankings, the FLRA was ranked #2 out of 28 small agencies in its support for diversity.</p>
<b>FY 2017</b>	<b>Results</b>	<p>Continued to develop capacity for shared administrative staff across several offices by utilizing administrative staff within the Authority Component – particularly those who are in “confidential” positions to agency leadership – to provide administrative assistance to the HR, Budget &amp; Finance, and Equal Employment Opportunity (EEO) Offices, which perform</p>

		<p>sensitive work. Not only does this provide administrative staff with a developmental opportunity, but it also allows for greater flexibility, relieves high-graded managerial staff from having to perform lower-graded administrative tasks, and avoids the need to hire additional FTEs when workloads increase within the component.</p> <p>Aligned the agency-wide Performance Year (previously July 1 - June 30) with the Fiscal Year. This alignment directly links every employee's individual performance to the FLRA's overall strategic and performance goals, as well as to the agency's annual budget and funding requests. It will provide a more accurate measurement of each employee's contribution towards achievement of agency-wide performance goals, greater accountability, and better data regarding resource needs.</p> <p>Conducted an agency-wide review of all agency electronic Official Personnel Folders (eOPFs) to: ensure proper retirement coverage (CSRS or FERS); verify the accuracy of service computation dates (SCDs) for both leave and retirement purposes; and examine all folders for missing or undocumented prior service.</p> <p>Conducted an agency-wide review of every agency position description (PD) to ensure that all PDs reflect actual duties and that accompanying cover sheets are accurate, and revised PDs that needed revision or that were very dated, which has been particularly critical in conducting "need-to-fill" evaluations and drafting recent vacancy announcements.</p>
<b>FY 2018</b>	<b>Target</b>	<p>Complete implementation of all necessary changes/corrections identified during the agency-wide eOPF and PD reviews.</p> <p>Develop/revise and implement standard operating procedures that will help to maintain accurate personnel records going forward.</p> <p>Continue to conduct "need-to-fill" evaluations before filling any vacant positions.</p> <p>Implement workforce reshaping, consistent with Executive Order 13781 and M-17-22.</p> <p>Continue to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that the FLRA needs.</p>



<b>FY 2019</b>	<b>Target</b>	<p>Adhere to and update, as needed, standard operating procedures that will help to maintain accurate records going forward.</p> <p>Continue to conduct “need-to-fill” evaluations before filling any vacant positions.</p> <p>Continue to implement workforce reshaping, consistent with Executive Order 13781 and M-17-22.</p> <p>Continue to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that the FLRA needs.</p>
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**Measure 1.2:** Maintain and grow agency expertise through employee development.

**\*New measure beginning in FY 2016**

<b>FY 2016</b>	<b>Results</b>	<p>Successfully implemented numerous cross-component developmental opportunities for employees, including workgroups to encourage innovation, the development and delivery of training, and more than ten detail opportunities at all levels and offices within the agency.</p> <p>Continued its robust training initiative focusing on leadership and skills development. It addressed temporary mission needs, maximizing Student Pathways and student-internship programs, and utilizing developmental details within its existing workforce. All new managers and supervisors were provided with leadership-training opportunities, and the FLRA’s executive-training plans are ongoing and are aimed at developing executive-level talent among the FLRA’s existing workforce.</p> <p>Continued its overall success and improvement as measured by the FEVS, leaving no doubt that the FLRA continues to have a highly engaged workforce that is dedicated to the accomplishment of its mission. The results of the survey reflect the agency’s continuous growth in overall employee satisfaction, as demonstrated by the FLRA ranking as the #1 small agency in two important indices – Employee Engagement and New IQ – and the increase in 2016 positive ratings in 19 items from 2015. In addition, the FLRA has 66 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). And the agency’s scores are above the Government-wide average in 69 out of 71 questions. Of particular note is that: 97 percent of FLRA respondents report that they are held accountable for achieving</p>
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		<p>results; 96 percent positively rate the overall quality of the work done by their work unit; 96 percent indicate that they are willing to put in extra effort to get a job done; 94 percent know how their work relates to the agency's goals and priorities; 94 percent think that the people they work with cooperate to get the job done; 94 percent believe that the agency is successful at accomplishing its mission; 93 percent find that the workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals; 92 percent indicate that their supervisors regularly communicate with them about their performance; and 91 percent state that employees in their work unit share job knowledge with each other. Moreover, the agency maintained its sustained growth of positive responses to the question "supervisors in my work unit support employee development" – increasing by nearly 9.5 percent over 2015.</p>
<b>FY 2017</b>	<b>Results</b>	<p>Continued to develop capacity for shared administrative staff across several offices by utilizing administrative staff within the Authority Component – particularly those who are in "confidential" positions to agency leadership – to provide administrative assistance to the HR, Budget &amp; Finance, and Equal Employment Opportunity (EEO) Offices, which perform sensitive work. Not only does this provide administrative staff with a developmental opportunity, but it also allows for greater flexibility, relieves high-graded managerial staff from having to perform lower-graded administrative tasks, and avoids the need to hire additional FTEs when workloads increase within the component.</p> <p>Most managers assessed all of their employees on their developmental needs and provided at least one targeted developmental opportunity to each. Training budgets for every office were reduced by 25 percent in FY 2017, so there was a reduced ability to procure outside training. This resulted in managers finding in-house opportunities to help develop their employees through details (e.g., Acting Chief Information Officer), work groups (e.g., eFiling), and special projects (e.g., revising FLRA policies).</p> <p>In the 2017 FEVS, 78 percent of FLRA employees responded positively to the OPM FEVS question "supervisors in my work unit support employee development" (Q. 47). Although this represents a 6 percent decrease from 2016, it is nonetheless 5 percent above the small-agency score of 73 percent, and 10 percent above the Government-wide score of 68 percent.</p> <p>In FY 2017, the FLRA continued its overall success as measured</p>

		<p>by the Federal Employee Viewpoint Survey (FEVS), leaving no doubt that the FLRA's investments in the recruitment, retention, and skills and leadership development of its employees continues to produce a highly engaged workforce that is dedicated to the accomplishment of its mission. The results of the 2017 survey reflect that the FLRA has 55 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). Compared to 2016, the FLRA increased its positive ratings for 15 questions, experienced no change in its positive ratings for 4 questions, and decreased its positive ratings for 52 questions. The agency outperformed the Government-wide average in 70 out of 71 questions. And the FLRA continues to rank in the top ten among small agencies (those with 100-999 employees) in two important indices – Employee Engagement and New IQ – with #6 and #5 rankings, respectively. With an Employee Engagement Index score of 77 percent and a New IQ Index score of 71 percent, the FLRA exceeds the Government-wide average for each index, as well as for every sub-category of each index. In addition, the FLRA's Global Satisfaction index score of 72 percent – well above the Government-wide average of 64 percent – is a positive indicator of employees' overall workplace satisfaction.</p> <p>As to the agency's 55 identified strengths, of particular note is that: 99 percent of FLRA respondents indicate that they are willing to put in extra effort to get a job done; 98 percent positively rate the overall quality of work done by their work unit; 97 percent report that they are held accountable for achieving results; 95 percent know how their work relates to the agency's goals and priorities; and 92 percent say that they are constantly looking for ways to do their jobs better. These results show that employees understand the FLRA's mission, understand their role in achieving it, and see themselves as an integral part of achieving agency-wide success.</p> <p>In addition to its top-ten rankings in the Employee Engagement and New IQ Indexes and increased ratings in 15 questions, FLRA employees also identified areas for improvement. These areas include opportunities for advancement, meaningful recognition of differences in performance, encouragement of creativity and innovation, availability of resources to get their jobs done, and communication from management about what's going on in the agency.</p>
<b>FY 2018</b>	<b>Target</b>	<p>Building on the agency's evolving succession plan – which is designed to lessen the impact of institutional-knowledge loss as employees retire or leave and to maximize current talent</p>

		<p>utilization by closing leadership staffing and competency gaps/deficiencies – develop a formal agency developmental-detail program, establishing cross-component detail opportunities to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the agency’s mission and operations across program lines, as well as the relevance of their work to the mission and programs of the FLRA.</p> <p>Managers will assess annually 100 percent of employees on their developmental needs and provide at least one targeted developmental opportunity to each of their staff members per year.</p> <p>Maintain sustained growth of positive responses to the OPM FEVS question “supervisors in my work unit support employee development.”</p>
<b>FY 2019</b>	<b>Target</b>	<p>Implement a formal cross-component detail program.</p> <p>Managers will assess annually 100 percent of employees on their developmental needs and provide at least one targeted developmental opportunity to each of their staff members per year.</p> <p>Maintain sustained growth of positive responses to the OPM FEVS question “supervisors in my work unit support employee development.”</p>

## **PERFORMANCE GOAL 2.1: IMPROVE USE OF EXISTING TECHNOLOGY AND DEPLOY NEW IT SYSTEMS TO STREAMLINE AND ENHANCE ORGANIZATIONAL OPERATIONS.**

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The FLRA began accepting eFilings in FY 2013, and, as of FY 2015, eFiling is available for all FLRA offices that receive case filings. The FLRA is continuing to work towards implementing the agency’s long-term goal of sharing end-to-end electronic case files throughout the FLRA, as well as the OMB-mandated target of having fully electronic files by 2019. Increasing eFiling is critical to achieving this goal. In this regard, the more case-related information that the FLRA receives electronically – rather than in hard copy – from the outset, the easier it is to convert that information into an electronic case file, without the need for FLRA staff to manually scan documents. In recognition of this, in FY 2015, the agency developed and launched a plan to accomplish the transition to fully electronic case files in 4 agile phases over 4 years.

<b>Measure 2.1: Expand the use of eFiling.</b>	
<b>Results</b>	
<b>FY 2014</b>	12% of cases eFiled.
<b>FY 2015</b>	17% of cases eFiled.
<b>FY 2016</b>	22% of cases eFiled.
<b>FY 2017</b>	35% of cases eFiled.
<b>Targets</b>	
<b>FY 2018</b>	75% of cases eFiled.
<b>FY 2019</b>	75% of cases eFiled.
<b>Measure 2.2: Electronic end-to-end case processing.</b>	
<b>Results</b>	
<b>FY 2014</b>	Migrated the CADRO to an end-to-end electronic case file.
<b>FY 2015</b>	Made eFiling available for OALJ cases, resulting in eFiling being available for all offices that accept case filings. As a result, completed full integration of the CMS and eFiling systems, enabling end-to-end electronic case processing throughout the agency.
<b>FY 2016</b>	With the full completion of the eFiling objective, the CMS has the structure in place to receive and store electronically filed cases. The applications have been merged, creating bridges between the two systems, to support end-to-end electronic case-processing capability. The FLRA neared completion of improving the eFiling user interface, which builds upon the existing system, making the eFiling system more user-friendly and intuitive. And efforts are underway to implement a Document Management System. This effort will span into FY 2017, and it is a critical step in accomplishing the FLRA's multi-year electronic-case-file plan.
<b>FY 2017</b>	<p>Incorporating internal and external customer feedback, adopting "agile" development efforts, and utilizing open-source code, completed development of a brand new, user-friendly eFiling application with a Ruby on Rails user interface and a Postgres backend database that is housed in Amazon Web Services – a cloud-based solution. Final testing and additional enhancements that were not anticipated until later in FY 2018 are currently being completed, and eFiling 3.0 will launch to the public in the 1st quarter of FY 2018. It is anticipated to dramatically increase the number of FLRA cases filed electronically.</p> <p>Laid the foundation for modernizing the infrastructure for the agency's electronic CMS and eFiling by transitioning to a new backend product – Postgres database housed in Amazon Web Services – that will allow for a more user friendly and complete integration of the CMS, the eFiling system, and the DMS.</p> <p>Deployed an agency-wide, cloud-based DMS, which replaced the existing</p>

	network shares with an integrated document and email communications system that will facilitate document sharing and electronic case-processing initiatives.
<b>Targets</b>	
<b>FY 2018</b>	Integrate the CMS and eFiling systems with the agency Document Management System, enabling end-to-end electronic case processing throughout the agency.
<b>FY 2019</b>	Implement end-to-end electronic case files throughout the agency.

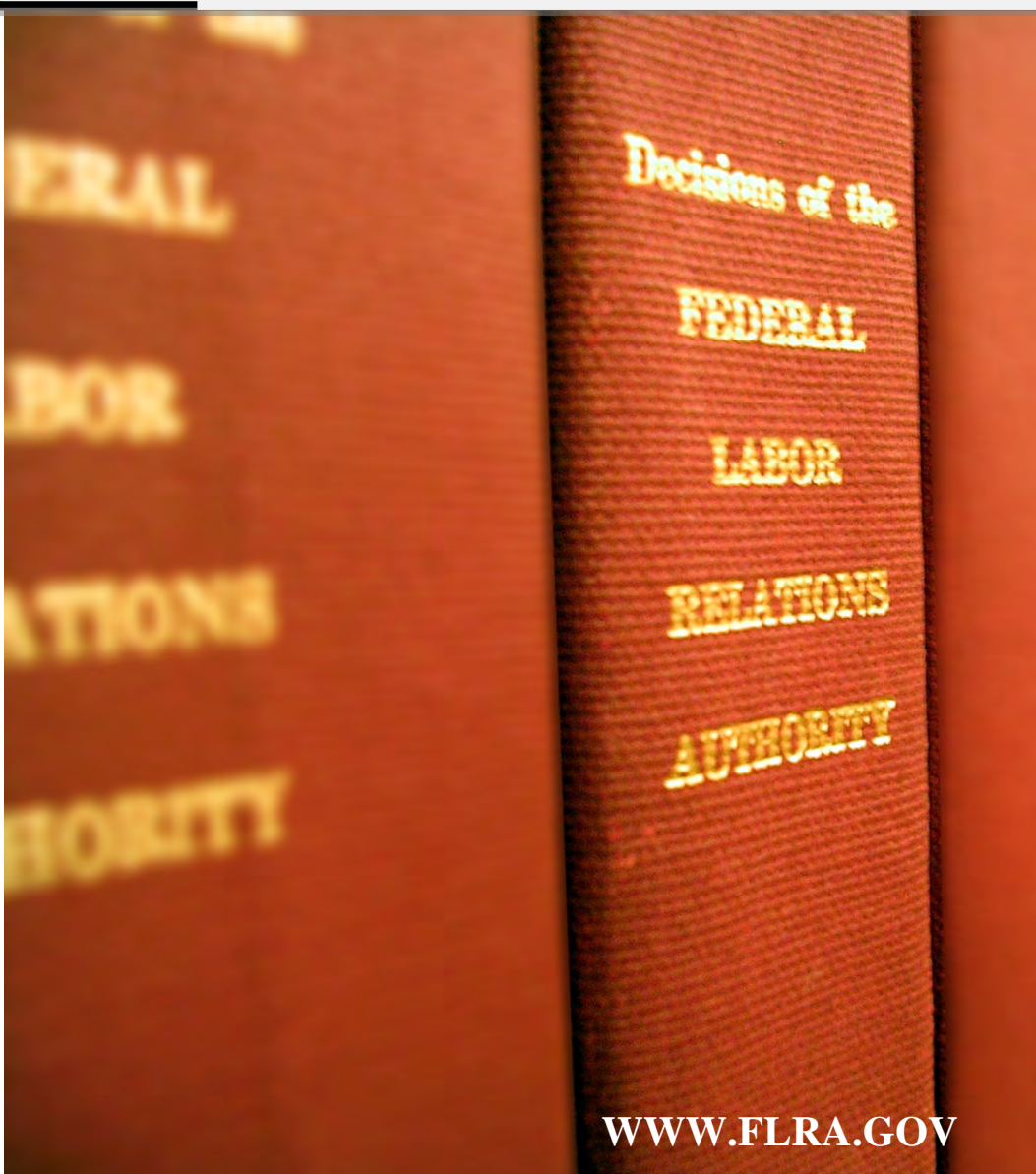
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*Forty-one years promoting and protecting labor-management relations for effective, efficient government.*

## U.S. FEDERAL LABOR RELATIONS AUTHORITY CONGRESSIONAL BUDGET JUSTIFICATION



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**UNITED STATES  
FEDERAL LABOR RELATIONS AUTHORITY**

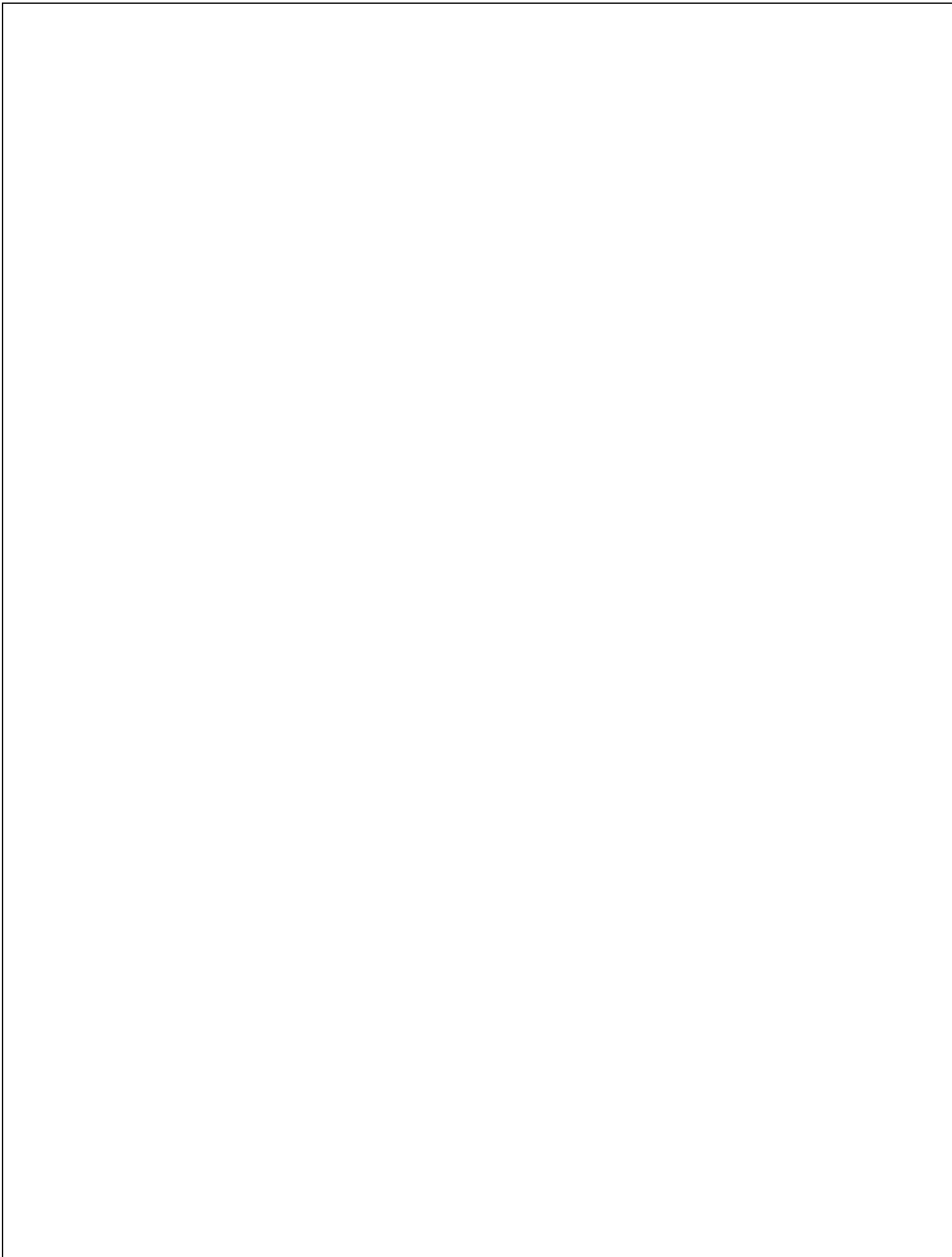


**Congressional Budget Justification  
Fiscal Year 2020**

# Table of Contents

<b>U.S. FEDERAL LABOR RELATIONS AUTHORITY.....</b>	<b>1</b>
<i>BACKGROUND AND MISSION .....</i>	<i>1</i>
<i>ORGANIZATIONAL STRUCTURE .....</i>	<i>2</i>
<i>AGENCY TRENDS AND CHALLENGES .....</i>	<i>5</i>
<b>BUDGET JUSTIFICATION .....</b>	<b>16</b>
<i>APPROPRIATIONS LANGUAGE.....</i>	<i>16</i>
<i>2020 FUNDING REQUEST.....</i>	<i>16</i>
<i>CHANGE FROM 2019.....</i>	<i>17</i>
<i>PROGRAM AND FINANCING SCHEDULE.....</i>	<i>18</i>
<i>OBJECT CLASSIFICATION SCHEDULE .....</i>	<i>19</i>
<i>EMPLOYMENT SUMMARY SCHEDULE.....</i>	<i>19</i>
<i>INSPECTOR GENERAL RESOURCES .....</i>	<i>20</i>
<b>ANNUAL PERFORMANCE PLAN.....</b>	<b>23</b>
<i>STRATEGIC AND PERFORMANCE-PLANNING FRAMEWORK .....</i>	<i>23</i>
<i>FLRA Strategic Goals.....</i>	<i>25</i>
Performance Goal 1a-1: Use updated metrics to measure productivity and overall timeliness of matters pending before FLRA. ....	27
Performance Goal 1a-2: Regularly measure productivity and overall case-processing timelines in each FLRA component; modify strategies as necessary to address unforeseen or unplanned events. ....	27
Performance Goal 1a-3: Track and publicly report progress of matters before the FLRA that the Federal labor-management community considers clear, relevant, widely known, and meaningful. ....	27
Performance Goal 1b-1: Conduct high-quality investigations and produce high-quality written work products. ....	45
Performance Goal 1b-2: Implement effective methods to maintain and improve the quality of FLRA investigations and written work products, including FLRA staff training and internal education resources. ....	46
Performance Goal 1b-3: Ensure external stakeholder confidence in the FLRA’s abilities. ....	46
Performance Goal 2a-1: Routinely review and update educational resources on the FLRA website. ....	47
Performance Goal 2a-2: Develop a growing library of online training modules on the FLRA website. ....	47
Performance Goal 2a-3: Develop and maintain case digests of new Authority decisions on the FLRA website. ....	47
Performance Goal 2b-1: Identify and evaluate parties with significant labor-management challenges. ....	48
Performance Goal 2b-2: Refer appropriate parties to suitable resources. ....	48
Performance Goal 2b-3: Implement highly effective targeted assistance programs and associated materials. ....	48
Performance Goal 2c-1: Exceed an annual target number of highly rated in-person training programs for a target number of participants concerning the full range of statutory matters. ....	49
Performance Goal 2c-2: Find additional ways to deliver real-time and pre-recorded external trainings that have been successfully developed and implemented utilizing appropriate technology and participant-friendly best practices. ....	49

Performance Goal 2c-3: Exceed an annual target number of highly rated training programs for a target number of participants regarding procedures for filing and processing FLRA cases.....	49
Performance Goal 3a-1: FLRA employees perceive that the Agency's performance-management systems, and their individual performance plans, directly align with achieving this strategic plan. ....	53
Performance Goal 3a-2: FLRA employees have a clear understanding of how their individual achievement contributes to achievement of Agency priorities and successful implementation of FLRA strategic goals.....	53
Performance Goal 3a-3: FLRA employees perceive that their performance recognition and rewards are also directly linked to their contribution to the successful achievement of FLRA's strategic goals. ....	53
Performance Goal 3b-1: Implement a new and improved FLRA electronic case-management system. Integrate the case-management system with the FLRA document management and eFiling systems in order to fully implement electronic case file capability throughout the Agency. ....	55
Performance Goal 3b-2: FLRA employees and parties understand how to make the most effective use of the FLRA's electronic systems. ....	55
Performance Goal 3b-3: Enhance the positive impact of technological advancements on the customer experience. ....	55
Performance Goal 3c-1: Internal and external survey respondents perceive that diverse and respected FLRA employees demonstrate expertise in federal-sector labor-management relations; minimal gaps exist in succession plans; and the Agency develops nontraditional resources for employee education and development. ....	58
Performance Goal 3c-2: The FLRA workforce expresses a stable and improving level of overall job satisfaction, as well as satisfaction with the manner in which internal problem-solving occurs.....	58
Performance Goal 3c-3: FLRA managers and employees perceive that the Agency appropriately uses telework and technology to promote employee efficiency and a healthy work-life balance.....	58



# U.S. FEDERAL LABOR RELATIONS AUTHORITY

## BACKGROUND AND MISSION

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Federal Labor Relations Authority (FLRA or the Agency) is an independent administrative Federal agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The purpose of the Statute is to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures that are designed to meet the special requirements and needs of the Government. *Id.* § 7101(b). The provisions of the Statute are to be interpreted in a manner consistent with the requirement of an effective and efficient Government. *Id.*

Consistent with its statutory mandate, FLRA's 2018-2022 (all years are expressed as fiscal unless stated otherwise) mission statement is: *Protecting rights and facilitating stable relationships among Federal agencies, labor organizations, and employees while advancing an effective and efficient Government through the administration of the Statute.*

FLRA applies its Federal-sector expertise to execute its mission primarily by carrying out the following statutory responsibilities:

1. Conduct hearings and resolve complaints of unfair labor practices (ULPs) under § 7118 of the Statute. *Id.* § 7105(a)(2)(G). FLRA is responsible for investigating, prosecuting, and adjudicating claims that an agency or a labor organization has failed to uphold its legal obligations under the Statute.
2. Determine the appropriateness of units for labor-organization representation under the Statute, and supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees in an appropriate unit. *Id.* § 7105(a)(2)(A). FLRA also resolves disputes about which employees may be included in bargaining units under the Statute. *Id.* § 7105(a)(2)(B).
3. Resolve exceptions to grievance-arbitration awards under § 7122 of the Statute. *Id.* § 7105(a)(2)(H). FLRA adjudicates appeals – known as exceptions – to arbitration awards that result from grievances filed by employees, labor organizations, or agencies under parties' negotiated grievance procedures. FLRA reviews those awards to assess whether they are contrary to any law, rule, or regulation, or are deficient on other grounds similar to those applied by federal courts in private-sector labor-management disputes.
4. Resolve issues relating to the duty to bargain in good faith under § 7117(c) of the Statute. *Id.* § 7105(a)(2)(E). FLRA resolves negotiability disputes that arise during

bargaining under two circumstances – when an agency claims that a contract proposal is outside the duty to bargain and when an agency head disapproves a negotiated agreement claiming that it contains provisions that are contrary to law, rule, or regulation.

5. Provide assistance in resolving negotiation impasses between federal agencies and exclusive representatives. *Id.* § 7119.

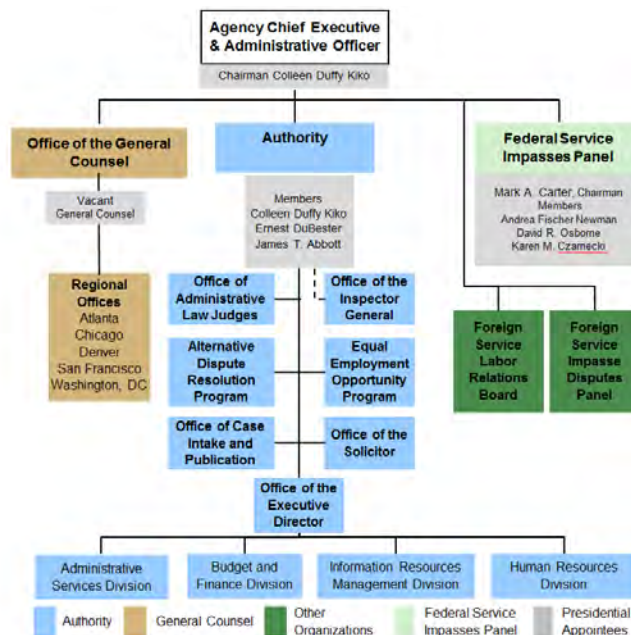
In addition, the Congress directed FLRA to prescribe criteria and resolve issues relating to the granting of national consultation rights under § 7113 of the Statute; prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under § 7117(b) of the Statute; prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under § 7117(d) of the Statute; and take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute.

Moreover, FLRA is to “provide leadership in establishing policies and guidance” related to matters under the Statute. *Id.* § 7105(a)(1). FLRA satisfies this directive primarily through its written determinations, but also by offering training and other services.

## ORGANIZATIONAL STRUCTURE

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Headquartered in Washington, D.C., FLRA has three statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (the FSIP or the Panel) – each with unique adjudicative or prosecutorial roles. The Agency also provides full program and staff support to two other organizations – the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, pursuant to the Foreign Service Act of 1980, 22 U.S.C. §§ 4101-4118.



### ***Chief Executive and Administrative Officer***

The President of the United States designates one Member as Chairman who serves as FLRA's chief executive and administrative officer. 5 U.S.C. § 7104(b).

### ***The Authority***

The Authority – FLRA's adjudicatory body – is led by three full-time, presidentially nominated and Senate-confirmed Members who are appointed to fixed, staggered five-year terms.

The Authority is responsible for adjudicating ULP complaints, ruling on exceptions to arbitrators' awards, resolving disputes over the negotiability of collective-bargaining proposals and provisions, and deciding applications for review of Regional Directors' decisions in representation disputes. The Authority Members appoint Administrative Law Judges (ALJs) to hear and prepare recommended decisions that may be appealed to the Authority in cases involving ULP complaints.

Other offices and programs under the jurisdiction of the Authority include the Office of the Solicitor, the Office of Administrative Law Judges (OALJ), the Office of Case Intake and Publication (CIP), the Alternative Dispute Resolution Program, and the Equal Employment Opportunity Program. Standing as an independent entity within the Authority is the Office of Inspector General.

### ***The Office of the General Counsel***

The OGC is led by a presidentially nominated and Senate-confirmed GC who has direct authority over, and responsibility for, all employees in the OGC, including those in FLRA's Regional Offices.

Under the Statute, the GC has sole responsibility – independent of the Authority – over the investigation and prosecution of ULP cases. The GC's determinations in these matters are final and unreviewable. The OGC investigates and resolves ULP charges, files and prosecutes ULP complaints, and provides training, as appropriate. In addition, through delegation by the Authority, the Regional Offices investigate and resolve representation (REP) cases and conduct secret-ballot elections.

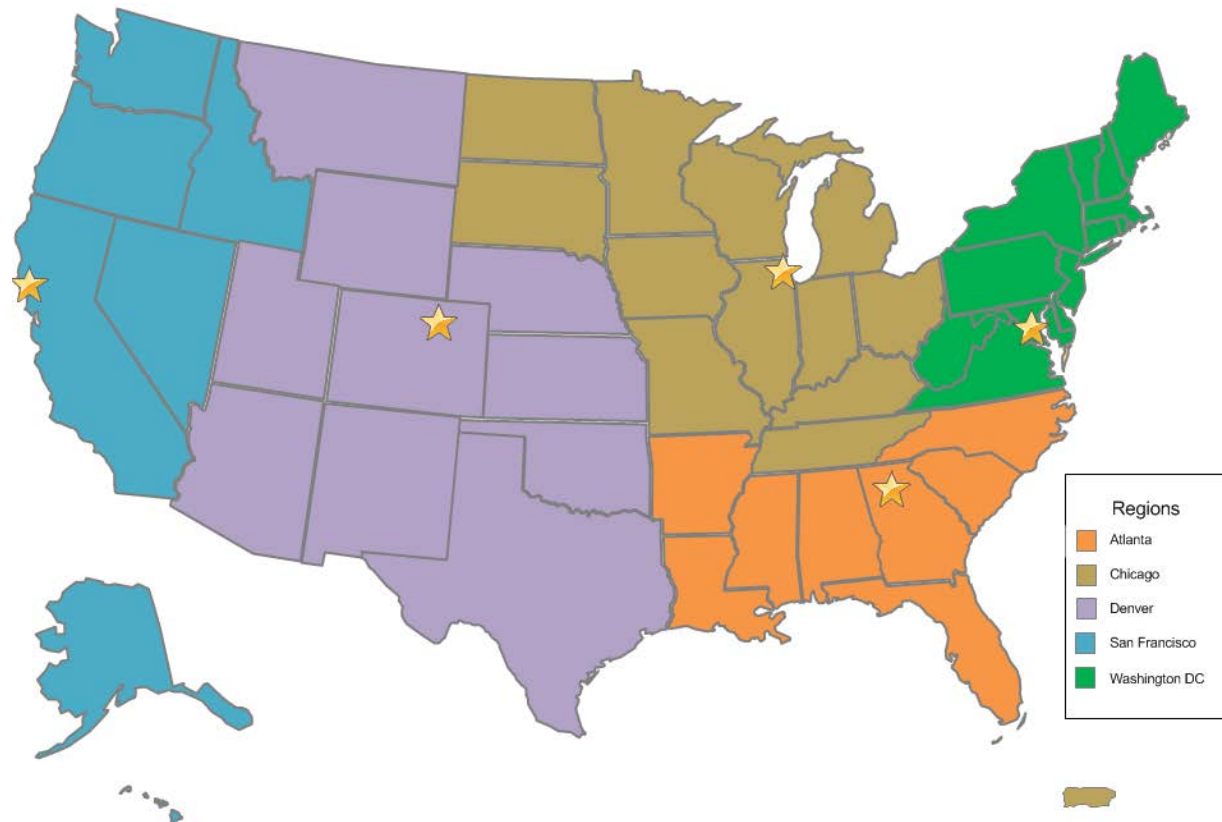
The GC has a small staff at FLRA Headquarters, located in Washington, D.C. Headquarters management provides administrative oversight; develops policies, guidance, procedures, and manuals that provide programmatic direction for the Regional Offices and training and education for the parties; and processes appeals from the Regional Offices' dismissals of ULP charges. Each Regional Office is headed by a Regional Director (RD) who provides leadership and management expertise for the respective region. Collectively, the RDs work with senior



management throughout FLRA to develop and implement policy and strategic initiatives to accomplish FLRA mission.

Consolidation of the Agency's regional offices involved closure of the Dallas Regional Office on September 21, 2018 and the closure of the Boston Regional Office on November 16, 2018. Effective November 16, 2018, FLRA has five Regional Offices: Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C.

***Map of FLRA's Regional Offices (as of November 16, 2018):***



***The Federal Service Impasses Panel***

The FSIP is composed of seven part-time Presidential appointees – a Chairman and at least six other Members – who are appointed to fixed, staggered five-year terms. The FSIP provides assistance in resolving negotiation impasses between Federal agencies and labor organizations representing Federal employees that arise from collective-bargaining under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.

## **AGENCY TRENDS AND CHALLENGES**

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As discussed in more detail below, FLRA remains a high performing Agency. Under its new 2018-2022 Strategic Plan, FLRA will continue to achieve strong mission-related results, while focusing on more customer-friendly time targets and educational resources, IT modernization, and human-capital initiatives.

An external challenge beyond FLRA control is the absence of a presidentially appointed, Senate-confirmed GC. The GC position is subject to the Federal Vacancies Reform Act (Vacancies Act), so, upon the resignation of the then-GC on January 20, 2017, the career Deputy GC automatically became the Acting GC. He served as Acting GC until November 16, 2017, the statutory maximum under the Vacancies Act absent a GC nominee.

In the absence of a GC, the Regional Offices may investigate ULP charges and dismiss those found to lack merit, but they cannot issue ULP complaints in meritorious cases - preventing the complaint from moving forward to a hearing before an ALJ. This is because the text of the Statute makes clear that issuance of a complaint is a power reserved exclusively to the GC's discretion. 5 U.S.C. §§ 7104(f)(2)(B), 7118(a)(1). In addition, only the GC can decide appeals from an RD's dismissal of a ULP charge. Since November 16, 2017, no ULP complaints or ULP appeal decisions have issued. As of September 30, 2018, there were 142 ULP-complaint recommendations and 158 appeals awaiting review by a new GC. Despite these challenges, FLRA provides its customers with timely and quality investigative, adjudicatory, and other case-processing services.

### ***Authority***

Since December 11, 2017, the Authority has again been operating with a full complement of Members, and its focus has been on issuing decisions. Specifically, the Authority issued a total of 110 decisions from December 2017 through September 2018 (an average of 11 decisions per month), as opposed to issuing only 53 decisions during the same time period in the previous fiscal year (an average of 5 decisions per month). In addition, it has implemented new case-processing procedures to ensure swift resolution by concurrently addressing old and new cases.

Consistent with the new 2018-2022 Strategic Plan, in 2019, the Authority revised its performance measures to more accurately represent true case-processing times so that they are meaningful to the parties. The Authority previously measured "case age" from the date of assignment to the Authority Members – not from the date that the case was filed. This meant that the time before assignment – when the case was pending in the Case Intake and Publication (CIP) Office (the Authority's docketing clerk's office) while the parties briefed it (4-75 days, depending on case type) – was not being counted. So, although case-processing time targets in the Authority are increasing in 2019 for that reason, they more accurately reflect "day in, day out" case-processing times, which is important to the parties. In addition, FLRA as a whole will begin reporting the "average age" of closed cases within all components and

offices, which will provide the parties with the average amount of time that it takes to process each case type. Both of these efforts will help the parties make better informed decisions regarding their litigation options and provide them with more realistic expectations around case-processing durations.

### ***Office of Administrative Law Judges***

Due to the absence of a GC or Acting GC, the OALJ has not received new cases since November 2017. It issued decisions in all remaining cases on its docket by the end of 2018. Assuming that a GC will be confirmed in the near future, the OALJ is prepared to conduct hearings on ULP complaints that it receives from the OGC and to adjudicate these cases expeditiously. In the interim, the OALJ received approval to perform work for other agencies through the OPM ALJ Loaner Program on a reimbursable basis. In addition, and consistent with applicable regulations governing ALJs, the OALJ was also approved to contribute to the Authority's elimination of pending Authority cases by utilizing ALJs to independently draft decisions for the Authority in matters other than ULP cases.

### ***Office of General Counsel***

Despite not having a GC for ten months in 2018, the OGC continued to investigate cases and deliver strong results. It met its strategic performance measures for the timely resolution of ULP and representation cases, having resolved, 88 percent (2,682/3,060) of ULP cases within 120 days of the filing date, and 82 percent (195/239) of representation cases within 120 days of filing. Of those ULP cases resolved in 2018, the OGC resolved over 590 of them through voluntary settlement during the investigative process.

In both 2017 and 2018, the OGC continued to experience a downward trend in its ULP intake. From 2016 to 2017, ULP intake declined by 15 percent (or 690 cases), and from 2017 to 2018 it declined by another 22 percent (or 795 cases).

In order to formally implement the regions' new jurisdictional boundaries resulting from the regional-office consolidation, FLRA issued procedural regulations on September 13, 2018 to reflect the Dallas Regional Office closure on September 21, 2018, and on November 1, 2018 to reflect the Boston Regional Office closure on November 16, 2018. It also issued guidance, press releases, and other communications to ensure the parties are aware of these changes and of the appropriate geographic region in which to file cases.

### ***Federal Service Impasses Panel***

In 2018, the FSIP exceeded all of its timeliness measures for assisting parties in resolving their negotiation impasses. Specifically, it issued its decisions to decline jurisdiction on cases not appropriately before the Panel within 140 days of the date that the parties filed their request for assistance in 100 percent (9/9) of cases. It assisted the parties in achieving voluntary settlement within 160 days of the date that the parties filed their requests for assistance in 83

percent (5/6) of cases. And it issued its final order within 200 days of the date that the parties filed their request for assistance in 100 percent (21/21) of cases.

In 2018, the Panel received a total of 91 filings (an average of less than 8 new filings each month). However, that trend is changing. Following the Administration's May 2018 issuance of Executive Orders 13836, 13837, and 13839, and the related OPM guidance to agencies regarding collective bargaining issued in August 2018, the FSIP began to receive an increase in requests for assistance. Eleven cases were filed in August 2018. The subject of the impasses began to trend toward ground rules for successor collective-bargaining agreements and contract proposals associated with successor collective-bargaining agreements. Following the August 24, 2018 U.S. District Court for the District of Columbia decision to enjoin parts of the Executive Orders, the filings have returned to the more typical average of 8 cases per month.

### ***Mission Accomplishment – Providing Training and Education across the Federal Government***

FLRA provides guidance first through its decisions; however, it also provides additional valuable education and training to the Federal labor-management-relations community related to all aspects of its case law and processes. Providing meaningful and clear guidance on statutory rights and responsibilities fulfills our statutory mandate to provide timely and efficient case processing and advance an effective and efficient Federal government. FLRA fulfills its educational mandate through a variety of means, such as: in-person training sessions; comprehensive, web-based training modules; and case outlines, manuals, and subject-matter guides that are easily accessible on [www.flra.gov](http://www.flra.gov).

In 2018, FLRA, as a whole, provided over 100 training sessions to nearly 5,000 participants. The Authority, the OGC, and the FSIP provided in-person case-law updates and training at several nationwide, annual conferences. These sessions included presentations of newly prepared materials that reflect the current case law and evolving precedent.

The Authority scaled back its external training efforts in 2018 to ensure that all available staff was working to issue decisions. The Authority primarily educates the parties through its issued decisions, particularly those on previously unaddressed legal issues. To that end, most of the training that it provided in 2018 consisted of "Case Law Updates." The Authority intends to continue offering this type of training in 2019. Additionally, during 2019, the Authority will begin publishing case-summary "digests" to provide additional, easy-to-understand guidance for its customers.

The OGC consistently provided statutory training efforts across the country. However, due to budget uncertainty, the OGC scaled back its provision of training that required FLRA-funded travel. It also continued to provide the parties with up-to-date and topical web-based resources, including revisions to the OGC's *Representation Case Law Outline*, *ULP Case Law Outline*, and *Guidance on Meetings*.

Consistent with the new 2018-2022 Strategic Plan, in 2019, FLRA will develop creative methods to provide these valuable resources in new, innovative, and more cost-effective ways that allow for wider reach and less travel. In 2019, FLRA will develop new training videos that anyone can easily access from the Agency website. There are efforts underway to allow for live-streaming of training sessions. Moreover, the Authority and the OGC will continue to update online educational tools, including guides and manuals.

### ***Executive Branch Reform***

Executive Order 13781, [Comprehensive Plan for Reorganizing the Executive Branch](#), (March 13, 2017) and Office of Management and Budget (OMB) Memorandum M-17-22, [Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce](#), (April 12, 2017), provided the Agency with an opportunity to take a close look at its structure and operations, and to implement solutions for streamlining and reducing costs across FLRA. It developed reform proposals and a long-term workforce plan focused on improving the Agency's efficiency, effectiveness, and accountability.

The Agency's physical footprint and its regional-office structure were logical places to look for additional cost savings. Based on regional workload, flat budgets, increasing rental costs, and the availability of technology to improve operational efficiency, on February 12, 2018, the Agency announced that it would consolidate from seven to five regional offices, resulting in closure of the Agency's Dallas and Boston Regional Offices.

All 16 affected employees were offered reassignment and paid relocation to another region or to FLRA Headquarters. The Agency also offered Voluntary Early Retirement Authority (VERA). Leadership strongly encouraged all of the affected employees to remain with FLRA, and only two employees declined the geographic reassignment. Seven employees relocated within the Agency – one to Headquarters, two to the Washington Regional Office, two to the Chicago Regional office, and two to the Denver Regional Office. Of the employees who left the Agency, one retired from Federal service, two accepted VERA, three transferred to other Federal agencies in their current geographic locations, and two left Federal service for other non-Federal positions. Only one employee was involuntarily separated from Federal service effective November 30, 2018.

FLRA carefully planned and monitored its 2018 expenditures to ensure that the consolidation was executed on schedule and within the Agency's existing budget. Five of the relocations were funded with 2018 funds, and two were funded with 2019 funds. The Dallas Regional Office closed on September 21, 2018, followed by the Boston Regional Office on November 16, 2018.

Other previously implemented reform efforts included: sustaining the 25 percent across-the-board reduction in the Agency-wide travel costs (implemented in 2017); sustaining the 25 percent across-the-board reduction in the Agency-wide professional development training costs (also implemented in 2017); continuing efforts to implement fully electronic case files across the Agency; and maintaining other administrative efforts.

With increased technology, especially video teleconferencing (VTC), the Agency has been able to maintain the reduction to its travel budget in 2018, and it expects to maintain that reduction without any adverse effect on the mission in 2019 and beyond.

In addition, FLRA has continued – and will continue – its ongoing efforts to implement fully electronic case files throughout the Agency, which will enable it to complete a number of other initiatives that will reduce costs and make FLRA more efficient. Once electronic case files are in place, FLRA: (1) will be able to reduce its U.S. Mail costs Agency-wide by implementing electronic service of case-related documents *by FLRA* on the parties; (2) plans to reduce FedEx shipping costs associated with transferring hard-copy case files across the Regions and HQ; and (3) will eventually mandate (with only very limited exceptions) – that FLRA parties file all case documents with the Agency electronically.

FLRA has also committed to other administrative efforts. For example, after using its own in-house IT staff to successfully develop and implement a new Agency intranet site (saving a \$65,000 one-time cost), it continues to save \$10,000 annually in maintenance costs. Where appropriate, the Agency will continue to tap existing Government-wide shared-services solutions, like those that it already uses for payroll, financial services, travel, and procurement. Consequently, FLRA is not seeking separate funding for training of its acquisition workforce. It will continue to seek out and utilize existing Government-wide procurement solutions and contracting flexibilities. These include using a General Services Administration (GSA)-approved vendor for its eFiling and Case Management projects, and piggybacking on the Library of Congress's FEDLINK contracting tool to procure Westlaw legal research services more cost-effectively. FLRA also continues to engage in more effective property and records management. This includes regularly and routinely taking inventory of all of its equipment and building a robust records-management program, that will, among other things, ensure that the Agency is not spending more than necessary to store unneeded or unused equipment or to archive and retain hard-copy case files.

### ***Workforce Reshaping & Human Capital***

FLRA completed a comprehensive review of all Agency position descriptions (PDs) to ensure that the PDs and accompanying cover sheets were accurate for every FLRA employee and position. This review has been – and will continue to be – critical in conducting “need-to-fill” evaluations and the requisite job analyses associated with recruitment efforts. In 2019, the Agency will continue to undertake a thorough evaluation and prioritization of every vacancy before filling any positions in order to fund the ongoing transition to fully electronic case files.

Guided by its new strategic plan, in 2019, FLRA will conduct a review of Agency performance-management systems (both General Schedule and Senior Executive Service) and individual employee performance plans to ensure that they directly align with the new 2018-2022 Strategic Plan. In support of these efforts to improve performance management, in 2019 the Agency is currently developing a strategy for acquiring and implementing the Office of Personnel Management's (OPM's) USA Performance automated performance-management system. Automating the performance-management process using a tool that is compliant with

all Federal performance-management regulations and OPM recommendations will assist Agency managers – and the Agency as a whole – in increasing performance accountability.

The Agency continues to actively engage employees at all levels in Agency processes and to seek their opinions. For example, the Agency's efforts in 2018 to develop its 2018-2022 Strategic Plan resulted in an employee-driven, employee-developed, and employee-drafted document that remained relatively unchanged upon leadership review. Forty FLRA employees, from every level, every component, and every region of the country (more than one-third of the Agency's workforce) actively participated in developing the substantive elements of the new Strategic Plan. All Agency employees were invited to participate in an initial survey regarding the Agency's new mission statement and a follow-up survey asking for their views on the strategic plan goals and objectives. 90 percent of respondents indicated that the work they do on a daily basis helps to achieve the Agency's mission as articulated in the new mission statement. Between 86 and 91 percent of respondents indicated that the new strategic goals were on target and important.

The Agency workforce not only assisted in creating the Strategic Plan but also is instrumental in implementing its new goals. Five different teams of employees (each headed by one manager and one non-manager) have been collaborating for several months to gather data and propose action items to meet our Agency's goals. The teams are reviewing and revising performance standards to align with the Strategic Plan, particularly the goals of increasing timeliness, quality, and productivity; evaluating the professional development needs of the employees of the Agency and proposing updated mechanisms and procedures for allocating training resources; and evaluating external communication with customers, including published reference materials, phone interactions, and electronic filing processes, to provide the best and most effective guidance to the parties who appear before the Agency. Additionally the Authority staff attorneys have been working to develop case-summary "digests" (which will be unveiled soon) to provide additional, easy-to-understand guidance to the Authority's customers.

Employees across the Agency at all levels continue to be actively involved in the efforts to develop the new and improved eFiling system, the Document Management System, and involved in the overall effort to help the Agency achieve its goal of implementing fully electronic case files by the end of calendar year 2019. Employee involvement in these efforts include: serving as a component or office representative on a work group to develop the structure of electronic case files; actively participating in facilitated, "user-centered design" information-gathering sessions where employees are encouraged to share their work processes, their needs, and their ideas for improvement; and responding to ad hoc questions about these systems as they arise. Additionally, a team of Agency employees have worked to move the existing monthly statistical reports from a system requiring manual input to one that is computer-generated. Not only does this save preparation time, it also verifies the accuracy of the data collected through the case processing system.

## *Federal Employee Viewpoint Survey*

FLRA continues to have a highly engaged workforce that is dedicated to the accomplishment of its mission. The 2018 FLRA response rate of 75 percent for OPM's Federal Employee Viewpoint Survey (FEVS) was a full 34 points above the Government-wide average of 41 percent. This represents a nine point increase from the 66 percent of eligible employees who identified strengths and concerns to Agency leadership and managers in 2017. For reporting purposes, the FEVS divided FLRA results into two work units: "Office of the General Counsel Headquarters and Regional Offices" (OGC/Regions) and "Authority and Administrative Headquarters" (FLRA HQ).

There was increased interest among the OGC/Regions work unit in answering the 2018 survey: 54 percent of FLRA respondents in 2018 were from OGC/Regions, compared to 49 percent in 2017.

### **Agency Strengths:**

FLRA has 31 strengths (65percent+ positive responses). The top five strengths are:

- 93 percent -- When needed, I am willing to put in the extra effort to get a job done.
- 92 percent -- My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.
- 89 percent -- How would you rate the overall quality of work done by your work unit?
- 88 percent -- Employees in my work unit share job knowledge with each other.
- 86 percent -- I am constantly looking for ways to do my job better.

### **Higher than the Government-wide average:**

Agency results exceeded the Government-wide average in 31 of the 78 questions; and 11 of those questions were 10+ points higher than that average. 62 percent of FLRA respondents agreed that "In my work unit, steps are taken to deal with a poor performer who cannot or will not perform" – 30 points above the Government-wide average of 32 percent.

### **Questions where respondents found FLRA a better place to work than the Government-wide average:**

- Promotions in my unit are based on merit (55 percent FLRA vs 38 percent Government-wide; 17 points above)
- Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well (82 percent vs 66 percent; 16 points)
- How satisfied are you with the following Work/Life programs in your agency: Telework (77 percent vs 62 percent; 15 points)
- Pay raises depend on how well employees perform their jobs (41 percent vs 27 percent; 14 points)
- Awards in my work unit depend on how well employees perform their jobs (59 percent vs 46 percent; 13 points)
- Employees in my work unit share job knowledge with each other (88 percent vs 76 percent; 12 points)



#### Areas for Improvement:

The 2018 FEVS is a snapshot in time that captures employees' perceptions of the Agency's work environment. FLRA employees identified areas for improvement involving training, the mission of the Agency, communication, innovation, management, and leadership. On key questions, there was a substantial difference in negative scores reported by FLRA HQ and the OGC/Regions.

Questions with the highest percentage of negative scores (broken down by FLRA HQ, and the OGC/Regions):

- 68 percent -- In my organization, senior leaders generate high levels of motivation and commitment in the workforce. (46 percent negative HQ, 83 percent OGC/Regions)
- 64 percent -- How satisfied are you with the policies and practices of your senior leaders? (49 percent, 76 percent)
- 64 percent -- I have a high level of respect for my organization's senior leaders. (49 percent, 76 percent )
- 55 percent -- I believe the results of this survey will be used to make my agency a better place to work. (39 percent, 66 percent)
- 53 percent -- How satisfied are you with the information you receive from management on what's going on in your organization? (43 percent, 61 percent)

The new staff-driven FLRA Strategic Plan 2018-2022 directly addresses these concerns. Specifically, Strategic Plan Implementation Teams (with representation from each Region and component of FLRA) were created to address these challenges, and build on the strengths, reflected in the FEVS.

#### ***IT Modernization***

As noted above, consistent with President's Management Agenda (PMA) Cross-Agency Priority (CAP) Goal 1 to modernize IT to increase productivity and security, and the Agency's strategic plan, FLRA is continuing its ongoing efforts to expand its IT capabilities to enhance mission performance by improving the quality and effectiveness of its internal- and external-customer-facing services – including increased use of cloud-based solutions, such as email, Case Management, and Document Management. By adopting cloud-based solutions that are FEDRAMP certified – such as Microsoft Office 365 and Amazon Web Services – the Agency has improved its IT security by leveraging those vendors' extensive resources to protect and segregate Government data with the best information security practices. The Agency also continues to improve its overall efficiency, as well as the customer-service experience, by engaging in new and innovative ways to conduct business, such as through electronic case filing (eFiling). In addition, the Agency has strategically emphasized IT modernization by implementing realistic and attainable equipment lifecycles.

In 2018, using agile methodology, FLRA continued to execute its multi-year, four-phase plan to achieve OMB's mandates and the Agency's long-term goal of implementing end-to-end electronic case file capabilities by the end of calendar year 2019.

1. Phase 1 was implementation of upgraded eFiling 3.0. Addressing customer feedback, and after refining its approach, the Agency launched this more user-friendly and intuitive user interface that is built on a new, cloud-based technical platform that will better support the Agency's long-term needs.
2. Phase 2 is to provide a similar, more user-friendly and intuitive user interface for the Agency's internal electronic Case Management System (CMS). Phase 2 also includes implementation of an Agency-wide Document Management System (DMS) – an electronic, cloud-based “filing cabinet” that provides a framework for organizing digital and paper documents. The DMS also provides the necessary storage capacity and IT platform for the eventual integration of eFiling, CMS, and DMS. The Agency has already implemented the DMS, and it expects to implement the new CMS across all offices by the end of calendar-year 2019.
3. Phase 3 is the integration of the automated connection between eFiling, CMS, and DMS, which is currently underway, with completion anticipated by the end of 2020.
4. Phase 4 is the transition to 100 percent electronic case files throughout the Agency, with a goal of completion by the end of 2020.

FLRA successfully completed the redesign and launch of eFiling 3.0 in 2018 using agile development and state-of-the art, cloud-based technology. Work on the new CMS has begun, using the same technology and building on the lessons learned during development, testing, and implementation of eFiling 3.0. Phase 2 is underway, and it will run through 2019. This is the most time-consuming and expensive phase of the project. The Agency diverted funds from this effort in 2018 in order to make as much progress as possible on the regional-office consolidation. The Agency has also begun work on Phase 3. Although not originally contemplated, redeveloping the CMS makes sound technical sense because it avoids reengineering down the road, which ultimately saves the Agency money in the long run.

Despite that timelines associated with the four-phase plan have shifted over time, the Agency remains on target to complete this initiative on time, and its overall costs are well *below* industry standards for similar undertakings. Further, despite the evolving nature of the approach, the goal and the results have remained the same: implementation of fully electronic case files throughout the Agency to enable FLRA to increase its overall efficiency and effectiveness.

Successful achievement of this goal will enable implementation of additional external and internal case-processing improvements that will further maximize the use of technology and eliminate many of the labor-intensive, manual case processes that are currently in place. These case-processing improvements include: reducing the time and expense that FLRA staff spends copying, scanning, mailing, and entering data; eliminating outdated facsimile service; reducing U.S. Mail costs by implementing electronic service of case-related documents by FLRA on the parties; reducing – or eliminating – Fed Ex costs for transferring paper case files between FLRA offices; implementing a pilot program that would mandate FLRA parties to file all

case-related documents electronically, and eventually mandating eFiling for all FLRA case filings. The greatest benefit will be the ability to redirect staff hours currently used to perform manual administrative tasks to perform other mission-critical functions.

In addition, FLRA has – and will continue – to embrace its “cloud-first” approach by migrating the Agency’s email system to the cloud in 2018. All of the Agency’s major technical components – email, DMS, CMS, and eFiling – are now in the cloud, offering better redundancy and backups that can be leveraged to improve the Agency’s Continuity of Operations Plan (COOP). This is a major achievement and another example of the Agency’s sustained commitment to continually modernizing IT. FLRA will continue to make improvements through smaller-scale projects such as ongoing efforts to enhance the VTC System, which will reduce necessary travel expenditures and provide more opportunities to offer remote training to Agency employees and its customers. FLRA is also keeping its IT life cycle on schedule, using 2018 funds to purchase new laptops as scheduled. It is imperative to maintain IT systems’ lifecycle to ensure FLRA systems are functional and with current operating systems and software.

As a small Federal agency, FLRA includes its IT budgetary resources within the overall Agency budget, keeping IT spending to a minimum while maintaining flexibility to address new projects such as the implementation of fully electronic case files as noted above. The CIO oversees and approves all IT related activities and keeps the CFO apprised of all IT spending.

### ***Improving the Customer Experience***

Consistent with the PMA, the Agency will emphasize Improving the Customer Experience by providing more meaningful information about case-processing timelines and updating educational and training materials.

As noted above, consistent with its Strategic Plan, the Agency is revising its case-processing performance measures so that they are more meaningful to the parties. For example, the age of all cases will begin to run from the date that the case is filed until the date that a decision is issued. In addition, the Agency will begin reporting the “average age” of closed cases within all FLRA components and offices, which will provide the parties with the average amount of time that it takes to process each case type. Providing this information to the parties will help them reach better, more informed decisions regarding their litigation options. It also provides them with more realistic expectations around case processing. Further, in productivity and timeliness reports, the Agency now provides the data behind the percentages (e.g., 88% - 2,682/3,060) so that customers will have a clearer understanding of Agency productivity relative to the Agency’s performance measures.

The Agency will also continue to serve its customers by providing valuable educational and training resources. It will continue to keep its website current with up-to-date information, including maintaining its practice of posting Authority decisions within one business day of issuance. During 2019, the Authority will also begin to issue case summaries of its decisions to help the Federal labor-management community digest them more easily. Agency components will establish a schedule for updating all subject-matter guides and manuals on a

routine basis, and FLRA is committed to updating at least three of these comprehensive guidance documents in 2019. In addition to providing in-person training sessions for FLRA customers, all Agency components are committed to developing new, web-accessible courses in 2019 so that the Federal-sector community can have access to relevant training without cost.

The new Strategic Plan focuses on examining external customer perceptions about the quality and impartiality of FLRA investigations and written work products, the quality of the Agency's web-based resources and trainings, and, generally, how well it is performing its mission. In order to assess these perceptions, the Agency will implement a series of customer-survey tools that it will develop in 2019. This data will inform the Agency of steps needed to better meet the goals of the Strategic Plan.

Finally, as described in detail above, FLRA's eFiling efforts are focused on improving the customer experience and allowing both filers and the Agency to improve efficiency through paperless automation.

#### ***Reports on Outstanding Government Accountability Office and Inspector General Recommendations***

There are no outstanding Government Accountability Office or Inspector General Recommendations subject to section 2(b) of the Good Accounting Obligation in Government Act, Pub. L. No. 115-414 (2019).

# BUDGET JUSTIFICATION

## APPROPRIATIONS LANGUAGE

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### FEDERAL LABOR RELATIONS AUTHORITY SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and including official reception and representation expenses (not to exceed \$1,500) and rental of conference rooms in the District of Columbia and elsewhere, \$24,890,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further*, That, notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

## 2020 FUNDING REQUEST

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FLRA requests \$24,890,000 in 2020 to fund employee salaries and related operating expenses necessary to execute its mission and meet annual performance targets. The Agency's 2020 request will fund 115 full-time equivalents (FTEs).

(In thousands of dollars)

Program Activity	2018 Actual	FY 2019 Estimated	FY 2020 Request	Change from FY 2019
Authority	14,692	14,377	13,659	(718)
Office of the General Counsel	10,729	10,749	10,210	(539)
Federal Service Impasses Panel	770	1,074	1,021	(53)
<b>Direct Obligations</b>	<b>\$26,191</b>	<b>\$26,200</b>	<b>\$24,890</b>	<b>(\$1,310)</b>
<b>FTEs</b>	<b>119</b>	<b>125</b>	<b>115</b>	<b>(10)</b>

The requested 2020 funding level realizes significant long-term cost-saving measures initiated in recent years to increase program effectiveness, and reduce fragmentation, overlap, and duplication. These efforts included, among others, consolidation of the Agency's regional-office structure in 2018 and 2019 – from seven regional offices to five – in order to improve efficiencies and reduce rent and other costs. By reducing its physical footprint the Agency achieved greater energy conservation than in prior years. FLRA also continues to look for

ways to reduce rental costs and considers space optimization annually throughout the Agency, even before current leases approach expiration.

FLRA is continuing its ongoing efforts to enhance mission performance, in support of the PMA, CAP Goal 1 to modernize information technology to increase productivity and security, by improving the quality and effectiveness of its internal and external customer-facing services, including through increased use of cloud-based solutions, such as email, Case Management, Document Management, and eFiling. By adopting cloud-based solutions that are FEDRAMP certified – such as Microsoft Office 365 and Amazon Web Services – the Agency has improved its IT security by leveraging those vendors' extensive resources to protect and segregate Government data with the best information security practices. The Agency's continued updates and enhancements to its website allow FLRA to provide timely and accurate information to its customers – other Federal agencies, labor organizations, Federal employees, the education community, and neutrals. These resources include FLRA decisions, legal guides and manuals, live and online training programs and materials, and other resources such as archival decisions and legislative history. In addition, with the launch of a new and improved eFiling system in 2018, the Agency continues to work toward its long-term goal of implementing fully electronic case files throughout the Agency. This will reduce the time and expense that FLRA staff spends copying, scanning, shipping case files, and entering data, and it will also reduce costs and increase convenience for customers who currently file cases by mail or other methods. FLRA is also keeping its IT life cycle on schedule, using 2018 funds to purchase new laptops as scheduled. It is imperative to maintain IT systems' lifecycle to ensure FLRA systems are functional and with current operating systems and software.

The 115 FTEs, that the requested 2020 funding level will support, reflect a net loss of 10 FTEs from FLRA's estimated 2019 staffing level. The Agency has already achieved this reduction in 2018 through attrition and retirements, operating with an average of only 119 FTEs throughout most of 2018. By leveraging the cost savings gleaned from leaving positions vacant, FLRA was able to accomplish its employee-relocation efforts associated with its regional-office consolidation. The Agency has undertaken – and will continue to undertake in 2019 – a thorough evaluation and prioritization of every vacancy before filling any positions, consistent with the Administration's goal of comprehensive Government reform and workforce reshaping. This will also help fund the transition to fully electronic case files.

## **CHANGE FROM 2019**

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The requested funding level for 2020 reflects an overall decrease of five percent (\$1,310,000) over 2019.

### ***Personnel Compensation and Benefits***

Personnel compensation and benefits costs continue to account for the overwhelming majority of its overall budget – nearly 80 percent.

## PROGRAM AND FINANCING SCHEDULE

(In thousands of dollars)

	FY 2018 Actual	FY 2019 Estimate	FY 2020 Request
<b>Budgetary resources:</b>			
Unobligated balance (total)	932	1,341	1,341
Appropriation, discretionary (total)	26,200	26,150	24,890
Spending authority from offsetting collections, discretionary (total)	12	100	0
Total budgetary resources	27,144	27,591	26,231
<b>Status of budgetary resources:</b>			
Direct obligations (total)	26,395	26,150	24,890
Reimbursable obligations (total)	13	100	0
New obligations and upward adjustments (total)	26,408	26,250	24,890
Unobligated balance, end of year	736	1,314	1,314
Total budgetary resources	27,144	27,564	26,204
<b>Change in obligated balance:</b>			
Obligated balance, start of year	3,728	3,132	3,132
Obligated balance, end of year	3,739	3,132	3,132
<b>Budget authority and outlays, net:</b>			
Budget authority, gross	26,212	26,200	24,890
Outlays, gross (total)	26,216	26,000	24,690
Offsets against gross budget authority and outlays (total)	(28)	(31)	0
Additional offsets against budget authority only (total)	16	10	0
Budget authority, net (discretionary)	26,200	26,200	24,890
Outlays, net (discretionary)	26,188	26,000	24,690

## OBJECT CLASSIFICATION SCHEDULE

(In thousands of dollars)

	FY 2018 Actual	FY 2019 Estimate	FY 2020 Request
Direct obligations:			
Personnel compensation:			
Full-time permanent	\$14,815	\$14,557	\$13,771
Other than full-time permanent	263	350	350
Other personnel compensation	<u>305</u>	<u>305</u>	<u>305</u>
Total personnel compensation	15,383	15,212	14,426
Civilian personnel benefits	5,008	5,039	4,810
Travel and transportation of persons	86	120	120
Transportation of things	76	12	12
Rental payments to GSA	2,557	2,437	2,392
Communications, utilities, and misc. charges	375	322	322
Printing and reproduction	7	7	7
Other services from non-federal sources	1,298	1,300	1,200
Other goods and services from Federal sources	915	1,000	900
Operation and maintenance of facilities	7	6	6
Operation and maintenance of equipment	318	320	320
Supplies and materials	94	100	100
Equipment	<u>271</u>	<u>275</u>	<u>275</u>
Direct obligations	\$26,395	\$26,150	\$24,890
Reimbursable obligations:			
Travel and transportation of persons	<u>13</u>	<u>100</u>	<u>      </u>
Reimbursable obligations	<u>13</u>	<u>100</u>	<u>      </u>
Total new obligations	\$26,408	\$26,250	\$24,890

## EMPLOYMENT SUMMARY SCHEDULE

	FY 2018 Actual	FY 2019 Estimate	FY 2020 Request
Direct civilian full-time equivalent employment	119	125	115



## **INSPECTOR GENERAL RESOURCES**

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The Office of the Inspector General (OIG) provides independent and objective assessments of FLRA's efficiency, effectiveness, and compliance with laws and regulations. This is accomplished through proactive evaluations of agency operational processes. In addition to striving to prevent and detect fraud, waste, and abuse of FLRA's resources and operations, a key goal of the Inspector General (IG) is to serve as a catalyst for improving operations and maximizing the efficiency and integrity of agency programs.

In fulfilling these responsibilities and objectives, the IG conducts and supervises investigations, internal reviews, audits, and evaluations of the programs and operations of the agency. The IG communicates the results of investigations and assessments to FLRA management, The Congress, other oversight entities, and the public, as appropriate. Generally, the IG communicates results in formal reports that contain findings and recommendations aimed at correcting any deficiencies identified and promoting efficiency and effectiveness in agency programs and operations. The IG also manages a hotline to provide employees and the public with a direct means for confidentially communicating information on potential fraud, waste, or abuse.

FLRA's 2020 funding request includes \$626,035 for the OIG. The funding level requested by the IG, including \$8,000 for training and \$1,748 to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has been funded in total. The IG has certified that FLRA's funding request for the OIG satisfies all training requirements for 2020.



INSPECTOR GENERAL

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

July 31, 2018

The Inspector General Reform Act (Pub. L. 110-149) was signed by the President on October 14, 2008. Section 6(f) (1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year (FY).

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- The aggregate amount of funds requested for the operations of the OIG,
- The portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for the fiscal year, and
- The portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget to the President for approval, shall include:

- An aggregate request for the OIG,
- The portion of this aggregate request for OIG training,
- The portion of this aggregate request for support of the CIGIE, and
- Any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress.

- A separate statement of the budget estimate submitted by each IG,
- The amount requested by the President for each OIG,
- The amount requested by the President for training of OIGs,
- The amount requested by the President for support of the CIGIE, and
- Any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing duties of the OIG.

Following the requirements as specified above, the Federal Labor Relations Authority Inspector General submits the following information relating to the OIG's requested budget for FY 2020:

- The aggregate budget request for the operations of the OIG is \$626,035;
- The portion of this amount needed for OIG training is \$8,000; and
- The portion of this amount needed to support the CIGIE is \$1,748.

I certify as the IG of the Federal Labor Relations Authority that the amount I have requested for training satisfies all OIG training needs for FY 2020.

A handwritten signature in blue ink, appearing to read "Dana A. Rooney".

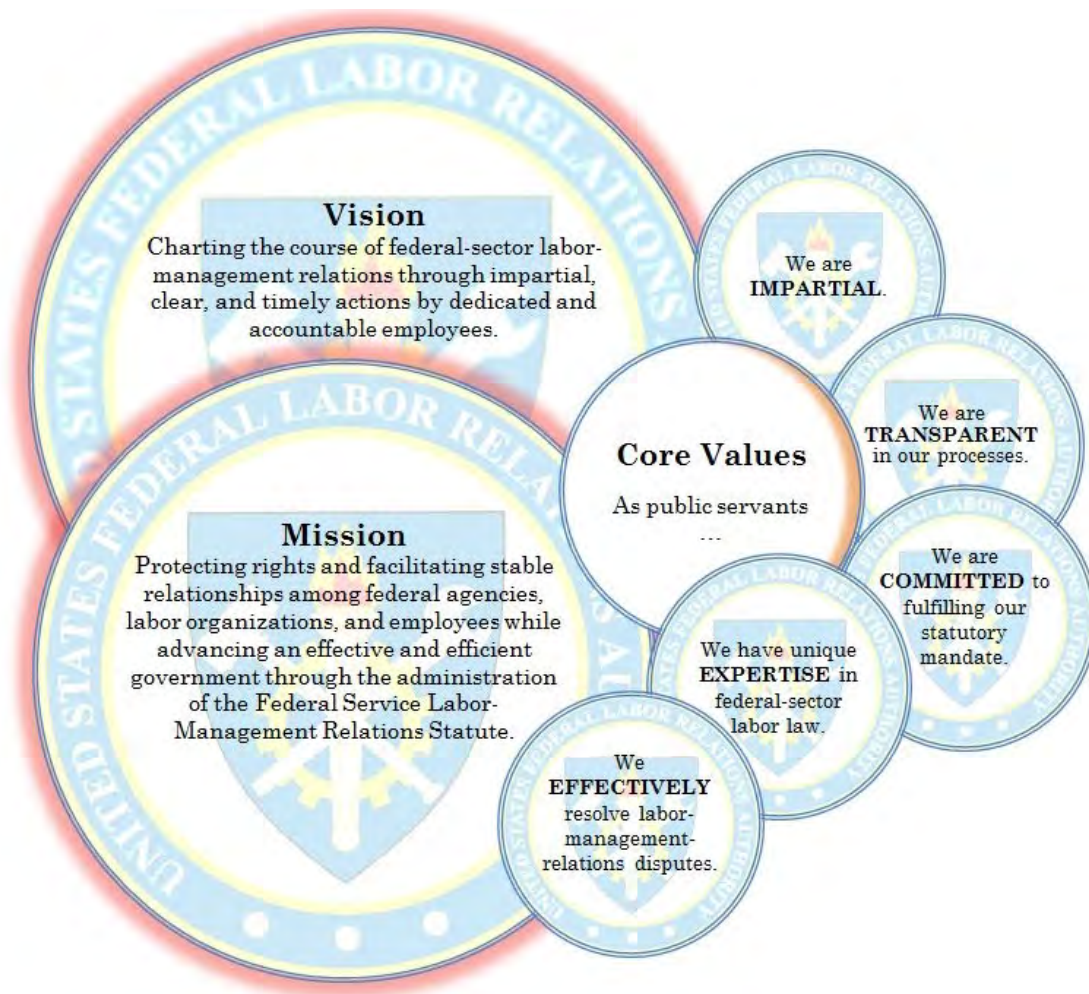
Inspector General  
Federal Labor Relations Authority

# ANNUAL PERFORMANCE PLAN

## STRATEGIC AND PERFORMANCE-PLANNING FRAMEWORK

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FLRA's 2020 strategic performance-planning framework is based on the Agency's 2018-2022 Strategic Plan, and it is supported by the Agency's Annual Performance Plan, which establishes the Agency's annual performance goals and measures. In developing the 2018-2022 Strategic Plan, the Agency refined its mission statement, developed a vision statement, and identified Agency core values.



FLRA seeks to achieve its strategic goals primarily through the timely, high-quality, and impartial review and disposition of cases. The Agency supplements these efforts, and helps the parties to avoid or resolve their own disputes, by producing educational materials, offering targeted assistance to parties with significant labor-management challenges, and providing training activities. Further supporting these efforts is FLRA's focus on internal improvements in IT and efforts to maximize human capital engagement.

Through comprehensive review of its programmatic requirements under the Statute, operations, staffing, work processes, resource allocations, and performance, FLRA has established goals and measures that are designed to maximize the delivery of Agency services throughout the Federal Government. The Annual Performance Plan reflects the Agency's commitment to establishing meaningful metrics that will assist in assessing performance, providing transparency to the parties around case-processing, aligning resources, and effectively identifying staffing and training needs.

## FLRA Strategic Goals

Strategic Goal #1	Strategic Goal #2	Strategic Goal #3
We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated.	We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships.	We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the prevention and resolution of labor-relations disputes.

## Strategic Objectives

a. Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.	a. Maintain and expand educational resources on <a href="http://www.flra.gov">www.flra.gov</a> .	a. Ensure that the FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.
b. Ensure excellence in investigations and clearly articulated written work products by establishing and surpassing case-processing quality goals that build upon the Agency's longstanding traditions of impartiality and consistent determinations that are effectively enforced.	b. Identify and offer targeted assistance to parties with significant labor-management challenges.	b. Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.
	c. Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.	c. Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.



Consistent with Government-wide efforts to improve performance and incorporate data-driven management decisions, FLRA engages in continuous strategic assessment of performance and other data to ensure that it is accomplishing its mission effectively and efficiently. The Agency conducts this ongoing review on a monthly basis with its automated monthly SMART report (to be introduced in 2019, replacing the existing manual Monthly Analysis of Performance and Status (MAPS) report), which contains statistical case and performance data derived from FLRA's Case Management System (CMS) and Agency management. In addition, Agency managers utilize a variety of internal CMS reports, which track the number, age, status, or resolution type of all pending and closed cases, to manage performance on a daily basis. Analysis of these reports drive, among other things: adjustments in workload through case transfers at the national, regional, and office levels; reallocation of human resources, including use of details and contract support decisions; and decisions to provide targeted assistance (such as training) to certain parties or geographical locations.

***Strategic Goal 1: We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated.***

This strategic goal concerns the core statutory activities of FLRA. The Statute charges FLRA with responsibility for protecting rights and facilitating stable labor-management relationships in the federal sector. To achieve that mandate, FLRA must provide the Federal labor-management community with quality, timely, impartial, and consistent investigations and determinations. Further, FLRA must convey those determinations clearly and enforce them effectively. All FLRA components must help to achieve this goal in order to attain overall Agency success.

***Strategic Objective 1a: Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.***

Parties often have time-sensitive interests at stake in matters pending before FLRA. Delays in the resolution of those matters can impede the ability of the parties to fulfill their missions effectively and efficiently. So, to properly serve the Federal labor-management community and accomplish FLRA's own mission, the Agency must satisfy internal case-processing productivity goals that enable it to investigate and resolve cases in a timely fashion.

Parties are best served when they have a clear understanding of how long it might take FLRA to process cases. FLRA therefore will set its standards for timeliness in a way that gives parties a reasonable expectation as to the duration of FLRA determination process. This requires the use of simple, straightforward metrics for understanding how long it might take to resolve a given matter before the Agency. Further, including the data behind reported percentages (e.g., 88% - 2,682/3,060) provides a clearer understanding of Agency productivity relative to the Agency's performance measures.

**Performance Goal 1a-1: Use updated metrics to measure productivity and overall timeliness of matters pending before FLRA.**

**Performance Goal 1a-2: Regularly measure productivity and overall case-processing timelines in each FLRA component; modify strategies as necessary to address unforeseen or unplanned events.**

**Performance Goal 1a-3: Track and publicly report progress of matters before the FLRA that the Federal labor-management community considers clear, relevant, widely known, and meaningful.**

<b>Authority Arbitration Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	90	50	42	73	73	64
<b>Exceptions filed (Intake)</b>	<b>99</b>	<b>87</b>	<b>103</b>	<b>105</b>	<b>97</b>	<b>97</b>
Total caseload	189	137	145	178	170	161
Cases closed procedurally	15	20	16	11	16	16
Cases closed based on merits	124	75	56	94	90	90
<b>Total cases closed (Output)</b>	<b>139</b>	<b>95</b>	<b>72</b>	<b>105</b>	<b>106</b>	<b>106</b>
Cases pending, end of year	50	42	73	73	64	55





**Measure 1a-1:** The average age of arbitration cases decided by the Authority.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-2:** The percentage of arbitration cases decided within 180 days of assignment to an Authority Member.

Results	
<b>FY 2015</b>	40% – (50/124 cases)
<b>FY 2016</b>	79% – (59/75 cases)

**Measure 1a-2:** The percentage of arbitration cases decided within 150 days of assignment to an Authority Member.

Results		Targets	
<b>FY 2017</b>	79% – (44/56 cases)	<b>FY 2018</b>	75%
<b>FY 2018</b>	38% – (36/94 cases)		

**Measure 1a-2:** The percentage of arbitration cases decided by the Authority within 210 days of the filing of exceptions.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	75%
		<b>FY 2020</b>	75%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-3:** The percentage of arbitration cases decided within 365 days of assignment to an Authority Member.

Results		Targets	
<b>FY 2017</b>	100% – (56/56 cases)	<b>FY 2018</b>	95%
<b>FY 2018</b>	98% – (92/94 cases)		

**Measure 1a-3:** The percentage of arbitration exceptions decided by the Authority within 365 days of the filing of exceptions.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	90%
		<b>FY 2020</b>	90%

\* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.

<i>Authority</i> Negotiability Cases	2015	2016	2017	2018	2019 Est.	2020 Est.
Cases pending, start of year	17	23	27	11	23	36
<b>Petitions filed (Intake)</b>	<b>54</b>	<b>55</b>	<b>40</b>	<b>43</b>	<b>45</b>	<b>45</b>
Total caseload	71	78	67	54	68	81
Cases closed procedurally	40	47	52	25	27	27
Cases closed based on merits	8	4	4	6	5	5
<b>Total cases closed (Output)</b>	<b>48</b>	<b>51</b>	<b>56</b>	<b>31</b>	<b>32</b>	<b>32</b>
Cases pending, end of year	23	27	11	23	36	49



**Measure 1a-4:** The average age of negotiability cases decided by the Authority.\*

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-5:** The percentage of negotiability cases decided within 180 days of assignment to an Authority Member.

<b>Results</b>	
<b>FY 2015</b>	50% – (4/8 cases)
<b>FY 2016</b>	75% – (3/4 cases)

**Measure 1a-5:** The percentage of negotiability cases decided within 150 days of assignment to an Authority Member.

<b>Results</b>		<b>Targets</b>	
<b>FY 2017</b>	75% – (3/4 cases)	<b>FY 2018</b>	75%
<b>FY 2018</b>	83% – (5/6 cases)		

**Measure 1a-5:** The percentage of negotiability cases decided by the Authority within 300 days of the filing of a petition for review.\*

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	75%
		<b>FY 2020</b>	75%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-6:** The percentage of negotiability cases decided within 365 days of assignment to an Authority Member.

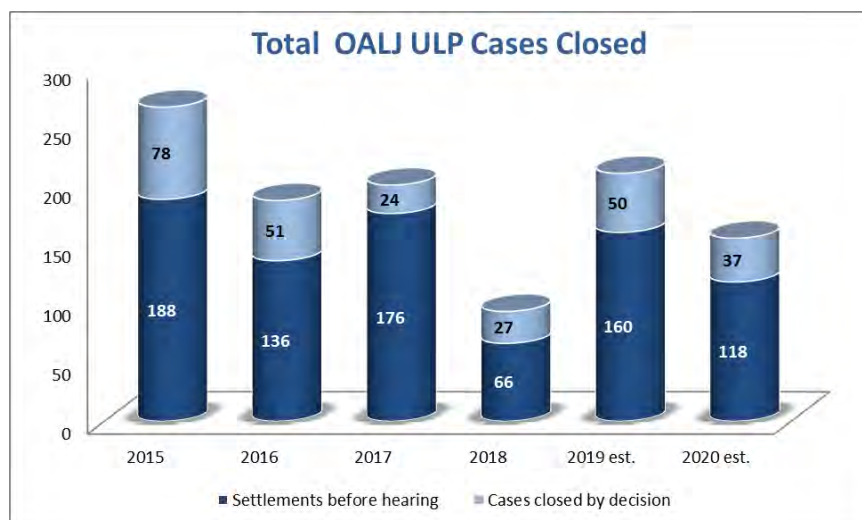
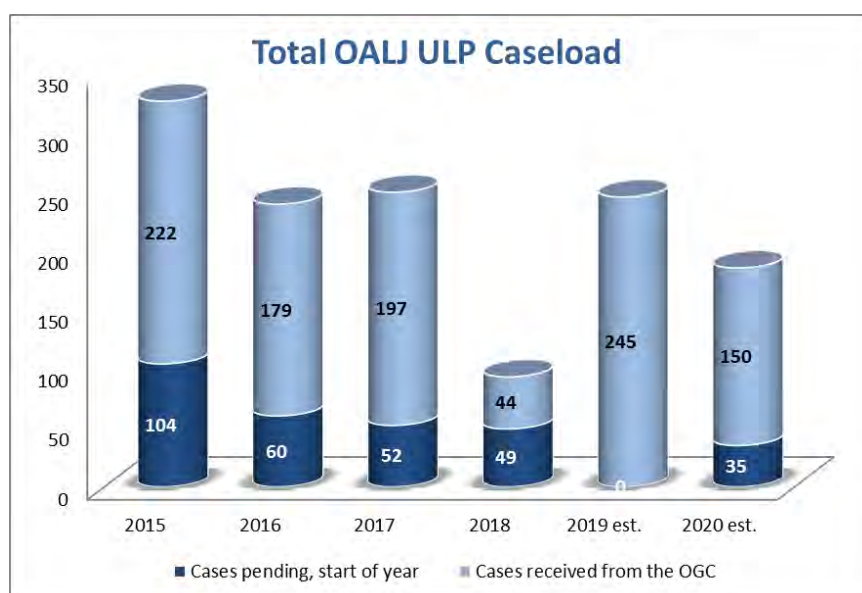
<b>Results</b>		<b>Targets</b>	
<b>FY 2017</b>	100% – (4/4 cases)	<b>FY 2018</b>	95%
<b>FY 2018</b>	100% – (6/6 cases)		

**Measure 1a-6:** The percentage of negotiability cases decided by the Authority within 365 days of the filing of a petition for review.\*

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	75%
		<b>FY 2020</b>	75%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

<b><i>OALJ</i></b> <b>ULP Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	104	60	52	49	0	35
<b>Complaints received (Intake)</b>	<b><u>222</u></b>	<b><u>179</u></b>	<b><u>197</u></b>	<b><u>44</u></b>	<b><u>245</u></b>	<b><u>150</u></b>
Total caseload	326	239	249	93	245	185
Settlements before hearing	188	136	176	66	160	118
Cases closed by decision	<u>78</u>	<u>51</u>	<u>24</u>	<u>27</u>	<u>50</u>	<u>37</u>
<b>Total cases closed (Output)</b>	<b><u>266</u></b>	<b><u>187</u></b>	<b><u>200</u></b>	<b><u>93</u></b>	<b><u>210</u></b>	<b><u>155</u></b>
Cases pending, end of year	60	52	49	0	35	30



**Measure 1a-7: The average age of ULP complaints decided by the OALJ.\***

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%

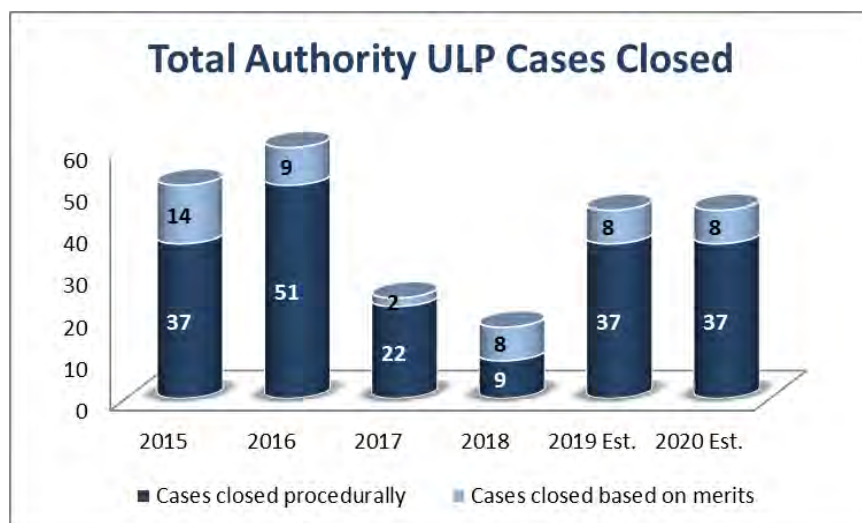
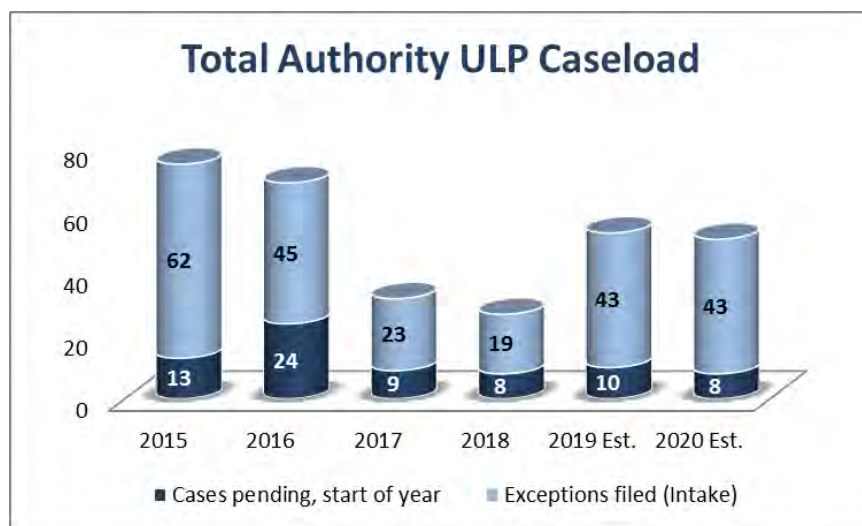
**Measure 1a-8: The percentage of ULP complaints issued by the General Counsel resolved or decided in the OALJ within 180 days of the complaint being issued.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	77% – (205/266 cases)	<b>FY 2018</b>	80%
<b>FY 2016</b>	80% – (150/187 cases)	<b>FY 2019</b>	80%
<b>FY 2017</b>	93% – (186/200 cases)	<b>FY 2020</b>	80%
<b>FY 2018</b>	88% – (72/93 cases)		

**Measure 1a-9: The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 365 days of the complaint being issued.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	89% – (166/187 cases)	<b>FY 2018</b>	95%
<b>FY 2017</b>	98% – (196/200 cases)	<b>FY 2019</b>	95%
<b>FY 2018</b>	90% – (84/93 cases)	<b>FY 2020</b>	95%

<b>Authority ULP Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	13	24	9	8	10	8
<b>Exceptions filed (Intake)</b>	<b>62</b>	<b>45</b>	<b>23</b>	<b>19</b>	<b>43</b>	<b>43</b>
Total caseload	75	69	32	27	53	51
Cases closed procedurally	37	51	22	9	37	37
Cases closed based on merits	14	9	2	8	8	8
<b>Total cases closed (Output)</b>	<b>51</b>	<b>60</b>	<b>24</b>	<b>17</b>	<b>45</b>	<b>45</b>
Cases pending, end of year	24	9	8	10	8	6



**Measure 1a-10:** The average age of ULP cases decided by the Authority.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-11:** The percentage of ULP cases decided within 180 days of assignment to an Authority Member.

Results	
<b>FY 2015</b>	57% – (8/14 cases)
<b>FY 2016</b>	89% – (8/9 cases)

**Measure 1a-11:** The percentage of ULP cases decided within 150 days of assignment to an Authority Member.

Results		Targets	
<b>FY 2017</b>	50% – (1/2 cases)	<b>FY 2018</b>	75%
<b>FY 2018</b>	50% – (4/8 cases)		

**Measure 1a-11:** The percentage of ULP cases decided by the Authority within 300 days of issuance of an OALJ decision.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	75%
		<b>FY 2020</b>	75%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-12:** The percentage of ULP cases decided within 365 days of assignment to an Authority Member.

Results		Targets	
<b>FY 2017</b>	100% – (2/2 cases)	<b>FY 2018</b>	90%
<b>FY 2018</b>	100% – (8/8 cases)		

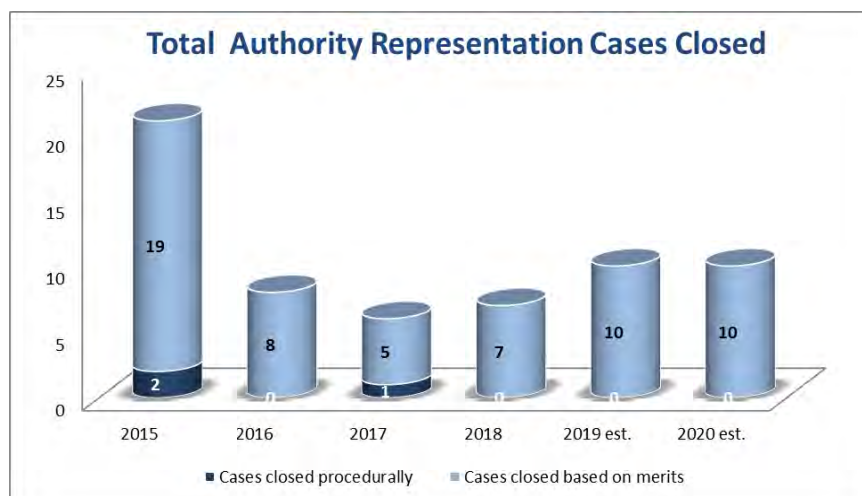
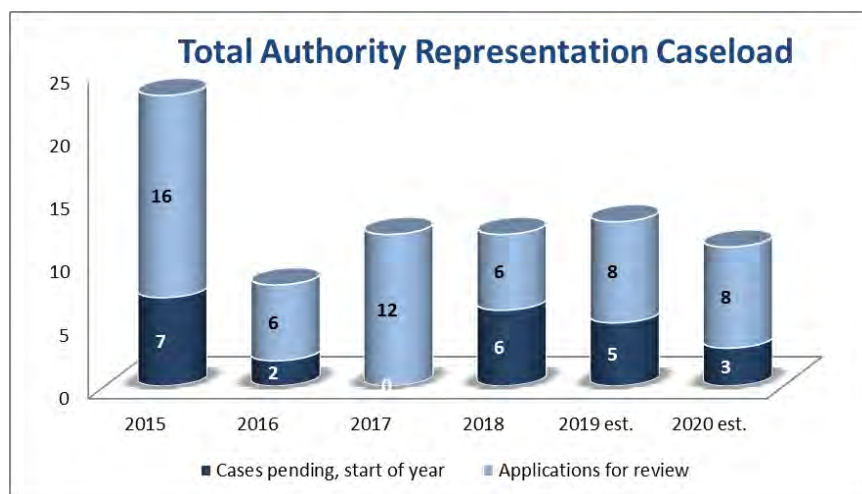
**Measure 1a-12:** The percentage of ULP cases decided by the Authority within 365 days of issuance of an OALJ decision.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	90%
		<b>FY 2020</b>	90%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.



<b>Authority Representation Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	7	2	0	6	5	3
<b>Applications for review (Intake)</b>	<b><u>16</u></b>	<b><u>6</u></b>	<b><u>12</u></b>	<b><u>6</u></b>	<b><u>8</u></b>	<b><u>8</u></b>
Total caseload	23	8	12	12	13	11
Cases closed procedurally	2	0	1	0	0	0
Cases closed based on merits	<u>19</u>	<u>8</u>	<u>5</u>	<u>7</u>	<u>10</u>	<u>10</u>
<b>Total cases closed (Output)</b>	<b>21</b>	<b>8</b>	<b>6</b>	<b>7</b>	<b>10</b>	<b>10</b>
Cases pending, end of year	2	0	6	5	3	1





**Measure 1a-13:** The average age of representation cases decided by the Authority.\*

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%

\* This new measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.

**Measure 1a-14:** The percentage of representation cases in which the Authority issued a decision whether to grant review within 60 days of the filing of an application for review.

<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	100% – (21/21 cases)	<b>FY 2018</b>	100%
<b>FY 2016</b>	100% – (8/8 cases)	<b>FY 2019</b>	100%
<b>FY 2017</b>	100% – (6/6 cases)	<b>FY 2020</b>	100%
<b>FY 2018</b>	100% – (7/7 cases)		

**Measure 1a-15:** The percentage of representation cases decided by the Authority within 210 days of the filing of an application for review.\*

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	75%
		<b>FY 2020</b>	75%

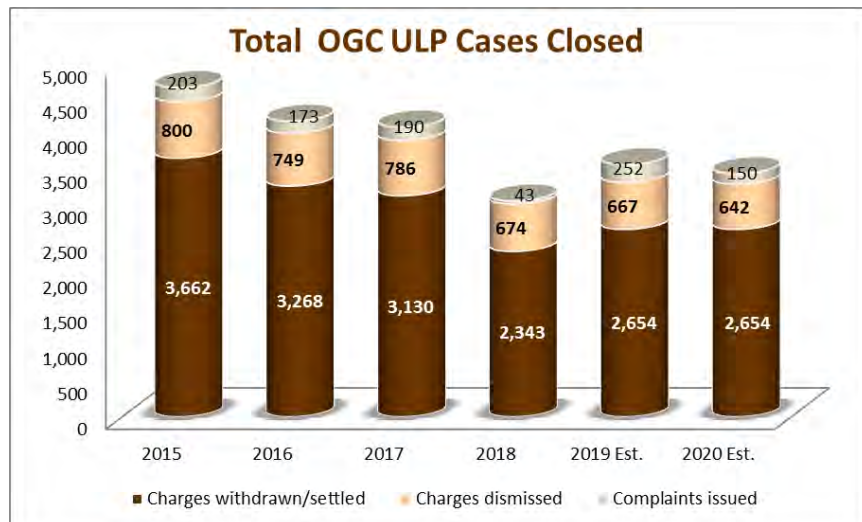
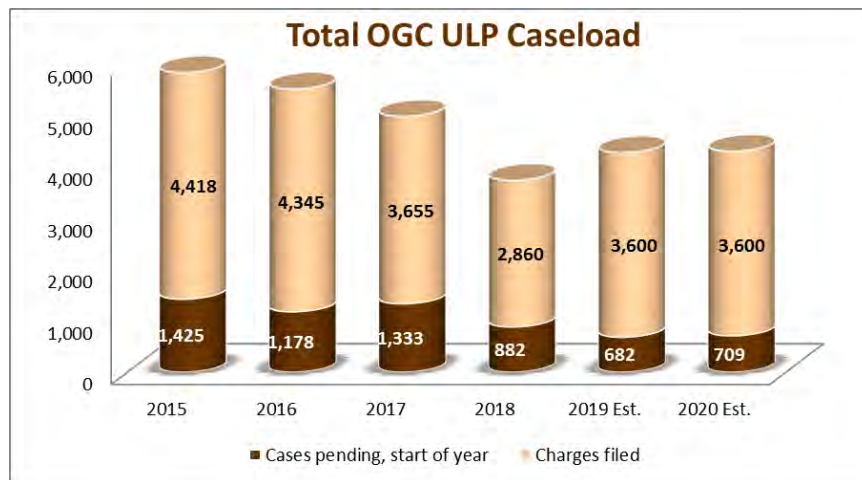
\* This new measure calculates case age based on the date that a final decision is issued in the case, to reflect “day in-day out” case-processing times.

**Measure 1a-16:** The percentage of representation cases decided by the Authority within 365 days of the filing of an application for review.

<b>Results</b>		<b>Targets</b>	
<b>FY 2017</b>	100% – (6/6 cases)	<b>FY 2018</b>	95%
<b>FY 2018</b>	100% – (7/7 cases)	<b>FY 2019</b>	95%
		<b>FY 2020</b>	95%

<b>OGC ULP Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	1,425	1,178	1,133	882	682	709
Charges filed (Intake)	<u>4,418</u>	<u>4,345</u>	<u>3,655</u>	<u>2,860</u>	<u>3,600</u>	<u>3,600</u>
<b>Total caseload</b>	<b>5,843</b>	<b>5,523</b>	<b>4,988</b>	<b>3,742</b>	<b>4,282</b>	<b>4,309</b>
Charges withdrawn/settled	3,662	3,268	3,130	2,343	2,654	2,654
Charges dismissed	800	749	786	674	667	642
Complaints issued	<u>203</u>	<u>173</u>	<u>190</u>	<u>43</u>	<u>252</u>	<u>150</u>
<b>Total cases closed (Output)</b>	<b>4,665</b>	<b>4,190</b>	<b>4,106</b>	<b>3,060</b>	<b>3,573</b>	<b>3,446</b>
<b>Cases pending, end of year</b>	<b>1,178</b>	<b>1,333</b>	<b>882</b>	<b>682</b>	<b>709</b>	<b>863</b>

\* During FY 2018, the OGC was unable to issue decisions on appeals in the absence of a General Counsel after November 16, 2017. Those cases are currently held in abeyance.



**Measure 1a-17: The average age of ULP charges resolved by the OGC. \***

<b>Results</b>		<b>Targets</b>	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%

**Measure 1a-18: The percentage of ULP charges resolved by the Office of the General Counsel by complaint, withdrawal, dismissal, or settlement within 120 days of filing of the charge.**

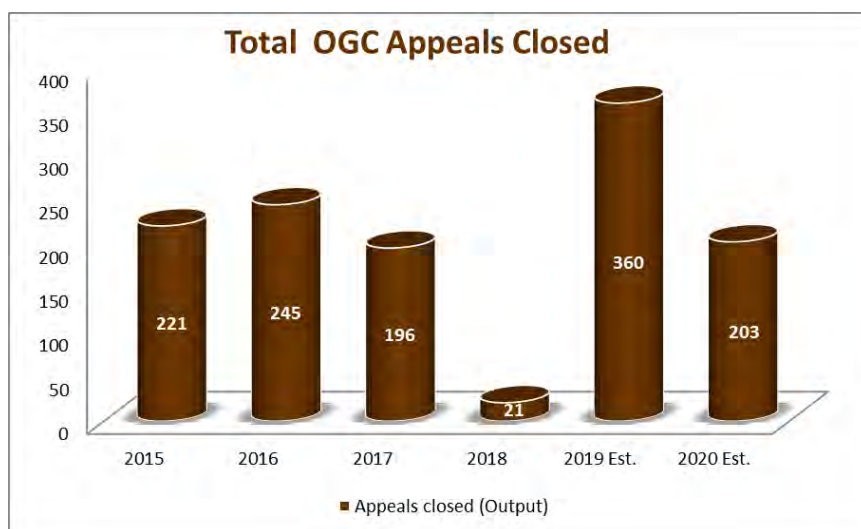
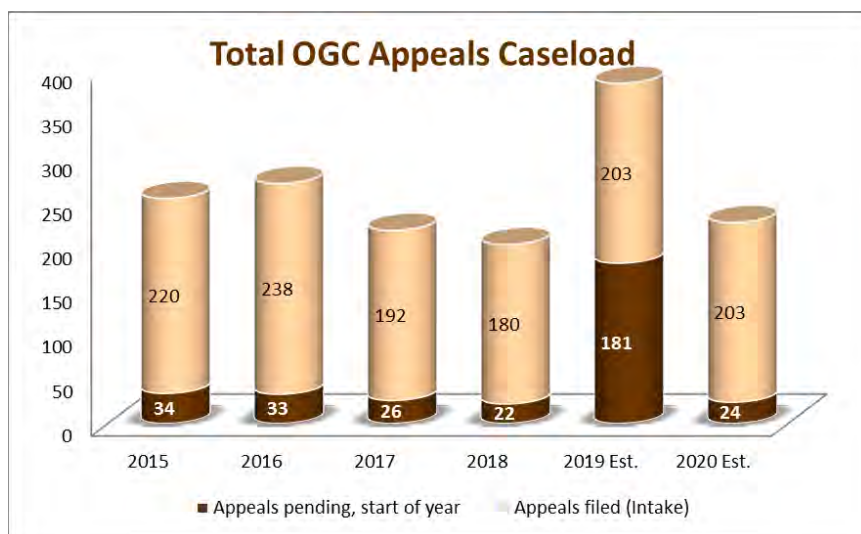
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	72% – (3,373/4,665 cases)	<b>FY 2018</b>	70%
<b>FY 2016</b>	71% – (2,973/4,190 cases)	<b>FY 2019</b>	70%
<b>FY 2017</b>	73% – (2,984/4,106 cases)	<b>FY 2020</b>	70%
<b>FY 2018</b>	88% – (2,682/3,060 cases)		

**Measure 1a-19: The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 240 days of filing of the charge.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	95% – (3,963/4,190 cases)	<b>FY 2018</b>	95%
<b>FY 2017</b>	95% – (3,883/4,106 cases)	<b>FY 2019</b>	95%
<b>FY 2018</b>	99% – (3,039/3,060 cases)	<b>FY 2020</b>	95%

<b>OGC ULP Appeals</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Appeals pending, start of year	34	33	26	22	181	24
<b>Appeals filed (Intake)</b>	<b><u>220</u></b>	<b><u>238</u></b>	<b><u>192</u></b>	<b><u>180</u></b>	<b><u>203</u></b>	<b><u>203</u></b>
Total caseload	254	271	218	202	384	227
<b>Appeals closed (Output)</b>	<b><u>221</u></b>	<b><u>245</u></b>	<b><u>196</u></b>	<b><u>21*</u></b>	<b><u>360</u></b>	<b><u>203</u></b>
Appeals pending, end of year	33	26	22	181	24	24

\* During FY 2018, the OGC was unable to issue decisions on appeals in the absence of a General Counsel after November 16, 2017. Those cases are currently held in abeyance.

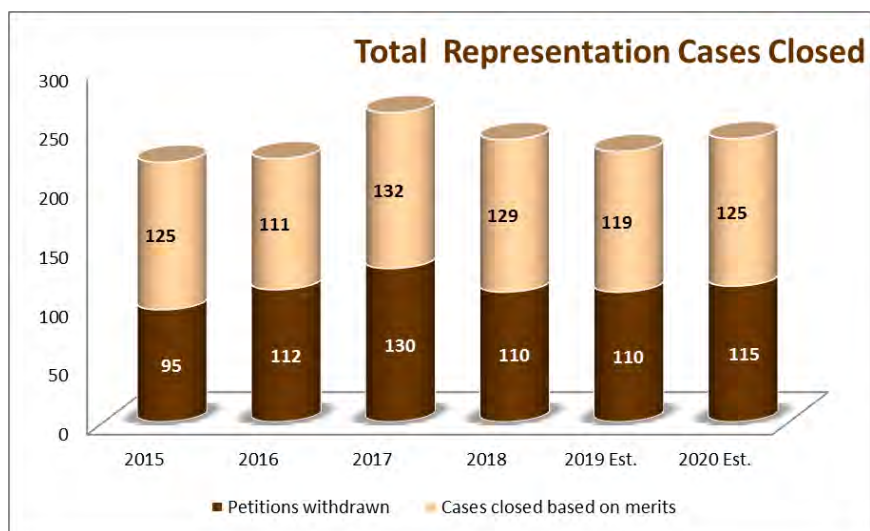
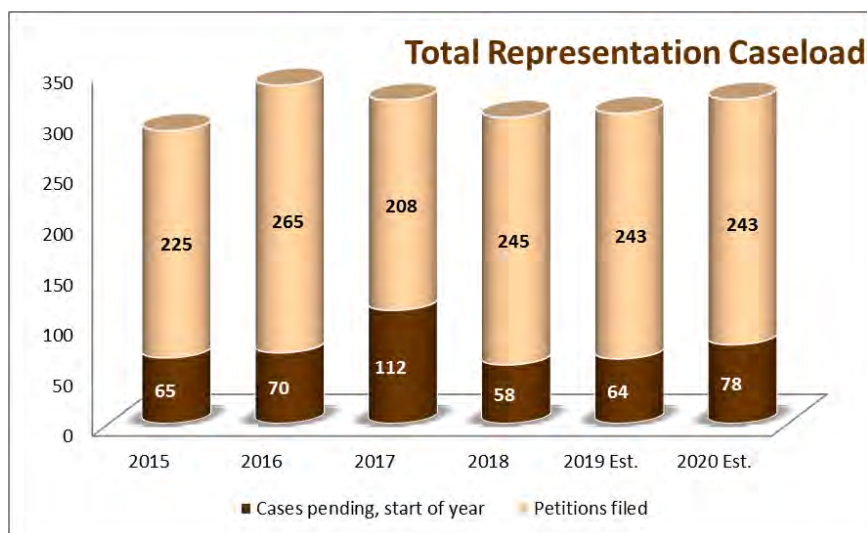


<b>Measure 1a-20: The average age of ULP appeals decided by the General Counsel.*</b>		
<b>Results</b>		<b>Targets</b>
New measure FY 2019.		<b>FY 2019</b>
* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		Reduce by 5%
		<b>FY 2020</b>
		Reduce by 5%

<b>Measure 1a-21: The percentage of decisions on an appeal of a Regional Director’s dismissal of a ULP charge issued by the General Counsel within 60 days of the date filed.</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	98% – (217/221 cases)	<b>FY 2018</b>	95%
<b>FY 2016</b>	100% – (245/245 cases)	<b>FY 2019</b>	95%
<b>FY 2017</b>	96% – (188/196 cases)	<b>FY 2020</b>	95%
<b>FY 2018</b>	100% – (21/21 cases)		

<b>Measure 1a-22: The percentage of decisions on an appeal of a Regional Director’s dismissal of a ULP charge issued by the General Counsel within 120 days of the date filed.</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	100% – (221/221 cases)	<b>FY 2018</b>	100%
<b>FY 2016</b>	100% – (245/245 cases)	<b>FY 2019</b>	100%
<b>FY 2017</b>	100% – (196/196 cases)	<b>FY 2020</b>	100%
<b>FY 2018</b>	100% – (21/21 cases)		

<b>OGC Representation Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	65	70	112	58	64	78
<b>Petitions filed (Intake)</b>	<b><u>225</u></b>	<b><u>265</u></b>	<b><u>208</u></b>	<b><u>245</u></b>	<b><u>243</u></b>	<b><u>243</u></b>
Total caseload	290	335	320	303	307	321
Petitions withdrawn	95	112	130	110	110	115
Cases closed based on merits	<u>125</u>	<u>111</u>	<u>132</u>	<u>129</u>	<u>119</u>	<u>125</u>
<b>Total cases closed (Output)</b>	<b>220</b>	<b>223</b>	<b>262</b>	<b>239</b>	<b>229</b>	<b>240</b>
Cases pending, end of year	70	112	58	64	78	81



**Measure 1a-23:** The average age of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order.\*

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	Reduce by 5%
* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%

**Measure 1a-24:** The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 120 days of the filing of a petition.

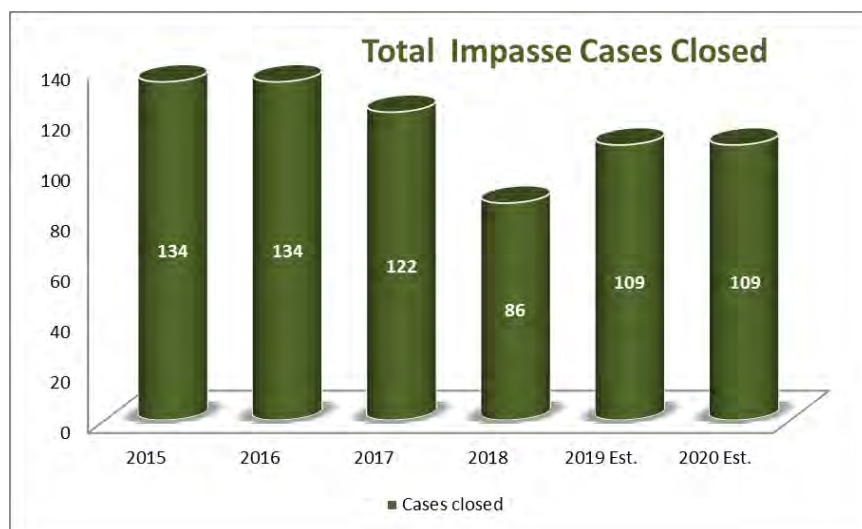
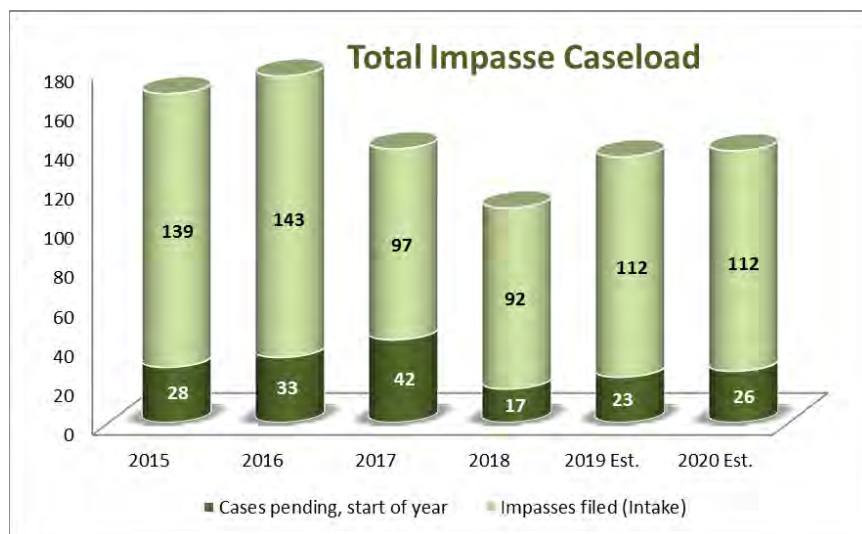
Results		Targets	
<b>FY 2015</b>	72% – (158/220 cases)	<b>FY 2018</b>	70%
<b>FY 2016</b>	73% – (163/223 cases)	<b>FY 2019</b>	70%
<b>FY 2017</b>	68% – (179/262 cases)	<b>FY 2020</b>	70%
<b>FY 2018</b>	82% – (196/239 cases)		

**Measure 1a-25:** The percentage of cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 365 days of the filing of a petition.

Results		Targets	
<b>FY 2016</b>	98% (219/223 cases)	<b>FY 2018</b>	95%
<b>FY 2017</b>	95% (250/262 cases)	<b>FY 2019</b>	95%
<b>FY 2018</b>	99% (215/239 cases)	<b>FY 2020</b>	95%



<b>FSIP Impasses</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019 Est.</b>	<b>2020 Est.</b>
Cases pending, start of year	28	33	42	17	23	26
<b>Impasses filed (Intake)</b>	<b><u>139</u></b>	<b><u>143</u></b>	<b><u>97</u></b>	<b><u>92</u></b>	<b><u>112</u></b>	<b><u>112</u></b>
Total caseload	167	176	139	109	135	138
Panel Decision	15	24	12	21	--	--
Panel declined jurisdiction	17	9	22	11	--	--
Settled with Panel assistance	25	22	24	7	--	--
Voluntarily withdrawn	77	79	64	47	--	--
<b>Cases closed total (Output)</b>	<b><u>134</u></b>	<b><u>134</u></b>	<b><u>122</u></b>	<b><u>86</u></b>	<b><u>109</u></b>	<b><u>109</u></b>
Cases pending, end of year	33	42	17	23	26	29





<b>Measure 1a-26:</b> The average age of bargaining-impasse cases in which the FSIP declines jurisdiction.*		
<b>Results</b>		<b>Targets</b>
New measure FY 2019.		<b>FY 2019</b>
		Reduce by 5%
* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>
		Reduce by 5%

<b>Measure 1a-27:</b> The percentage of bargaining-impasse cases in which the FSIP declines jurisdiction within 140 days of the date filed.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	100% – (17/17 cases)	<b>FY 2018</b>	80%
<b>FY 2016</b>	80% – (7/9 cases)	<b>FY 2019</b>	90%
<b>FY 2017</b>	93% – (22/22 cases)	<b>FY 2020</b>	90%
<b>FY 2018</b>	100% – (11/11 cases)		

<b>Measure 1a-28:</b> The percentage of bargaining-impasse cases that are voluntarily settled, after the FSIP asserts jurisdiction, within 160 days of the date filed.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	100% – (25/25 cases)	<b>FY 2018</b>	70%
<b>FY 2016</b>	100% – (22/22 cases)	<b>FY 2019</b>	90%
<b>FY 2017</b>	93% – (22/24 cases)	<b>FY 2020</b>	90%
<b>FY 2018</b>	86% – (6/7 cases)		

<b>Measure 1a-29:</b> The average age of bargaining-impasse cases that the FSIP resolves through final action.*		
<b>Results</b>		<b>Targets</b>
New measure FY 2019.		<b>FY 2019</b>
		Reduce by 5%
* This new measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>
		Reduce by 5%

<b>Measure 1a-30:</b> The percentage of bargaining-impasse cases that the FSIP resolves through final action that are closed within 200 days of the date filed.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	100% – (15/15 cases)	<b>FY 2018</b>	70%
<b>FY 2016</b>	100% – (24/24 cases)	<b>FY 2019</b>	80%
<b>FY 2017</b>	77% – (9/12 cases)	<b>FY 2020</b>	80%
<b>FY 2018</b>	100% – (21/21)		

**Strategic Objective 1b: *Ensure excellence in investigations and clearly articulated written work products by establishing and attempting to surpass case-processing quality goals that build upon the Agency’s longstanding traditions of impartiality and consistent determinations that are effectively enforced.***

Excelling at FLRA’s core functions requires the Agency to perform thorough investigations and produce clearly articulated written products. From informal communications, to FLRA determinations, to information on the FLRA website, FLRA’s written work is one of the primary means by which the Agency communicates with parties and the federal labor-management community.

FLRA’s ability to achieve its mission depends on its ability to issue impartial and consistent determinations that are clearly articulated. Even *the appearance* of partiality can cause parties to lose trust in FLRA’s determinations, and ultimately, in FLRA as an institution.

<b><i>Performance Goal 1b-1: Conduct high-quality investigations and produce high-quality written work products.</i></b>	
<b>Measure 1b-1:</b> Establish and surpass case-processing quality goals.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"><li>▪ Develop and pilot use of internal tool(s) throughout the Agency to establish case-processing quality goals (e.g., quality-assessment checklist).</li><li>▪ Solicit feedback on and assess the effectiveness of pilot internal tool(s) to measure quality.</li><li>▪ Make necessary adjustments to make new internal tool(s) more effective.</li><li>▪ Formally implement use of new internal tool(s) in order to surpass established case-processing quality goals.</li><li>▪ Develop and administer internal survey(s) to assess baseline case-processing quality.</li></ul>
<b>FY 2020</b>	<ul style="list-style-type: none"><li>▪ Target areas for improvement in case-processing quality based on data gathered from internal tool(s) and survey results.</li><li>▪ Show a 10% increase in case-processing quality, as measured by surveys or other measures developed in 2019.</li></ul>

***Performance Goal 1b-2: Implement effective methods to maintain and improve the quality of FLRA investigations and written work products, including FLRA staff training and internal education resources.***

**Measure 1b-2:** Train FLRA staff and provide internal educational resources to improve the quality of investigations and written work products.

**Results**

New measure FY 2019.

**Targets**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop internal training programs and other educational tools Agency-wide in order to improve the quality of investigations and written work products (e.g., component-specific mentoring programs, Agency-wide or component-specific brown bag sessions, Agency-wide dissemination of decisions and other relevant legal opinions).</li> <li>▪ Develop and administer internal surveys or other measures to assess the effectiveness of pilot internal training programs and educational tools.</li> <li>▪ Make necessary adjustments to make them more effective.</li> <li>▪ Formally implement those internal training programs and educational tools that are deemed effective in order to improve the quality of investigations and written work products.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Target ways to improve the effectiveness of internal educational resources based on survey results.</li> <li>▪ Show a 10% increase in the effectiveness of internal educational resources, as measured by internal survey instruments or other measures developed in 2019.</li> </ul>

***Performance Goal 1b-3: Ensure external stakeholder confidence in the FLRA's abilities.***

**Measure 1b-3:** Customer perceptions about the FLRA's impartiality.

**Results**

New measure FY 2019.

**Targets**

<b>FY 2019</b>	Develop and administer an external survey(s) to assess the parties' perceptions of FLRA's impartiality.
<b>FY 2020</b>	Maintain or improve overall perceptions about FLRA's impartiality year over year.

**Strategic Goal 2: We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships.**

FLRA is specifically empowered and obligated to “provide leadership in establishing policies and guidance” related to matters arising under the Statute. 5 U.S.C. § 7105(a)(1). Educating parties regarding statutory obligations promotes FLRA’s mission of protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient Government. FLRA accomplishes this goal first through its written determinations and by providing parties with quality educational resources through FLRA’s website; by identifying, and offering targeted assistance to, parties with significant labor-management challenges; and by offering external training to Federal agencies and labor organizations regarding their rights and obligations under the Statute.

**Strategic Objective 2a: *Maintain and expand educational resources on [www.flra.gov](http://www.flra.gov).***

Offering high-quality educational resources through the FLRA website is a key component of promoting stability in the Federal labor-management community. Parties who are better informed about their rights and obligations under the Statute are less likely to pursue frivolous matters or defenses, and they are more likely to approach their labor-management relations in a manner that is consistent with the Statute.

In April 2016, FLRA launched a totally redesigned website featuring all-new substantive content, a convenient training-registration tool, a visually engaging design, simplified global navigation, and improved usability and search functions. The Agency will continue to build on this achievement by exploring ways to supplement and enhance the educational resources on its website, such as expanding parties’ access to statutory and other training, including the development of online training modules that replicate the in-person trainings that FLRA currently provides. It will also include opportunities for parties to access live statutory training sessions on the FLRA website by utilizing technology and techniques that encourage interaction with remote participants.

***Performance Goal 2a-1: Routinely review and update educational resources on the FLRA website.***

***Performance Goal 2a-2: Develop a growing library of online training modules on the FLRA website.***

***Performance Goal 2a-3: Develop and maintain case digests of new Authority decisions on the FLRA website.***

<b>Measure 2a:</b> Expand the relevancy, currency, and reach of educational tools.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Update at least 3 guides or manuals Agency-wide.</li> <li>▪ Establish a mechanism to live stream trainings online or offer pre-recorded trainings on the <a href="http://www.flra.gov">www.flra.gov</a> website.</li> <li>▪ Offer at least 5 training sessions online Agency-wide.</li> <li>▪ Provide case digests for all Authority decisions. OGC and FSIP to evaluate doing the same for their decisions.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Update at least 3 guides or manuals Agency-wide.</li> <li>▪ Offer at least 7 training sessions online Agency-wide.</li> <li>▪ Continue to provide case summaries for all Authority decisions. Provide OGC and FSIP case digests, if deemed appropriate.</li> </ul>

**Strategic Objective 2b: *Identify and offer targeted assistance to parties with significant labor-management challenges.***

In situations where parties experience labor-management challenges, targeted assistance can promote stable labor-management relationships by educating the parties regarding their statutory rights and obligations. It can also promote effective and efficient Government by assisting parties in addressing their disputes without necessarily resorting to formal filings.

Targeted assistance can take many forms, including offering training to parties on particular topics that have given rise to frequent ULP charges, negotiability disputes, or arbitration exceptions. Other types of assistance might be most appropriate for parties experiencing broader labor-management challenges. For parties involved in complex representational matters, targeted assistance can include conducting conferences with the parties to assist them in identifying and, if feasible, resolving relevant issues.

**Performance Goal 2b-1: *Identify and evaluate parties with significant labor-management challenges.***

**Performance Goal 2b-2: *Refer appropriate parties to suitable resources.***

**Performance Goal 2b-3: *Implement highly effective targeted assistance programs and associated materials.***

<b>Measure 2b:</b> Develop and implement a highly effective, totally voluntary targeted-assistance program and related procedures.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop the criteria for identifying parties with significant labor-management challenges.</li> <li>▪ Develop procedures for offering targeted assistance to identified</li> </ul>

	<p>parties or referring such parties to appropriate resources.</p> <ul style="list-style-type: none"> <li>▪ Pilot a targeted-assistance program.</li> <li>▪ Identify metrics for evaluating the program's success.</li> <li>▪ Formally implement a targeted-assistance program with appropriately ambitious measures to assess its effectiveness.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Evaluate the effectiveness of the targeted-assistance program using the metrics established in 2019.</li> <li>▪ Make necessary refinements and improvements based on customer feedback.</li> <li>▪ Increase the program's overall success as measured by the metrics established in 2019.</li> </ul>

**Strategic Objective 2c: *Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.***

Agency components have traditionally provided training on statutory principles governing ULPs, representational issues, negotiability disputes, and arbitration exceptions. Providing such external training to federal agencies and labor organizations regarding their rights and obligations under the Statute directly promotes FLRA's mission of protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient government. For this reason, it is essential that FLRA maintain and, where possible, expand these external training programs.

***Performance Goal 2c-1: Exceed an annual target number of highly rated in-person training programs for a target number of participants concerning the full range of statutory matters.***

***Performance Goal 2c-2: Find additional ways to deliver real-time and pre-recorded external trainings that have been successfully developed and implemented utilizing appropriate technology and participant-friendly best practices.***

***Performance Goal 2c-3: Exceed an annual target number of highly rated training programs for a target number of participants regarding procedures for filing and processing FLRA cases.***

Measure 2c-1: The number of <i>training, outreach, and facilitation activities</i> delivered.			
Results		Targets	
FY 2015	306	FY 2018	275
FY 2016	280		
FY 2017	273		
FY 2018	124		
Measure 2c-1: The number of <i>in-person statutory training</i> programs delivered.			
Results		Targets	
New measure FY 2019.		FY 2019	20
		FY 2020	20

**Measure 2c-2:** The number of participants involved in *training, outreach, and facilitation* activities.

Results		Targets	
<b>FY 2015</b>	8,294	<b>FY 2018</b>	7,000
<b>FY 2016</b>	8,440		
<b>FY 2017</b>	8,122		
<b>FY 2018</b>	4,289		

**Measure 2c-2:** The number of participants who receive *in-person statutory training*.

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	2,500
		<b>FY 2020</b>	2,500

**Measure 2c-3:** The percentage of participants who highly rate the statutory training that they received.

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	Develop evaluations.
		<b>FY 2020</b>	80% of participants rate the training as effective or highly effective

**Measure 2c-4:** The number of training programs delivered regarding procedures for filing and processing FLRA cases.

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	20
		<b>FY 2020</b>	25

**Measure 2c-5:** The number of participants who receive training regarding procedures for filing and processing FLRA cases.

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	2,000
		<b>FY 2020</b>	2,000

**Measure 2c-6:** The percentage of participants who highly rate the training that they received regarding procedures for filing and processing FLRA cases.

Results		Targets	
New measure FY 2019.		<b>FY 2019</b>	Develop evaluations.
		<b>FY 2020</b>	80% of participants rate the training as effective or highly effective

<b>Measure 2c-7:</b> The number of real-time and pre-recorded online training programs developed and implemented.		
<b>Results</b>	<b>Targets</b>	
New measure FY 2019.	<b>FY 2019</b>	5
	<b>FY 2020</b>	7

<b>Measure 2c-8:</b> The percentage of participants who highly rate the real-time and pre-recorded online training that they received.		
<b>Results</b>	<b>Targets</b>	
New measure FY 2019.	<b>FY 2019</b>	Develop evaluations.
	<b>FY 2020</b>	80% of participants rate the training as effective or highly effective



**Strategic Goal 3: We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the resolution of labor-relations disputes.**

FLRA honors the trust that the public has placed in it to use Agency resources wisely on behalf of the American taxpayer. Recognizing that trust, FLRA has always focused its resources on carrying out its mission. It will continue to do so.

The core of FLRA's mission is to protect rights and facilitate stable labor-management relationships. FLRA will continue to achieve that goal by employing committed, experienced professionals.

FLRA developed a cross-component working group to meet the goals articulated in Executive Order No. 13781 (March 13, 2017), *Comprehensive Plan for Reorganizing the Executive Branch*, and Office of Management and Budget (OMB) Memorandum M-17-22 (April 12, 2017), *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*. Guided by internal and external input, this working group offered FLRA leadership a set of recommendations to improve the efficiency, effectiveness, and accountability of Agency operations. FLRA expects to maximize its resources by reducing travel, training, and mail costs through the increased use of teleconferencing, utilization of in-house and interagency training, and implementation of fully electronic case files.

FLRA will continue to explore ways to manage its workforce effectively and efficiently. A key component of that commitment is to continue developing IT systems, with the goal of enabling FLRA employees to spend more time on mission-critical, substantive work. FLRA will also reexamine its performance-management systems to ensure that they align with the goals in the Strategic Plan, that individual employee standards reflect organizational goals, and that the Agency appropriately recognizes employee achievements in support of these goals. Finally, FLRA will continue to encourage employee growth, development, and innovation.

**Strategic Objective 3a: *Ensure that the FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.***

At the foundation of the Agency's 2018-2022 Strategic Plan is FLRA's renewed commitment to developing the most effective ways to evaluate Agency performance, as well as the contributions of the Agency's components and individual employees. To do this, employee performance-management targets will be adapted to support Agency goals. This will help ensure that the evaluation of FLRA employees will include consideration of how well they assist the Agency to achieve its strategic and performance goals.

***Performance Goal 3a-1: FLRA employees perceive that the Agency’s performance-management systems, and their individual performance plans, directly align with achieving this strategic plan.***

***Performance Goal 3a-2: FLRA employees have a clear understanding of how their individual achievement contributes to achievement of Agency priorities and successful implementation of FLRA strategic goals.***

***Performance Goal 3a-3: FLRA employees perceive that their performance recognition and rewards are also directly linked to their contribution to the successful achievement of FLRA’s strategic goals.***

**Measure 3a-1:** Align performance-management systems and individual performance plans with current Strategic Plan.

**Results**

New measure FY 2019.

**Targets**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Evaluate Agency performance management systems (GS and SES) and individual employee performance plans for alignment with the Strategic Plan and make recommendations to Agency leadership by the second quarter of 2019.</li> <li>▪ Consistent with that recommendation, revise and draft appropriate Agency performance management systems and individual employee performance plans and elements.</li> <li>▪ Develop communications strategies, educational tools, and other materials to successfully implement the new systems on October 1, 2019.</li> <li>▪ Develop and administer an internal survey(s) to assess whether employees perceive that performance management systems (GS and SES) and individual employee performance plans align with the Strategic Plan.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Implement all revised performance-related systems, individual employee plans, or other required policies on October 1, 2019.</li> <li>▪ Implement appropriate communications strategies and educational tools to successfully achieve the transition.</li> </ul>

<b>Measure 3a-2:</b> Employees understand how their individual performance contributes to overall Agency strategic goals.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments, to assess whether FLRA employees understand how their individual achievements contribute to Agency priorities and successful implementation of FLRA strategic goals.
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.

<b>Measure 3a-3:</b> Employees believe that there is alignment between the recognition and rewards that they receive and their individual contributions towards achieving the FLRA's strategic goals.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments, to assess whether employees believe that recognition and rewards relate to their contribution toward achievement of FLRA strategic goals.
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments the internal survey(s) year over year.

**Strategic Objective 3b:** *Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.*

FLRA's IT systems have provided, and will continue to provide, a key means by which FLRA will more effectively and efficiently deliver quality services and increase internal efficiencies. For example, the Agency has connected all FLRA offices in ways that improve internal communication, and FLRA staff works more efficiently by using a cloud-based Document Management System (DMS) that allows for simplified document management and internal collaboration.

The Agency also recently launched a new and improved version of its eFiling system that provides a more intuitive, user-friendly customer experience. This improved eFiling experience allows the parties to submit ULP, representation, arbitration, and negotiability filings in an electronic format and easily access FLRA services, which enables FLRA employees to take timely and quality actions. The Agency is currently using the same software and agile methodology to develop a more user-friendly electronic Case Management System (CMS). FLRA will integrate these three systems — document management, eFiling, and case management — to fully implement electronic case file capability throughout the Agency.

Thereafter, as resources permit, FLRA will continue to enhance and leverage these technological capabilities. For example, the logical next step after fully implementing electronic case files is to encourage the widest uses of eFiling and to serve FLRA-generated case documents on the parties electronically—saving time, human-capital resources, and postage costs.

***Performance Goal 3b-1: Implement a new and improved FLRA electronic case-management system. Integrate the case-management system with the FLRA document management and eFiling systems in order to fully implement electronic case file capability throughout the Agency.***

***Performance Goal 3b-2: FLRA employees and parties understand how to make the most effective use of the FLRA’s electronic systems.***

***Performance Goal 3b-3: Enhance the positive impact of technological advancements on the customer experience.***

**Measure 3b-1: Expand the use of eFiling.**

**Results**

<b>FY 2015</b>	17% of cases eFiled Agency-wide.
<b>FY 2016</b>	22% of cases eFiled Agency-wide.
<b>FY 2017</b>	35% of cases eFiled Agency-wide.
<b>FY 2018</b>	35% of cases eFiled Agency-wide, including an all-time high of 55% of Authority cases.

**Targets**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ 50% of cases eFiled Agency-wide.</li> <li>▪ 10% increase in eFiling in each component – the OGC, the Authority, and the FSIP.</li> <li>▪ Amend FLRA’s regulations to eliminate the use of facsimile service for case filings throughout the Agency.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ 75% of cases eFiled Agency-wide.</li> <li>▪ Pilot mandatory eFiling in at least one Regional Office.</li> </ul>

**Measure 3b-2: Implement end-to-end electronic case files.**

**Results**

<b>FY 2015</b>	Made eFiling available for OALJ cases, resulting in eFiling being available for all offices that accept case filings. Completed full integration of the CMS and eFiling systems for all components, building the infrastructure for electronic case files in all components.
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<b>FY 2016</b>	With the merger of the eFiling and CMS applications complete, and the bridge between the two systems in place to support end-to-end electronic case-processing capability, enhanced the available features for the integration of the eFiling and CMS applications. eFiled cases are routinely automatically entered into the CMS. Neared completion of an improved eFiling user interface (eFiling 2.0) to make the application more user-friendly and intuitive. Began efforts to implement a Document Management System, which is a critical step in accomplishing FLRA's multi-year electronic-case-file plan.
<b>FY 2017</b>	Deployed an Agency-wide, cloud-based DMS, which replaced the existing network shares with an integrated document and email communications system that will facilitate document sharing and electronic case-processing initiatives. Adopted a new, more cost-effective approach to achieving end-to-end electronic case files. Using agile methodology and open-source code, and responding to user feedback, completed initial development of a brand new, user-friendly eFiling application (eFiling 3.0) with a Ruby on Rails user interface and a Postgres backend database that is housed in Amazon Web Services – a cloud-based solution. The new application will be launched in 2018 once final testing and additional enhancements are completed. Began modernizing the infrastructure of the Agency's electronic CMS and eFiling by transitioning to a new cloud-based, backend product – Postgres database housed in Amazon Web Services – that will allow for a more user friendly and complete integration of the CMS, the eFiling system, and the DMS.
<b>FY 2018</b>	Developed and launched eFiling 3.0, which both internal and external users report is significantly more user-friendly and intuitive. Began development of a new and improved CMS that, over time, will provide significant (\$100,000 annually) cost savings and allow for more efficient integration of the CMS and eFiling systems with the DMS, enabling end-to-end electronic case processing throughout the Agency. Identified the basic structure of electronic case files for each component/office in the DMS. Completed transition of all major IT functions – CMS, DMS, eMail – to the cloud, which improves both IT security, consistent with the PMA, and Agency continuity of operations plans.
<b>Targets</b>	
<b>FY 2019</b>	Develop and fully implement the new and improved CMS in at least one FLRA component.
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Develop and implement the new and improved CMS in all remaining components/offices.</li> <li>▪ Implement end-to-end electronic case files throughout the Agency.</li> </ul>

<b>Measure 3b-3: Internal and external customer perceptions of the eFiling System.</b>	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop a communications strategy for sharing with internal and external customers the benefits and advantages of eFiling (e.g., notice to go out with all Authority decisions).</li> <li>▪ Develop and administer internal and external survey tools to assess customer perceptions of the eFiling System.</li> <li>▪ Develop online, pop-up eFiling surveys that appear while users are logged into the eFiling System.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Maintain or improve positive responses to internal and external survey instruments.</li> <li>▪ Adopt suggested enhancements to the eFiling System, as appropriate.</li> </ul>

<b>Measure 3b-4: Assess how internal and external customers perceive the effectiveness of the Agency's IT modernization efforts.</b>	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop and administer internal and external survey(s) to assess: (1) whether FLRA employees and customers know how to maximize available technology; and (2) how FLRA employees and customers perceive the effectiveness of the Agency's IT modernization efforts.</li> <li>▪ Develop and implement appropriate communications to promote and enhance these efforts.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Craft an effective, targeted communications strategy based on the results of the customer-satisfaction surveys.</li> <li>▪ Develop and provide any necessary internal or external training programs so that employees and customers have the tools to maximize technological improvements.</li> <li>▪ Achieve improved survey results year over year.</li> </ul>

**Strategic Objective 3c: *Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.***

FLRA's charge to uphold and administer the Statute relies on its employees. Accordingly, FLRA's success relies on the expertise and engagement of its workforce. A key component of attracting and retaining an effective workforce is creating a positive work environment in which employees see themselves as stakeholders and innovators. FLRA will continue to assess the skills and professional education/training needs of its workforce, and it will seek new, cost-effective ways to cultivate employee development and commitment. FLRA will provide opportunities for experienced employees to share their institutional knowledge by providing internal training and through other means. FLRA's continued focus on human-capital

development will help ensure continued mission accomplishment and leadership of the federal-sector labor-management relations program.

***Performance Goal 3c-1: Internal and external survey respondents perceive that diverse and respected FLRA employees demonstrate expertise in federal-sector labor-management relations; minimal gaps exist in succession plans; and the Agency develops nontraditional resources for employee education and development.***

***Performance Goal 3c-2: The FLRA workforce expresses a stable and improving level of overall job satisfaction, as well as satisfaction with the manner in which internal problem-solving occurs.***

***Performance Goal 3c-3: FLRA managers and employees perceive that the Agency appropriately uses telework and technology to promote employee efficiency and a healthy work-life balance.***

**Measure 3c-1: Demonstrate strong recruitment and retention practices.**

New measure FY 2016.

**Results**

<b>FY 2016</b>	<ul style="list-style-type: none"> <li>▪ Implemented a process for sharing job announcements with relevant affinity groups. Used data to help identify and eliminate barriers to recruiting and hiring the diverse talent that it needs.</li> <li>▪ Revised all manager performance plans to include Government-mandated diversity-and-inclusion-focused metrics.</li> <li>▪ Received the #1 small-agency ranking on the “New IQ” Index, which provides insights into employee perceptions of the inclusiveness of the agency by looking at twenty questions that measure the five “Habits of Inclusion.”</li> <li>▪ Ranked #2 out of 28 small agencies in its support for diversity in the 2015 <i>Best Places to Work in the Federal Government</i> rankings.</li> </ul>
<b>FY 2017</b>	<ul style="list-style-type: none"> <li>▪ Aligned the Agency-wide Performance Year (previously July 1 – June 30) with the Fiscal Year, directly linking individual performance to the Agency’s overall strategic and performance goals.</li> <li>▪ Conducted an Agency-wide review of all Agency electronic Official Personnel Folders (eOPFs) to ensure accuracy of retirement system coverage, service computation dates, and missing or undocumented prior service.</li> <li>▪ Conducted an Agency-wide review of every position description (PD) to ensure that all PDs and cover sheets reflect actual duties.</li> </ul>

<b>FY 2018</b>	<ul style="list-style-type: none"> <li>Completed implementation of all necessary changes/corrections identified during the Agency-wide eOPF and PD reviews.</li> <li>Implemented standard operating procedures for maintaining accurate eOPFs for all FLRA staff in order to support the provision of excellent customer service.</li> <li>Continued to conduct “need-to-fill” evaluations before filling any vacant positions, consistent with Executive Order 13781 and M-17-22.</li> <li>Continued to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that FLRA needs.</li> <li>Completed all required security-background investigations for new hires and investigations/re-investigations for existing employees – 45 adjudications since January 2017. Clarified the circumstances under which a new background check should be conducted. Ensured that all employees were HSPD-12 compliant.</li> <li>Began a comprehensive review and revision, as appropriate, of all internal Agency policies in order to ensure that they are up to date, necessary, and consistent with law and regulation.</li> </ul>
Discontinued measure FY 2019.	

<b>Measure 3c-1: Recruit, retain, and develop a diverse, respected workforce.</b>	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Review Agency performance-management systems and individual performance plans to ensure that they align directly with the 2018-2022 Strategic Plan, and implement any required changes by October 1, 2019.</li> <li>Conduct a comprehensive, Agency-wide position classification review to confirm that all Agency positions reflect the actual duties of the position.</li> <li>Assess time-to-hire results for Agency positions by reviewing recruitment and staffing processes and procedures.</li> <li>Issue a revised Reasonable Accommodation Policy – including Personal Assistive Device policy – that is fully compliant with recent EEOC regulatory amendments and guidance.</li> <li>Ensure compliance with Government-wide goals for Schedule A hiring.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Evaluate results of position-classification review and determine action items.</li> <li>Improve time-to-hire metrics based on results of FY 2019 assessment.</li> <li>Meet or exceed Government-wide standards for diversity and Schedule A hiring.</li> </ul>



<b>Measure 3c-2: Maintain and grow Agency expertise through employee development.</b>	
New measure FY 2016.	
<b>Results</b>	
<b>FY 2016</b>	<ul style="list-style-type: none"> <li>▪ Implemented cross-component developmental opportunities for employees, including workgroups to encourage innovation, the development and delivery of training, and more than ten detail opportunities at all levels and offices within the agency.</li> <li>▪ Provided leadership-training opportunities to all new managers and supervisors, including executive-level training, as appropriate.</li> <li>▪ Continued overall success as measured by the FEVS, including #1 small-agency ranking in Employee Engagement and New IQ indices. Increased 2016 positive ratings in 19 items from 2015. Results show 66 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). Scored above the Government-wide average in 69 out of 71 questions. Maintained sustained growth of positive responses to the question “supervisors in my work unit support employee development” – increasing by nearly 9.5 percent over 2015.</li> </ul>
<b>FY 2017</b>	<ul style="list-style-type: none"> <li>▪ Managers assessed employees’ developmental needs and provided at least one targeted developmental opportunity to each, many of those in-house (e.g., details, workgroups, and special projects).</li> <li>▪ In the 2017 FEVS, had 55 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). Continued to rank in the top ten among small agencies (those with 100-999 employees) in two important indices – Employee Engagement and New IQ – with #6 and #5 rankings, respectively.</li> <li>▪ 78 percent of FLRA employees responded positively to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47), which is 5 percent above the small-agency score of 73 percent, and 10 percent above the Government-wide score of 68 percent.</li> </ul>
<b>FY 2018</b>	<ul style="list-style-type: none"> <li>▪ Offered cross-component details to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency’s mission and operations.</li> <li>▪ Managers assessed annually employees on their developmental needs and provided appropriate training and developmental opportunities.</li> <li>▪ Maintained sustained growth of positive responses to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47).</li> </ul>

<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop and implement use of nontraditional resources for employee education and development (e.g., component-specific mentoring programs, Agency-wide or component-specific brown bag sessions, Agency-wide dissemination of decisions and other relevant legal opinions).</li> <li>▪ Develop and administer survey(s) to solicit feedback on and assess the effectiveness of nontraditional resources for employee education and development.</li> <li>▪ Maintain sustained growth of satisfaction.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Enhance and continue to use those nontraditional resources for employee education and development that were found to be most successful.</li> <li>▪ Show a 10% increase in satisfaction with nontraditional methods, as measured by surveys or other measures developed in 2019.</li> </ul>

**Measure 3c-3: Internal and external perceptions about the workforce.**

<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop and administer an <i>internal</i> survey(s), or use existing survey instruments, to assess whether employees believe that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations</li> <li>▪ Develop and administer an <i>external</i> survey(s) to assess whether external respondents perceive that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations.</li> </ul>
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.

**Measure 3c-4: Internal perceptions about succession plans.**

<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments, to assess whether employees believe that minimal gaps exist in succession planning.
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.

<b>Measure 3c-5:</b> Overall employee job satisfaction.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments to assess whether employees believe that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations.
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.

<b>Measure 3c-6:</b> Internal satisfaction with the manner in which internal problem-solving occurs.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments, to assess employee satisfaction with internal problem-solving practices.
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.

<b>Measure 3c-7:</b> Internal perceptions about use of technology to promote employee efficiency and work-life balance.	
<b>Results</b>	
New measure FY 2019.	
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments, to assess internal perceptions about the use of technology to promote efficiency and work-life balance.
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.



**U.S. FEDERAL LABOR RELATIONS AUTHORITY**  
**1400 K Street, N.W.**  
**Washington, DC 20424**  
**[www.flra.gov](http://www.flra.gov)**



*Promoting and protecting labor-management relations for effective, efficient government.*

**FINAL**

**U.S. FEDERAL LABOR RELATIONS AUTHORITY**

**CONGRESSIONAL BUDGET JUSTIFICATION**

Decisions of the  
FEDERAL  
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RELATIONS  
AUTHORITY

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**UNITED STATES  
FEDERAL LABOR RELATIONS AUTHORITY**



**Congressional Budget Justification  
Fiscal Year 2021**



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## Table of Contents

<b>U.S. FEDERAL LABOR RELATIONS AUTHORITY</b> .....	1
BACKGROUND AND MISSION .....	1
ORGANIZATIONAL STRUCTURE .....	2
<i>Authority</i> .....	3
<i>The Office of the General Counsel</i> .....	3
<i>The Federal Service Impasses Panel</i> .....	4
AGENCY TRENDS AND CHALLENGES .....	4
<i>Authority</i> .....	5
<i>Office of the General Counsel</i> .....	7
<i>Federal Service Impasses Panel</i> .....	7
<i>Improving the Customer Experience</i> .....	8
<i>Executive Branch Reform</i> .....	9
<i>People: Developing a Workforce for the 21<sup>st</sup> Century</i> .....	10
<i>IT Modernization</i> .....	11
<b>BUDGET JUSTIFICATION</b> .....	13
APPROPRIATIONS LANGUAGE.....	13
2021 FUNDING REQUEST .....	13
CHANGE FROM 2020.....	14
PROGRAM AND FINANCING SCHEDULE.....	15
OBJECT CLASSIFICATION SCHEDULE.....	16
EMPLOYMENT SUMMARY SCHEDULE .....	16
AWARDS DATA SCHEDULE .....	17
INSPECTOR GENERAL RESOURCES .....	17
<b>ANNUAL PERFORMANCE PLAN</b> .....	20
STRATEGIC AND PERFORMANCE-PLANNING FRAMEWORK.....	20
<i>FLRA Strategic Goals, Objectives and Measures</i> .....	21

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# U.S. FEDERAL LABOR RELATIONS AUTHORITY

## BACKGROUND AND MISSION

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The Federal Labor Relations Authority (FLRA or the Agency) is an independent administrative Federal agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The purpose of the Statute is to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures that are designed to meet the special requirements and needs of the Government. *Id.* § 7101(b). The provisions of the Statute are to be interpreted in a manner consistent with the requirement of an effective and efficient Government. *Id.*

Consistent with its statutory mandate, FLRA's mission is: *Protecting rights and facilitating stable relationships among Federal agencies, labor organizations, and employees while advancing an effective and efficient Government through the administration of the Statute.*

FLRA applies its Federal-sector expertise to execute its mission primarily by carrying out the following statutory responsibilities:

1. Conduct hearings and resolve complaints of unfair labor practices (ULPs) under § 7118 of the Statute. *Id.* § 7105(a)(2)(G). FLRA is responsible for investigating, prosecuting, and adjudicating claims that an agency or a labor organization has failed to uphold its legal obligations under the Statute.
2. Determine the appropriateness of units for labor-organization representation under the Statute, and supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees in an appropriate unit. *Id.* § 7105(a)(2)(A). FLRA also resolves disputes about which employees may be included in bargaining units under the Statute. *Id.* § 7105(a)(2)(B).
3. Resolve exceptions to grievance-arbitration awards under § 7122 of the Statute. *Id.* § 7105(a)(2)(H). FLRA adjudicates appeals – known as exceptions – to arbitration awards that result from grievances filed by employees, labor organizations, or agencies under parties' negotiated grievance procedures. The FLRA reviews those awards to assess whether they are contrary to any law, rule, or regulation, or are deficient on other grounds similar to those applied by federal courts in private-sector labor-management disputes.
4. Resolve issues relating to the duty to bargain in good faith under § 7117(c) of the Statute. *Id.* § 7105(a)(2)(E). FLRA resolves negotiability disputes that arise during bargaining under two circumstances – when an agency claims that a contract proposal is outside the duty to bargain and when an agency head disapproves a negotiated agreement claiming that it contains provisions that are contrary to law, rule, or regulation.

5. Provide assistance in resolving negotiation impasses between federal agencies and exclusive representatives. *Id.* § 7119.

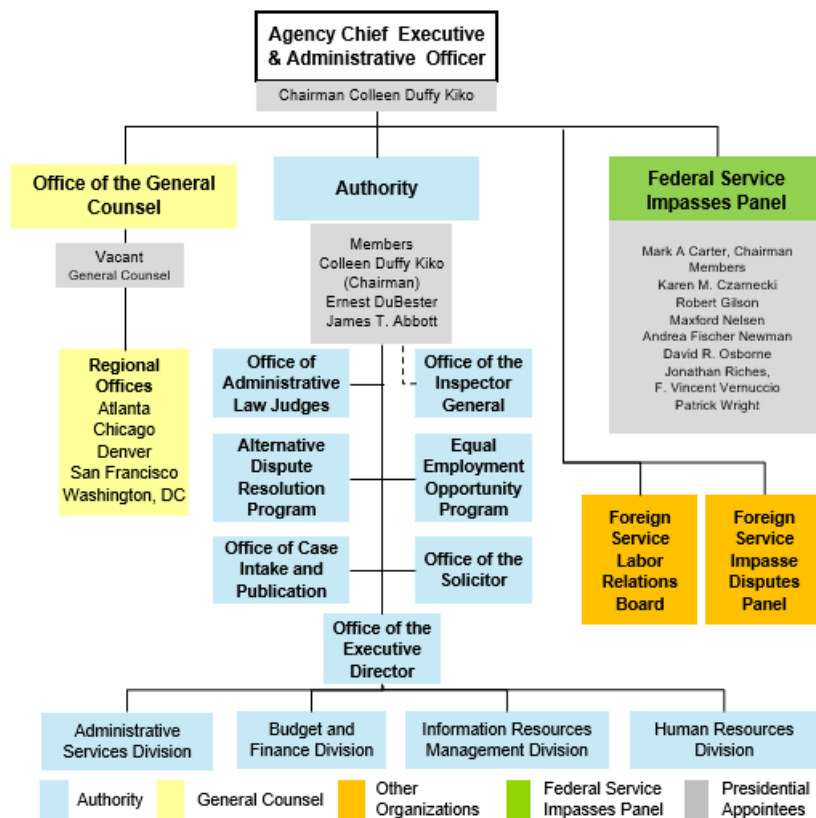
In addition, Congress directed FLRA to prescribe criteria and resolve issues relating to the granting of national consultation rights under § 7113 of the Statute; prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under § 7117(b) of the Statute; prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under § 7117(d) of the Statute; and take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute.

Moreover, FLRA is to “provide leadership in establishing policies and guidance” related to matters under the Statute. *Id.* § 7105(a)(1). FLRA satisfies this directive primarily through its written determinations, but also by offering training and other services.

## ORGANIZATIONAL STRUCTURE

Headquartered in Washington, D.C., FLRA has three independent statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (the FSIP or the Panel) – each with unique adjudicative or prosecutorial roles.

The Agency also provides full program and staff support to two other organizations – the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, pursuant to the Foreign Service Act of 1980, 22 U.S.C. §§ 4101-4118.



## ***Authority***

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### ***Chief Executive and Administrative Officer***

The President of the United States designates one Member as Chairman who serves as FLRA's chief executive and administrative officer. 5 U.S.C. § 7104(b).

### ***The Authority***

The Authority – FLRA's adjudicatory body – is led by three full-time, presidentially nominated and Senate-confirmed Members who are appointed to fixed, staggered five-year terms.

The Authority is responsible for adjudicating ULP complaints, ruling on exceptions to arbitrators' awards, resolving disputes over the negotiability of collective-bargaining proposals and provisions, and deciding applications for review of Regional Directors' decisions in representation disputes. The Authority Members appoint Administrative Law Judges (ALJs) to hear and prepare recommended decisions that may be appealed to the Authority in cases involving ULP complaints.

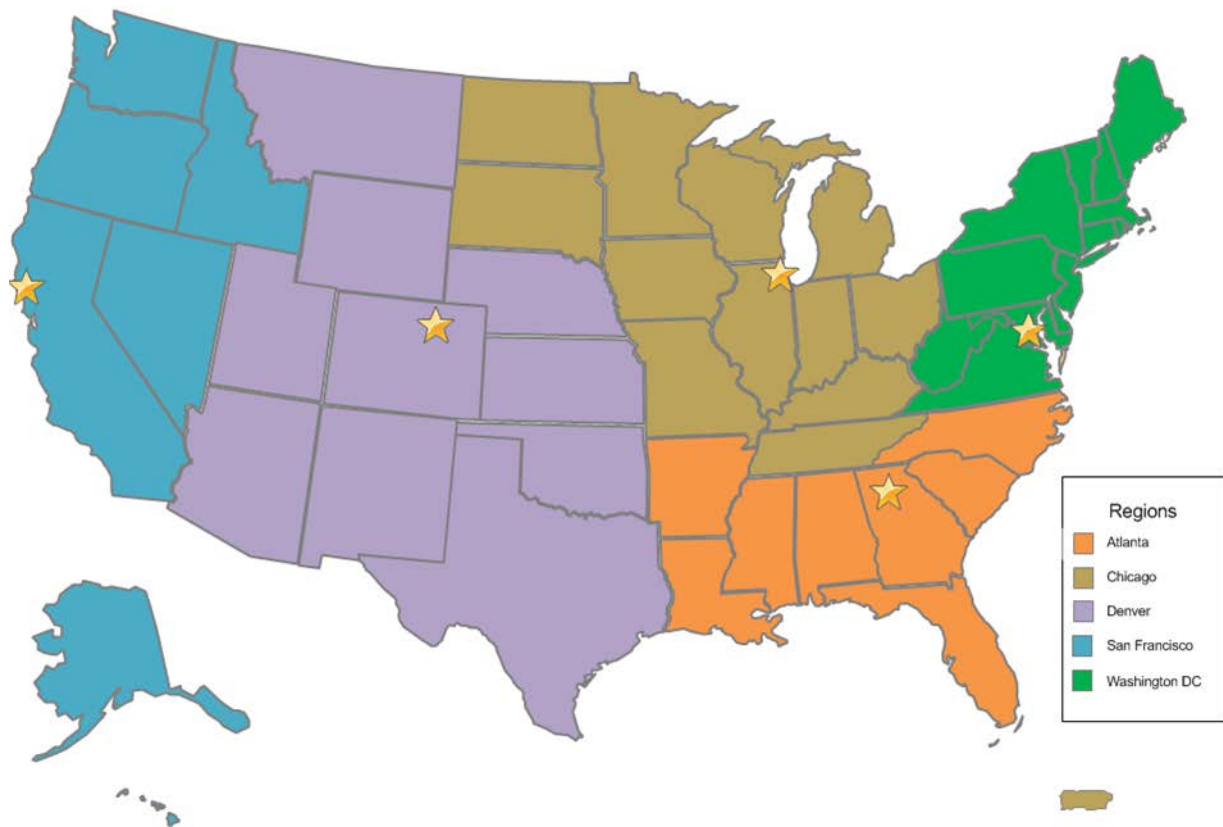
Other offices and programs under the jurisdiction of the Authority include the Office of the Solicitor, the Office of Administrative Law Judges (OALJ), the Office of Case Intake and Publication (CIP), the Alternative Dispute Resolution Program, and the Equal Employment Opportunity Program. Standing as an independent entity within the Authority is the Office of Inspector General.

### ***The Office of the General Counsel***

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The Office of the General Counsel (OGC) is led by a presidentially appointed and Senate-confirmed General Counsel who has direct authority over, and responsibility for, all employees in the OGC, including those in FLRA's Regional Offices. The OGC investigates and resolves ULP charges, files and prosecutes ULP complaints, and provides training, as appropriate. In addition, through delegation by the Authority, the Regional Offices investigate and resolve representation cases and conduct secret-ballot elections.

The General Counsel has a small staff at FLRA Headquarters, located in Washington, D.C. Headquarters management provides administrative oversight; develops policies, guidance, procedures, and manuals that provide programmatic direction for the Regional Offices and training and education for the parties; and processes appeals from the Regional Offices' dismissals of ULP charges. Each Regional Office is headed by a Regional Director who provides leadership and management expertise for their respective regions. There are five Regional Offices in Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C.



### ***The Federal Service Impasses Panel***

The FSIP is composed of part-time Presidential appointees who are appointed to fixed, staggered five-year terms. The FSIP provides assistance in resolving negotiation impasses between Federal agencies and labor organizations representing Federal employees that arise from collective-bargaining negotiations under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.

### **AGENCY TRENDS AND CHALLENGES**

FLRA is requesting funding to fully support an FTE level of 119 for 2021. In 2019, FLRA carefully reexamined its organizational structure and size to prepare for the reduction in the budget for 2020, focusing on the cost of FTEs. FLRA calculations resulted in the need to reduce in 2020 the requested and authorized 2019 staffing level from 125 to 115 to meet the five-percent reduction implemented. Based on experience in 2019, FLRA has determined that the cut was detrimental to the Authority's overall case production and Agency wide customer engagement efforts. Thus, this request returns one attorney FTE for each of the three Authority members. In addition, the Inspector General (IG) has requested an additional staff member to provide mandated legal services to the IG in accordance with the IG Act. For 2021, given this staff level and recent pay increase, as well as the need to institute a more robust awards and recognition program mandated by Office of Management and Budget (OMB) Guidance, FLRA has calculated how much it will cost to pay and maintain 119 FTEs. This request provides a budget to support that number.

The funding increase will also support the steady and efficient progress FLRA has been making in completing an electronic case filing system, which will provide for better

service delivery to its customers, stakeholders, and the public. Adequate funding is needed to complete the Case Management System development for two components, as well as to connect the Case Management System and the Agency Document Management System, resulting in a fully electronic case file. Funding will be needed to address converting legacy (paper) documents to electronic format - to include converting oversized documents as part of the electronic case file. Receiving the requested funding increase will ensure that the Agency meets the requirement for electronic records by December 31, 2022 as directed by OMB. 2021 will be a critical time for the IT security program and other integral IT programs as FLRA begins to tie them together and bring them into full production.

To be an effective partner in achieving the President's vision of Strengthening the Federal Workforce, FLRA itself needs a first-in-class workforce. Consistent with the PMA, FLRA seeks to build an agile organization to quickly respond and align to changing mission needs, innovations, and technological advancements. FLRA is committed to recruiting, rewarding, and retaining a diverse and well-respected workforce and, to help achieve this goal, intends to institute an Agency Workforce Fund Plan as required by OMB and OPM Guidance, M-19-24 (July 12, 2019). (*see infra* p. 12)

As discussed in more detail below, FLRA is a high performing Agency. Under its 2018-2022 Strategic Plan, FLRA will continue to achieve strong mission-related results, while focusing on more customer-friendly time targets and educational resources, IT modernization, and human-capital initiatives.

Nonetheless, the Agency faces external challenges that are beyond its control, such as vacancies in political leadership, staffing fluctuations, and budget uncertainty. For example, FLRA has been without a presidentially appointed, Senate-confirmed General Counsel since January 20, 2017. In the absence of a General Counsel, the Regional Offices may investigate ULP charges and dismiss those found to lack merit, but they cannot issue ULP complaints when the Regional Director recommends that a complaint be issued. This is because the text of the Statute makes clear that issuance of a complaint is a power reserved exclusively to the General Counsel's discretion. 5 U.S.C. §§ 7104(f)(2)(B), 7118(a)(1). In addition, only the General Counsel can decide appeals of a Regional Director's dismissal of a ULP charge.

The General Counsel position is subject to the Federal Vacancies Reform Act (Vacancies Act), so, upon the resignation of the then-General Counsel, the career Deputy General Counsel automatically became the Acting General Counsel on January 20, 2017. He served as Acting General Counsel until November 16, 2017, the statutory maximum under the Vacancies Act absent a General Counsel nominee. Since that date, no ULP complaints or ULP appeal decisions have issued. As of September 30, 2019, there are 298 ULP-complaint recommendations and approximately 326 appeals awaiting review by a new General Counsel.

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### ***Authority***

The Authority has experienced significant staffing shortages in 2019 that have hampered its case processing speed. Between August 2018 and June 2019, the Member offices lost eleven attorneys, which constituted 61 percent of the attorneys at that time. Although the Authority has recently filled many of those vacancies, the intervening period of understaffing dramatically affected the Authority's case processing abilities. At the end



of 2018, the Authority was averaging almost 12 merits decisions per month. However, as a result of staff loss, the Authority averaged 8 merits decisions per month in 2019. Staffing shortages have also resulted in an accumulating backlog of pending cases, and the Authority focused its efforts on issuing the oldest cases in its inventory. However, without a full staff, making significant progress has been challenging, as the backlog of negotiability and arbitration cases is growing faster than the cases are being issued. The Authority began 2019 with a pending inventory of 111 cases, but ended the year with an inventory of approximately 136 cases.

Although its new case-processing performance measures provide the Authority with ambitious time targets and the parties with more meaningful information regarding case-processing timelines, the significant staffing shortages discussed above have resulted in the Authority failing to meet some of its targeted goals. The Authority met its 210-day target in 37 percent (32/87) of arbitration cases and met its 300-day target in 75 percent (6/8) of ULP cases and 83 percent (30/36) of negotiability cases. Because the Authority made a concerted effort to clear most of its oldest cases by the end of 2019, its performance in these measures reflects that it is issuing some of the oldest cases in the Authority's inventory. For example, the Authority met its outer 365-day target in 92 percent (33/36) of negotiability cases, 88 percent (7/8) of ULP cases, and 84 percent (73/87) of arbitration cases. Further, the Authority continues to meet the statutory requirement to determine whether to grant review in 100 percent of representation cases within 60 days of filing of an application for review from a Regional Director's determination. Where the Authority has granted applications for review, it met its 210-day target in 75 percent (6/8) of cases and its outer 365-day target in 88 percent (7/8) of cases.

The Authority is also committed to decreasing its "average ages" of closed cases within each case type. The Authority set 2019 targets to reduce the average age in each case type by 5 percent. However, this target is in tension with the Authority's focus on issuing the oldest cases in its inventory. Accordingly, the Authority did not hit the 5 percent reduction in average age for any of its four case types. But by issuing many of its oldest cases by the end of 2019, the Authority is positioning itself to improve its performance under 2020 case-processing timeliness measures.

The OALJ – also part of the Authority – met or substantially met all of its performance goals in 2019. Due to the continuing lack of a Presidentially nominated and Senate-confirmed General Counsel, the OALJ completed all of its remaining ULP cases and continued performing work for other agencies on a reimbursable basis through the ALJ Loan Program. In addition, due to attrition and reduction of staff of the Authority, the OALJ continued drafting decisions in accordance with regulations to assist the Authority with matters other than ULP cases.

The Office of the Solicitor represents FLRA in court proceedings before all U.S. courts, including the U.S. Supreme Court, the U.S. Courts of Appeals, and the Federal District Courts. During 2019, the Solicitor's Office litigated numerous cases in the federal courts, filed briefs supporting Authority decisions, and presented oral argument before panels of circuit court judges. After receiving decisions from the courts of appeals, the Solicitor's Office provided timely and thoughtful advice to the Authority concerning the courts' orders. As the Authority issued many of its pending cases in 2018, the Solicitor's Office experienced increasing caseloads in 2019, which is expected to continue in 2020 and 2021 as parties seek review of adverse Authority decisions in the courts of appeals under 5

U.S.C. § 7123(a). The Solicitor also serves as FLRA's in-house counsel, providing legal advice to FLRA components on all facets of government operations, including ethics, FOIA, privacy, human resources, fiscal law, and the Administrative Procedure Act. It met all reporting and substantive deadlines under those authorities.

### ***Office of the General Counsel***

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Despite not having a General Counsel or Acting General Counsel since November 17, 2017, the OGC continued to investigate cases and deliver strong results. It met its strategic performance measures for the timely resolution of ULP and representation cases, having resolved, 88 percent (1,867/2,134) of ULP cases within 120 days of the filing date, and 77 percent (205/266) of representation cases within 120 days of filing. Of those ULP cases resolved in 2019, the OGC resolved over 360 of them through voluntary settlement during the investigative process.

In both 2018 and 2019, the OGC continued to experience a downward trend in its ULP intake. From 2018 to 2019, ULP intake declined by 22 percent (or 625 cases).

The Agency bases this request on an assumption that a new General Counsel will be nominated and confirmed in 2020. Having OGC political leadership in place will restore the OGC's ability to carry out its full mission and allow it to be successful in further meeting its 2020 and 2021 performance goals while eliminating the backlog of cases pending GC action.

### ***Federal Service Impasses Panel***

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FSIP has exceeded most of its timeliness measures for assisting parties in resolving their negotiation impasses. Specifically, in most cases, it issued its decision to decline jurisdiction on cases not appropriately before the Panel within 140 days of the date that the parties filed their request for assistance in 90 percent (10/11) of cases. It assisted the parties in achieving voluntary settlement within 160 days of the date that the parties filed their requests for assistance in 100 percent (15/15) of cases. And it issued its final order within 200 days of the date that the parties filed their request for assistance in 100 percent (21/21) of cases.

Although in previous years, the Panel has received an average of 140 requests for assistance per year (averaging close to 11 new filings per month), In 2017, the Panel received 97 filings (an average of 8 new filings per month), 92 filings in 2018 (an average of 8 new filings per month), and 77 filings in 2019 (an average of 6 new filings per month).

This downward trend is expected to continue. While the number of cases filed has decreased, the issues involved in the impasses have become more complex. Following the Administration's May 2018 issuance of Executive Orders 13836, 13837, and 13839, the FSIP began to receive more impasses over ground rules for successor collective-bargaining agreements and successor collective-bargaining agreements. These cases tend to be substantively more complex than single issue impact and implementation changes (e.g., changes in a personnel policy) and, the parties tend to be more entrenched in their positions and less willing to settle the impasse, resulting in the need for the Panel to issue final orders to resolve the impasse. In 2017, the Panel issued a final order on parties in 12 cases (which was 10% of the cases filed with the Panel). In 2019, the number of cases

where the Panel issued a final decision was 24, approximately 31 percent of the cases filed that year.

### ***Improving the Customer Experience***

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FLRA speaks first through its decisions. Consistent with the PMA, the Agency will emphasize Improving the Customer Experience by providing more meaningful information to parties about case-processing timelines. For example, starting in 2019, the Authority is measuring case age starting from the date that the case is filed until the date that a decision is issued. In addition, the Agency began reporting “average ages” of closed cases within all FLRA components and offices, which will provide the parties with the average amount of time that it takes to process each case type. Making all of this information available to the parties will help them reach better, more informed decisions regarding their litigation options. It also provides them with more realistic expectations around case processing.

FLRA also provides valuable education and training tools to the Federal labor-management-relations community in all aspects of its case law and processes. Providing meaningful and clear guidance on statutory rights and responsibilities so that its customers are knowledgeable furthers timely and efficient case processing and is an important function of FLRA under the Statute. FLRA delivers its educational materials through a variety of means, such as: in-person training sessions; web-based training modules; and case outlines, manuals, and subject-matter guides that are easily accessible on [www.flra.gov](http://www.flra.gov).

In 2019, FLRA, as a whole, provided 95 training sessions to over 3,000 participants. The Authority, the OGC, and the FSIP also provided in-person case-law updates and training at several nationwide, annual conferences. These sessions included presentations of newly prepared materials of current relevance, as well as updated materials for more standard sessions. The OGC consistently provided statutory training courses across the country.

However, these numbers are significantly lower than in prior years. For example, in 2016 and 2017, FLRA conducted 280 and 273 training, outreach, and facilitation activities, respectively. In 2018, FLRA conducted only 124. Due to staffing challenges, the Authority limited its external training offerings in 2019 to ensure that all available staff was working to process cases. Similarly, the number of participants reached through these activities has decreased from over 8,000 in 2015 through 2017 to 4,289 in 2018 and 4,807 in 2019. In 2021, FLRA plans to increase customer engagement by, among other things, offering more training sessions to parties appearing before the Authority and reaching more participants through newly-developed online training and greater use of social media.

As stated, the Authority educates the parties, primarily, through its issued decisions, particularly those on previously unaddressed legal issues. To that end, many of the trainings that it provided in 2019 were “Case Law Updates.” The Authority has also focused on providing training on topics where the case law has been changing. For example, the Authority presented training on management rights and arbitrability. During 2019, the Authority began publishing case-summary “digests” to provide additional, easy-to-understand guidance to its customers.

In addition, due to budget uncertainty in 2019, the OGC scaled back its provision of training that required FLRA-funded travel. Consistent with the 2018-2022 Strategic Plan, the FLRA is developing creative ways to provide educational material in new, innovative, and more cost-effective ways that allow for wider reach and less travel. In 2020 and 2021, FLRA will develop training videos that anyone can easily access from the Agency website. FLRA is also exploring options to live stream training sessions. Moreover, the Authority and the OGC will continue to update online educational tools, including guides and manuals.

In order to serve its customers and fulfill its statutory obligation to expedite negotiability appeals to the extent practicable, the Authority signed a memorandum of understanding (MOU) with the Federal Mediation and Conciliation Service (FMCS) creating a new pilot procedure to offer alternative dispute resolution opportunities at no cost to the parties for resolving negotiability appeals. Under its terms, FMCS is developing a unique cadre of mediators, some of whom have already received specialized training from the Authority, to assist the parties through mediation. Under the pilot program, before a negotiability appeal is considered by the Authority's Members for a decision, the Authority may refer such appeals to FMCS, either on the Authority's own initiative or based upon a request from the parties. The negotiability-appeal-mediation procedure is expected to take between 30 and 60 days.

In addition, as described in detail below, FLRA's eFiling efforts are focused on improving the customer experience and allowing both filers and the Agency to improve efficiency through paperless automation.

### ***Executive Branch Reform***

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Executive Order 13781, [\*Comprehensive Plan for Reorganizing the Executive Branch\*](#), (March 13, 2017) and OMB Memorandum M-17-22, [\*Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce\*](#), (April 12, 2017), provided the Agency with an opportunity to take a close look at its structure and operations, and to implement solutions for streamlining and reducing costs across FLRA. It developed reform proposals and a long-term workforce plan focused on improving the Agency's efficiency, effectiveness, and accountability. Based on regional workload, flat budgets, increasing rental costs, and the availability of technology to improve operational efficiency, on February 12, 2018, the Agency announced that it would consolidate from seven to five regional offices, resulting in closure of the Agency's Dallas and Boston Regional Offices. The Dallas Regional Office closed on September 30, 2018, followed by the Boston Regional Office on November 30, 2018.

Other recent reform efforts included sustaining the 25 percent across-the-board reduction in the Agency-wide travel and agency-wide internal, employee-development training from 2017 through 2020. However, travel costs will increase for hearings once a GC is onboard. In addition, in 2021, additional costs are expected for professional development for FLRA staff and providing specific targeted statutory training to parties.

With respect to employee-development training, despite budgetary limitations, FLRA has worked to provide its employees with relevant, mission-related training and to better identify training needs. For example, the Agency has implemented individual employee development plans for all staff, and the Agency has instituted informal "lunch and learns" on topics such as case law updates, FSIP, and OALJ.

FLRA has also committed to other administrative efforts to reduce costs. Where appropriate, the Agency will continue to tap existing Government-wide shared-services solutions, like those that it already uses for payroll, financial services, and travel. It will continue to seek out and utilize existing Government-wide procurement solutions and contracting flexibilities. These include using a General Services Administration (GSA)-approved vendor that the Agency otherwise would not have found for its eFiling and Case Management projects, and piggybacking on the Library of Congress's FEDLINK contracting tool to procure Westlaw legal research services more easily.

### ***People: Developing a Workforce for the 21<sup>st</sup> Century***

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The mission accomplishments cited above are particularly noteworthy because, in 2019, FLRA has operated with as many as 16 vacant positions.

Guided by its new strategic plan, in 2019, FLRA began its review of Agency performance-management systems (both General Schedule and Senior Executive Service) and individual employee performance plans to ensure that they directly align with the new 2018-2022 Strategic Plan. Revised performance standards will be implemented as part of a one-year pilot at the beginning of 2020.

In support of these efforts to improve performance management, the Agency is currently working with the Office of Personnel Management's (OPM) to implement the USA Performance automated performance-management system in 2020. Automating the performance-management process using a tool that is compliant with all Federal performance-management regulations and OPM recommendations will assist Agency managers – and the Agency as a whole – in increasing performance accountability.

OPM's Federal Employee Viewpoint Survey (FEVS) provides employees an opportunity to influence change by submitting feedback about their work environment, agency leadership, and other important factors affecting morale and employee satisfaction. In 2018, the FLRA FEVS responses declined for certain measures as compared with prior years. Specifically, FLRA employees identified areas for improvement involving training, the mission of the Agency, communication, innovation, management, and leadership.

In response to the 2018 FEVS feedback, the Agency has enhanced its efforts to actively engage employees at all levels in Agency processes and to seek their opinions. For example, building on the Agency's efforts in 2018 to develop an employee-driven 2018-2022 Strategic Plan, FLRA launched several internal Strategic Plan Implementation Teams, which have operated throughout 2019. The teams, each of which includes both managers and non-managers, are:

- (1) Professional Development Team
- (2) Performance Communication Team
- (3) Customer Engagement Team
- (4) Digests Team
- (5) Employee Engagement Team

The teams have focused on a variety of issues including revisions to performance plans for mission critical positions, improving customer engagement, and improving professional development within the Agency. These employee-led teams have recommended, for

example, new performance standards for the majority of positions in the Agency, completion of individual development plans by employees to identify their training needs, and recently recorded video presentation of educational material to be made available on the FLRA website. Many of the teams' recommendations have been accepted and will be implemented in 2020. Further, the teams have engaged in discussions with leadership on how best to allocate limited training dollars for the agency. This process has allowed employees to be engaged in the stewardship of the Agency and to offer innovative and creative solutions to problems they see in the workplace or its processes.

Consistent with OMB policy, FLRA has prepared a Workforce Fund Plan to guide the award program in 2020 and will develop the plan further in 2020. For fiscal year 2021, as directed by OMB, the Agency will increase award funding by 1 percent of non-SES/SL/ST salary spending. To ensure that the Workforce Fund Plan sets forth a comprehensive strategy to develop and foster a culture of recognition, both formal and informal, FLRA will review and update the plan in 2020 for use in 2021. As part of this review, FLRA will: identify the projected awards spending level, as a dollar amount, by component; align with agency strategic goals and support organizational values; address how FLRA will strategically spend the determined amount consistent with its broader recognition plan; explain how the strategic spending plan will result in improved outcomes and organizational performance; explain how FLRA evaluated and adjusted, as appropriate, the balance between rating-based awards and individual contribution awards; ensure use of an evidence-based approach to support issuing awards and the amount; and define how FLRA will determine the effectiveness of awards and recognition programs and the measures used to evaluate effectiveness.

### ***IT Modernization***

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FLRA is continuing its ongoing efforts to expand its IT capabilities to enhance mission performance by improving the quality and effectiveness of its internal- and external-customer-facing services – including increased use of cloud-based solutions, improving its IT security program, and developing innovative means for enhancing employees' ability to work remotely. The Agency also continues to improve its overall efficiency, as well as the customer-service experience, by engaging in new and innovative ways to conduct business, such as through electronic case filing (eFiling). In addition, the Agency has strategically emphasized IT modernization by implementing realistic and attainable equipment lifecycles.

In 2019, FLRA continued to execute its multi-year, four-phase plan to achieve its long-term goal of implementing end-to-end electronic case files throughout the Agency and complying with OMB mandates.

1. Phase 1 was implementation of upgraded eFiling 3.0. Addressing customer feedback, and after refining its approach, the Agency launched a more user-friendly and intuitive user interface that is built on a new, cloud-based technical platform that will better support the Agency's long-term needs. This was completed in 2018.
2. Phase 2 is to provide a similar, more user-friendly and intuitive user interface for the Agency's internal electronic Case Management System (CMS). Phase 2 also includes implementation of an Agency-wide Document Management System (DMS) – an electronic, cloud-based “filing cabinet” that provides a framework for

organizing digital and paper documents. The DMS also provides the necessary storage capacity and IT platform for the eventual integration of eFiling, CMS, and DMS. The Agency has already implemented the DMS, and in 2019 initiated the first pilot of the CMS with the Authority office. The Agency expects to complete development for the Office of General Counsel in FY 2020 and to fully implement the new CMS across all components by the end of calendar-year 2021.

3. Phase 3 is the integration of the automated connection between eFiling, CMS, and DMS, which is currently underway, with completion anticipated by the end of 2021.
4. Phase 4 is the transition to 100 percent electronic case files throughout the Agency, with a goal of September 30, 2022, for completion (in advance of the deadline of December 31, 2022, directed by OMB).

The Agency has relied on an agile development approach, both in how the systems are developed and with how the project is funded. As such, timelines associated with the four-phase plan have shifted over time, but the Agency still remains within target, and its overall costs are well *below* industry standards for similar undertakings. Further, despite the evolving nature of the approach, the goal and the results have remained the same: implementation of fully electronic case files throughout the Agency to enable the FLRA to meet OMB requirements and increase its overall efficiency and effectiveness. Successful achievement of this goal will enable implementation of additional external and internal case-processing improvements that will further maximize the use of technology and eliminate many of the labor-intensive, manual case processes that are currently in place. These case-processing improvements include: reducing the time and expense that FLRA staff spends copying, scanning, mailing, and entering data; eliminating outdated facsimile service; reducing U.S. Mail costs by implementing electronic service of case-related documents by FLRA on the parties; reducing or eliminating courier costs for transferring paper case files between FLRA components; implementing a pilot program that would mandate FLRA parties to file all case-related documents electronically, and eventually mandating eFiling for all FLRA case filings. The greatest benefit will be the ability to redirect staff hours currently used to perform manual administrative tasks to perform other mission-critical functions.

In addition, FLRA continues to embrace its “cloud-first” approach. All of the Agency’s major technical components – email, DMS, CMS, and eFiling – are hosted in the cloud. The FLRA is planning to move its Video Teleconferencing (VTC) system to the cloud in 2020 and Voice over Internet Protocol (VoIP) in 2021. Also, in 2019 the Agency continued to maintain its lifecycle for Agency computer hardware, completing an Agency refresh of all laptops and specific data center hardware. FLRA is also exploring options to modernize employee communication platforms.

### ***Reports on Outstanding Government Accountability Office and Inspector General Recommendations***

There are no outstanding Government Accountability Office or Inspector General Recommendations subject to section 2(b) of the Good Accounting Obligation in Government Act, Pub. L. No. 115-414 (2019).

# BUDGET JUSTIFICATION

## APPROPRIATIONS LANGUAGE

### FEDERAL LABOR RELATIONS AUTHORITY SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and including official reception and representation expenses (not to exceed \$1,500) and rental of conference rooms in the District of Columbia and elsewhere, \$28,395,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further*, That, notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

## 2021 FUNDING REQUEST

FLRA requests \$28,395,000 in 2021 to fund employee salaries and related operating expenses necessary to execute its mission and meet annual performance targets. The Agency's 2021 request will fund 119 full-time equivalents (FTEs).

(In thousands of dollars)

Program Activity	FY 2019 Actual	FY 2020 Enacted	FY 2021 Request	Change from FY 2020
Authority	\$ 16,073	\$ 13,659	\$ 15,617	\$ 1,958
Office of the General Counsel	\$ 9,335	\$ 10,210	\$ 11,641	\$ 1,431
Federal Service Impasses Panel	\$ 758	\$ 1,021	\$ 1,137	\$ 116
<b>Direct Obligations</b>	<b>\$ 26,166</b>	<b>\$ 24,890</b>	<b>\$ 28,395</b>	<b>\$ 3,505</b>
<b>FTEs</b>	<b>99</b>	<b>109</b>	<b>119</b>	<b>10</b>

The requested 2021 funding level follows cost-saving measures initiated in recent years to increase program effectiveness, and reduce fragmentation, overlap, and duplication. These efforts included, among others, consolidation of the Agency's regional-office structure in 2018 and 2019 – from seven regional offices to five – in order to improve efficiencies and reduce rent and other costs. FLRA also previously reduced the size of its Headquarters location by approximately 12,000 square feet, and it continues to look for ways to reduce rental costs annually throughout the Agency, even before its leases approach expiration.



The Agency has undertaken a thorough evaluation and prioritization of every vacancy, consistent with the Administration's goal of comprehensive Government reform and workforce reshaping. While the vast majority of the increased funding level will go toward compensating the 119 FTEs, the funding will also go toward additional training of the parties, an important function entrusted to FLRA under the Statute, but one which has diminished in 2019 as a result of the prior funding decrease. In addition, with the turnover of staff, resources are needed to properly train professional staff.

The 2021 Budget Request and the Agency Performance Plan assume that there will be a presidentially nominated and Senate-confirmed General Counsel in place during 2020. Filling this position will allow for processing of the backlog of unfair-labor-practice (ULP) cases in which ULP-complaint recommendations and appeals are awaiting review by the General Counsel. This anticipates increased ULP hearing activities and increased case-related travel costs in 2020 for the Office of the General Counsel (OGC) and the Office of Administrative Law Judges (OALJ). With the onboarding of a new GC, the requested FTE level will allow the GC to manage the increased level of work.

## **CHANGE FROM 2020**

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The requested funding level for 2021 reflects an overall increase of \$3,505.000, approximately 14 percent, over 2020.

### *Personnel Compensation and Benefits*

Personnel compensation and benefits costs continue to account for the overwhelming majority of its overall budget – nearly 80 percent.

## PROGRAM AND FINANCING SCHEDULE

(In thousands of dollars)

	FY 2019 Actual	FY 2020 Estimate	FY 2021 Request
<b>Budgetary resources:</b>			
Unobligated balance (total)	\$ 467	\$ 1,341	\$ 1,341
Appropriation, discretionary (total)	\$ 26,200	\$ 24,890	\$ 28,395
Spending authority from offsetting collections, discretionary (total)	\$ 30	\$ 100	\$ -
Total budgetary resources	\$ 26,697	\$ 26,331	\$ 29,736
<b>Status of budgetary resources:</b>			
Direct obligations (total)	\$ 26,357	\$ 24,890	\$ 28,395
Reimbursable obligations (total)	\$ 30	\$ 100	\$ -
New obligations and upward adjustments (total)	\$ 26,387	\$ 24,990	\$ 28,395
Unobligated balance, end of year	\$ 310	\$ 1,314	\$ 1,314
Total budgetary resources	\$ 26,697	\$ 26,304	\$ 29,709
<b>Change in obligated balance:</b>			
Obligated balance, start of year	\$ 3,739	\$ 3,132	\$ 3,132
Obligated balance, end of year	\$ 5,858	\$ 3,132	\$ 3,132
<b>Budget authority and outlays, net:</b>			
Budget authority, gross	\$ 26,230	\$ 24,890	\$ 28,395
Outlays, gross (total)	\$ 24,028	\$ 24,690	\$ 29,748
Offsets against gross budget authority and outlays (total)	\$ (48)	\$ (31)	\$ (31)
Additional offsets against budget authority only (total)	\$ 18	\$ 10	
Budget authority, net (discretionary)	\$ 26,200	\$ 24,890	\$ 28,395
Outlays, net (discretionary)	\$ 23,981	\$ 24,690	\$ 29,748

## OBJECT CLASSIFICATION SCHEDULE

(In thousands of dollars)

	FY 2019 Actual	FY 2020 Estimate	FY 2021 Request
Direct obligations:			
Personnel compensation:			
Full-time permanent	\$ 13,002	\$ 12,127	\$ 14,335
Other than full-time permanent	\$ 307	\$ 571	\$ 571
Other personnel compensation	\$ 244	\$ 407	\$ 407
Total personnel compensation	\$ 13,553	\$ 13,105	\$ 15,313
Civilian personnel benefits	\$ 4,468	\$ 4,464	\$ 5,036
Travel and transportation of persons	\$ 97	\$ 165	\$ 225
Transportation of things	\$ 37	\$ 12	\$ 12
Rental payments to GSA	\$ 2,798	\$ 2,392	\$ 2,542
Communications, utilities, and misc. charges	\$ 382	\$ 325	\$ 325
Printing and reproduction	\$ -	\$ 14	\$ 14
Other services from non-federal sources	\$ 2,737	\$ 895	\$ 3,233
Other goods and services from Federal sources	\$ 1,612	\$ 3,160	\$ 1,387
Operation and maintenance of facilities	\$ -	\$ 4	\$ 4
Operation and maintenance of equipment	\$ 374	\$ 93	\$ 93
Supplies and materials	\$ 246	\$ 121	\$ 121
Equipment	\$ 53	\$ 90	\$ 90
Direct obligations	\$ 26,357	\$ 24,840	\$ 28,395
Reimbursable obligations:			
Travel and transportation of persons	\$ 30	\$ 100	
Reimbursable obligations	\$ 30	\$ 100	
Total new obligations	\$ 26,387	\$ 24,940	\$ 28,395

## EMPLOYMENT SUMMARY SCHEDULE

	FY 2019 Actual	FY 2020 Estimate	FY 2021 Request
Direct civilian full-time equivalent employment	99	109	119

## AWARDS DATA SCHEDULE

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(In thousands of dollars)

FY 2020 Estimated GS Salary Spending	Estimated FY 20 Awards Spending %	FY 2021 Requested GS Salary Spending	FY 2021 Estimated Allocation of Awards Spending	FY 2021 Estimated Allocation of Awards Spending %
\$ 14,369	1.5%	\$ 16,154	\$ 404	2.5%

## INSPECTOR GENERAL RESOURCES

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The Office of the Inspector General (OIG) provides independent and objective assessments of FLRA's efficiency, effectiveness, and compliance with laws and regulations. This is accomplished through proactive evaluations of agency operational processes. In addition to striving to prevent and detect fraud, waste, and abuse of the FLRA's resources and operations, a key goal of the Inspector General (IG) is to serve as a catalyst for improving operations and maximizing the efficiency and integrity of agency programs.

In fulfilling these responsibilities and objectives, the IG conducts and supervises investigations, internal reviews, audits, and evaluations of the programs and operations of the agency. The IG communicates the results of investigations and assessments to FLRA management, Congress, other oversight entities, and the public, as appropriate. Generally, the IG communicates results in formal reports that contain findings and recommendations aimed at correcting any deficiencies identified and promoting efficiency and effectiveness in agency programs and operations. The IG also manages a hotline to provide employees and the public with a direct means for confidentially communicating information on potential fraud, waste, or abuse.

FLRA's 2021 funding request includes \$921,120 for the OIG, including funding to create an attorney/investigator position to provide mandated legal services to the IG in accordance with the IG Act. The funding level requested by the IG, including \$10,000 for training and \$3,030 to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has been funded in total. The IG has certified that FLRA's funding request for the OIG satisfies all training requirements for 2021.



INSPECTOR GENERAL

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

September 4, 2019

The Inspector General Reform Act (Pub. L. 110-149) was signed by the President on October 14, 2008. Section 6(f) (1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year (FY).

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- The aggregate amount of funds requested for the operations of the OIG,
- The portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for the fiscal year, and
- The portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget to the President for approval, shall include:

- An aggregate request for the OIG,
- The portion of this aggregate request for OIG training,
- The portion of this aggregate request for support of the CIGIE, and
- Any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress.

- A separate statement of the budget estimate submitted by each IG,
- The amount requested by the President for each OIG,
- The amount requested by the President for training of OIGs,
- The amount requested by the President for support of the CIGIE, and
- Any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing duties of the OIG.

Following the requirements as specified above, the Federal Labor Relations Authority Inspector General submits the following information relating to the OIG's requested budget for FY 2021:

- The aggregate budget request for the operations of the OIG is \$921,120;
- The portion of this amount needed for OIG training is \$10,000; and
- The portion of this amount needed to support the CIGIE is \$3,030.

I certify as the IG of the Federal Labor Relations Authority that the amount I have requested for training satisfies all OIG training needs for FY 2021.

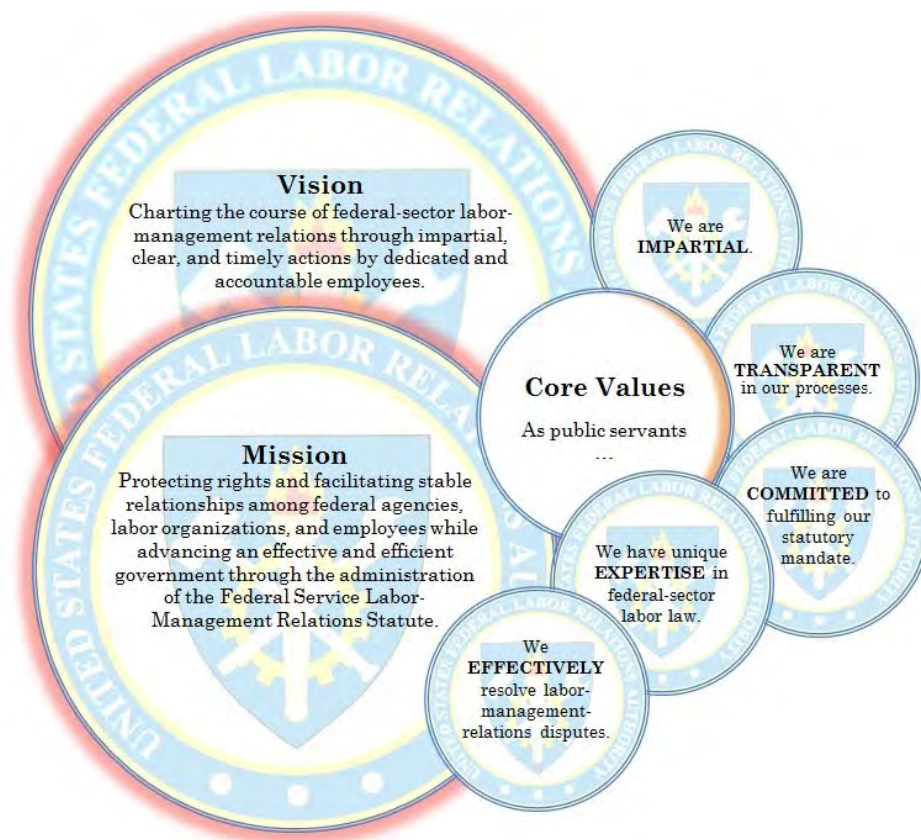


Inspector General  
Federal Labor Relations Authority

# ANNUAL PERFORMANCE PLAN

## STRATEGIC AND PERFORMANCE-PLANNING FRAMEWORK

FLRA's 2021 strategic performance-planning framework is based on the Agency's 2018-2022 Strategic Plan, and it is supported by the Agency's Annual Performance Plan, which establishes the Agency's annual performance goals and measures. In developing the 2018-2022 Strategic Plan, the Agency refined its mission statement, developed a vision statement, and identified Agency core values.



FLRA seeks to achieve its strategic goals primarily through the timely, high-quality, and impartial review and disposition of cases. The Agency supplements these efforts, and helps the parties to avoid or resolve their own disputes, by producing educational materials, offering targeted assistance to parties with significant labor-management challenges, and providing training activities. Further supporting these efforts is FLRA's focus on internal improvements in IT and efforts to maximize human capital.

Through comprehensive review of its programmatic requirements under the Statute, operations, staffing, work processes, resource allocations, and performance, FLRA has established goals and measures that are designed to maximize the delivery of Agency services throughout the Federal Government. The Annual Performance Plan reflects the Agency's commitment to establishing meaningful metrics that will assist in assessing performance, providing transparency to the parties around case-processing, aligning resources, and effectively identifying staffing and training needs.

## ***FLRA Strategic Goals, Objectives and Measures***

<b>Strategic Goal #1</b>	<b>Strategic Goal #2</b>	<b>Strategic Goal #3</b>
We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated.	We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships.	We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the prevention and resolution of labor-relations disputes.

### **Strategic Objectives**

a. Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.	a. Maintain and expand educational resources on <a href="http://www.flra.gov">www.flra.gov</a> .	a. Ensure that the FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.
b. Ensure excellence in investigations and clearly articulated written work products by establishing and surpassing case-processing quality goals that build upon the Agency's longstanding traditions of impartiality and consistent determinations that are effectively enforced.	b. Identify and offer targeted assistance to parties with significant labor-management challenges.	b. Continue to expand the FLRA's technological capabilities to enable employees to deliver mission results more effectively and efficiently.
	c. Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.	c. Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.

Consistent with Government-wide efforts to improve performance and incorporate data-driven management decisions, FLRA engages in continuous strategic assessment of performance and other data to ensure that it is accomplishing its mission effectively and efficiently. The Agency conducts this ongoing review on a monthly basis with its



automated monthly SMART report (introduced in 2019, replacing the existing manual Monthly Analysis of Performance and Status (MAPS) report), which contains statistical case and performance data derived from FLRA's CMS and Agency management. In addition, Agency managers utilize a variety of internal CMS reports, which track the number, age, status, or resolution type of all pending and closed cases, to manage performance on a daily basis. Analysis of these reports drive, among other things: adjustments in workload through case transfers at the national, regional, and office levels; reallocation of human resources, including use of details and contract support decisions; and decisions to provide targeted assistance (such as training) to certain parties or geographical locations.

**STRATEGIC GOAL 1: WE WILL ENSURE QUALITY, TIMELY, IMPARTIAL, AND CONSISTENT INVESTIGATIVE AND DECISION-MAKING PROCESSES WITH DETERMINATIONS THAT ARE CLEARLY ARTICULATED.**

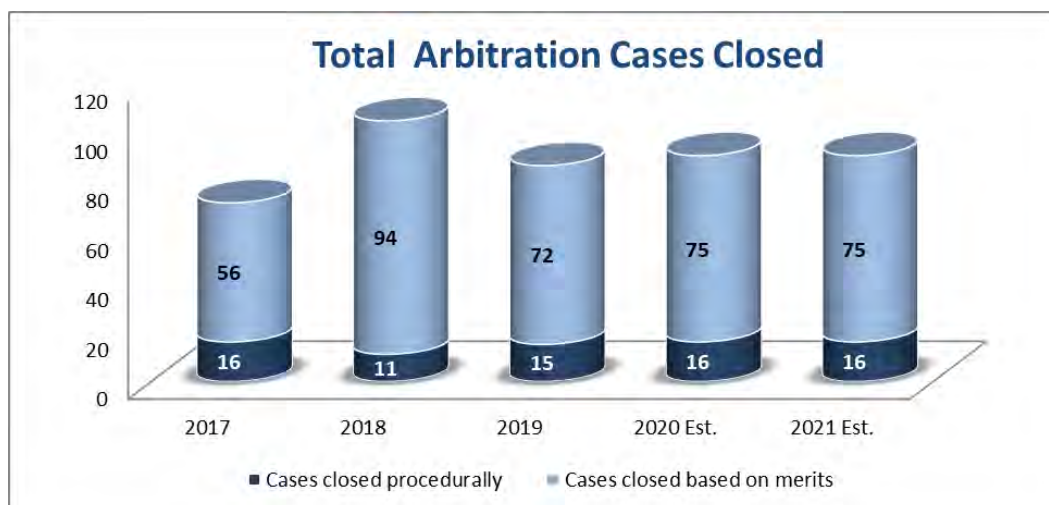
This strategic goal concerns the core statutory activities of FLRA. The Statute charges FLRA with responsibility for protecting rights and facilitating stable labor-management relationships in the federal sector. To achieve that mandate, FLRA must provide the Federal labor-management community with quality, timely, impartial, and consistent investigations and determinations. Further, FLRA must convey those determinations clearly and enforce them effectively. All FLRA components must help to achieve this goal in order to attain overall Agency success.

**STRATEGIC OBJECTIVE 1A: ESTABLISH AND ATTEMPT TO SURPASS (1) CASE-PROCESSING PRODUCTIVITY GOALS, AND (2) TIMELINESS MEASURES THAT ARE MEANINGFUL TO THE PARTIES.**

Parties often have time-sensitive interests at stake in matters pending before FLRA. Delays in the resolution of those matters can impede the ability of the parties to fulfill their missions effectively and efficiently. So, to properly serve the Federal labor-management community and accomplish FLRA's own mission, the Agency must satisfy internal case-processing productivity goals that enable it to investigate and resolve cases in a timely fashion.

Parties are best served when they have a clear understanding of how long it might take FLRA to process cases. Therefore, effective 2019, FLRA set its standards for timeliness in a way that gives parties a reasonable expectation as to the duration of the FLRA determination process. This requires the use of simple, straightforward metrics for understanding how long it might take to resolve a given matter before the Agency.

<i>Authority</i> Arbitration Cases	2017	2018	2019	2020 Est.	2021 Est.
Cases pending, start of year	42	73	73	121	138
<b>Exceptions filed (Intake)</b>	<b>103</b>	<b>105</b>	<b>135</b>	<b>108</b>	<b>127</b>
Total caseload	145	178	208	229	265
Cases closed procedurally	16	11	15	16	16
Cases closed based on merits	56	94	72	75	75
<b>Total cases closed (Output)</b>	<b>72</b>	<b>105</b>	<b>87</b>	<b>91</b>	<b>91</b>
Cases pending, end of year	73	73	121	138	174



<b>Measure 1a-1: The average age of arbitration exceptions decided by the Authority.*</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b> Goal: 247 days	261 Days	<b>FY 2019</b>	Reduce by 5%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-2: The percentage of arbitration cases decided within 180 days of assignment to an Authority Member.**

<b>Results</b>	
<b>FY 2016</b>	79% – (59/75)

**Measure 1a-2: The percentage of arbitration cases decided within 150 days of assignment to an Authority Member.**

<b>Results</b>	
<b>FY 2017</b>	79% – (44/56)
<b>FY 2018</b>	38% – (36/94)

**Measure 1a-2: The percentage of arbitration cases decided by the Authority within 210 days of the filing of exceptions.\***

<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b>	37% – (32/87)	<b>FY 2019</b>	75%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	75%
		<b>FY 2021</b>	75%

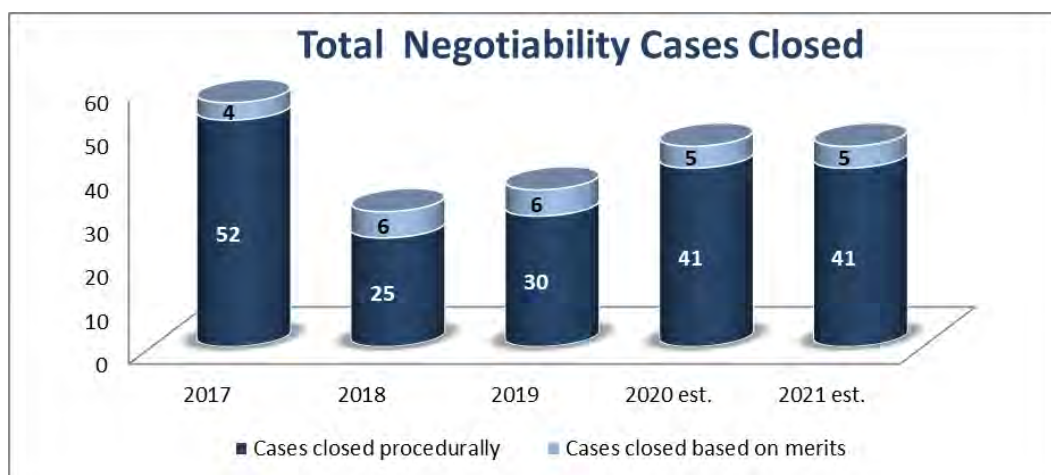
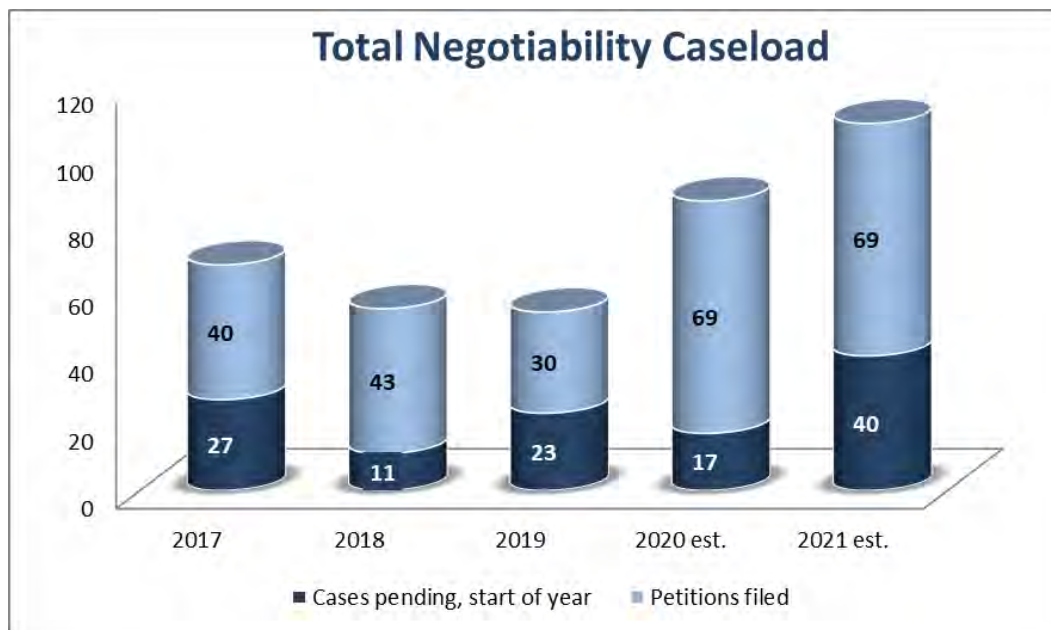
**Measure 1a-3: The percentage of arbitration cases decided within 365 days of assignment to an Authority Member.**

<b>Results</b>	
<b>FY 2017</b>	100% – (56/56)
<b>FY 2018</b>	98% – (92/94)

**Measure 1a-3: The percentage of arbitration exceptions decided by the Authority within 365 days of the filing of exceptions.\***

<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b>	84% – (73/87)	<b>FY 2019</b>	90%
* This measure calculates case age based on the date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	90%
		<b>FY 2021</b>	90%

<i>Authority</i> Negotiability Cases	2017	2018	2019	2020 Est.	2021 Est.
Cases pending, start of year	27	11	23	17	40
<b>Petitions filed (Intake)</b>	<b>40</b>	<b>43</b>	<b>30</b>	<b>69</b>	<b>69</b>
Total caseload	67	54	53	86	109
Cases closed procedurally	52	25	30	41	41
Cases closed based on merits	4	6	6	5	5
<b>Total cases closed (Output)</b>	<b>56</b>	<b>31</b>	<b>36</b>	<b>46</b>	<b>46</b>
Cases pending, end of year	11	23	17	40	63



**Measure 1a-4: The average age of negotiability cases decided by the Authority.\***

Results		Targets	
<b>FY 2019</b> Goal: 119 days	169 days	<b>FY 2019</b>	Reduce by 5%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-5: The percentage of negotiability cases decided within 180 days of assignment to an Authority Member.**

Results	
<b>FY 2016</b>	75% – (3/4)

**Measure 1a-5: The percentage of negotiability cases decided within 150 days of assignment to an Authority Member.**

Results	
<b>FY 2017</b>	75% – (3/4)
<b>FY 2018</b>	83% – (5/6)

**Measure 1a-5: The percentage of negotiability cases decided by the Authority within 300 days of the filing of a petition for review.\***

Results		Targets	
<b>FY 2019</b>	83% – (30/36)	<b>FY 2019</b>	75%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	75%
		<b>FY 2021</b>	75%

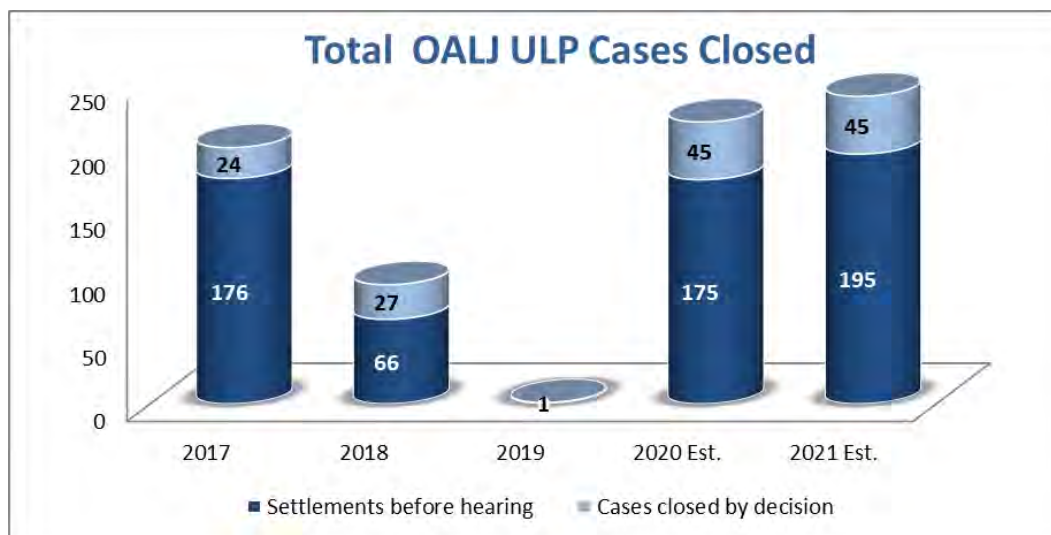
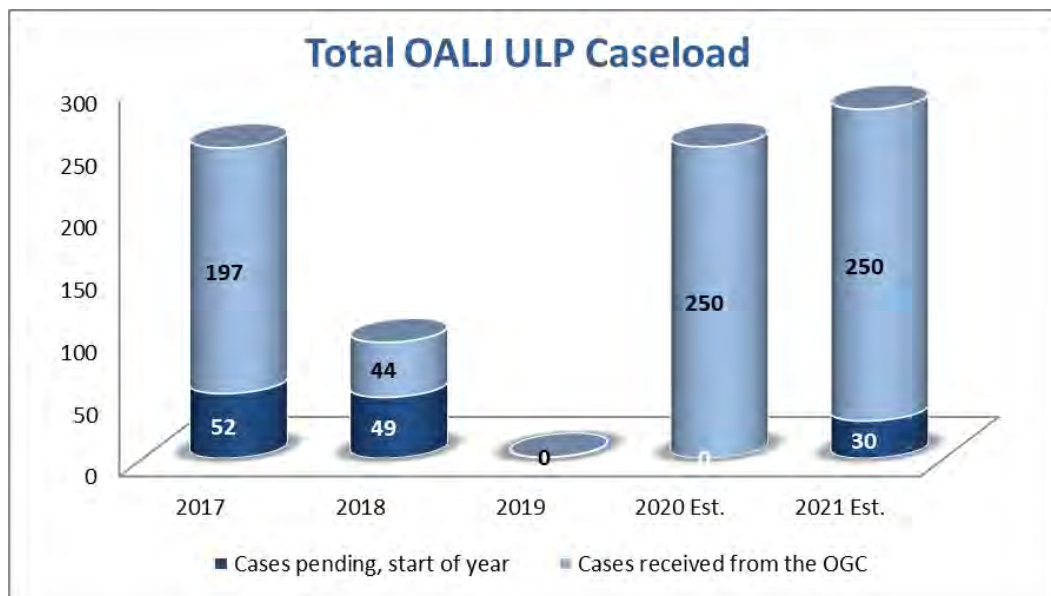
**Measure 1a-6: The percentage of negotiability cases decided within 365 days of assignment to an Authority Member.**

Results	
<b>FY 2017</b>	100% – (4/4)
<b>FY 2018</b>	100% – (6/6)

**Measure 1a-6: The percentage of negotiability cases decided by the Authority within 365 days of the filing of a petition for review.\***

Results		Targets	
<b>FY 2019</b>	92% – (33/36)	<b>FY 2019</b>	75%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	75%
		<b>FY 2021</b>	75%

<b><i>OALJ</i> ULP Cases</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020 Est.</b>	<b>2021 Est.</b>
Cases pending, start of year	52	49	1	0	30
<b>Complaints received (Intake)</b>	<b><u>197</u></b>	<b><u>44</u></b>	<b><u>0</u></b>	<b><u>250</u></b>	<b><u>250</u></b>
Total caseload	249	93	1	250	280
Settlements before hearing	176	66	0	175	195
Cases closed by decision	<u>24</u>	<u>27</u>	<u>1</u>	<u>45</u>	<u>45</u>
<b>Total cases closed (Output)</b>	<b>200</b>	<b>93</b>	<b>1</b>	<b>220</b>	<b>240</b>
Cases pending, end of year	49	0	0	30	40



**Measure 1a-7: The average age of ULP complaints decided by the OALJ.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b> Goal: 124 days	N/A	<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-8: The percentage of ULP complaints issued by the General Counsel resolved or decided in the OALJ within 180 days of the complaint being issued.**

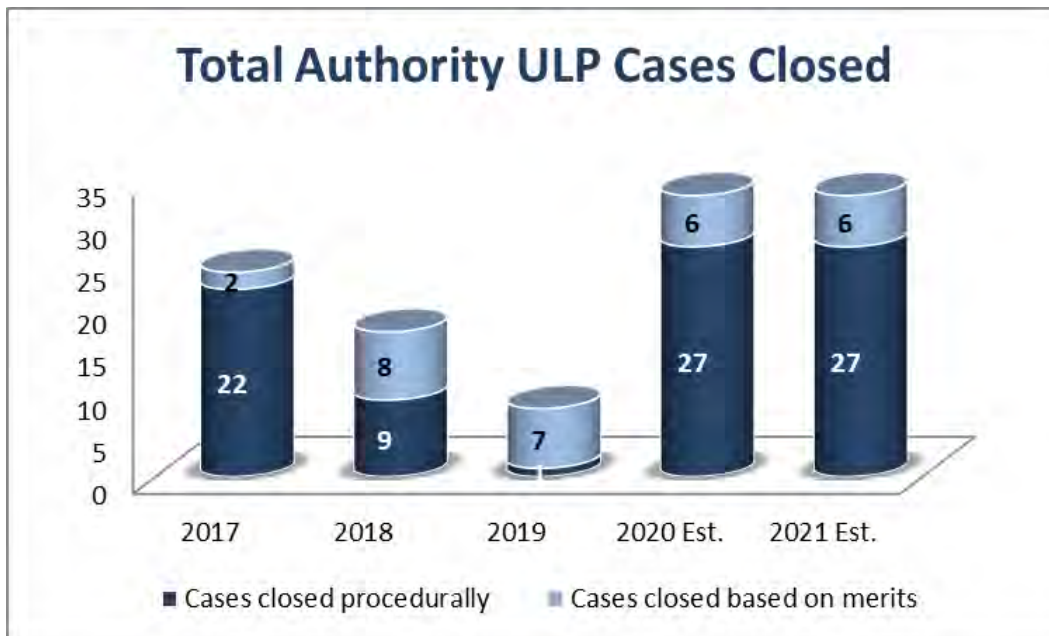
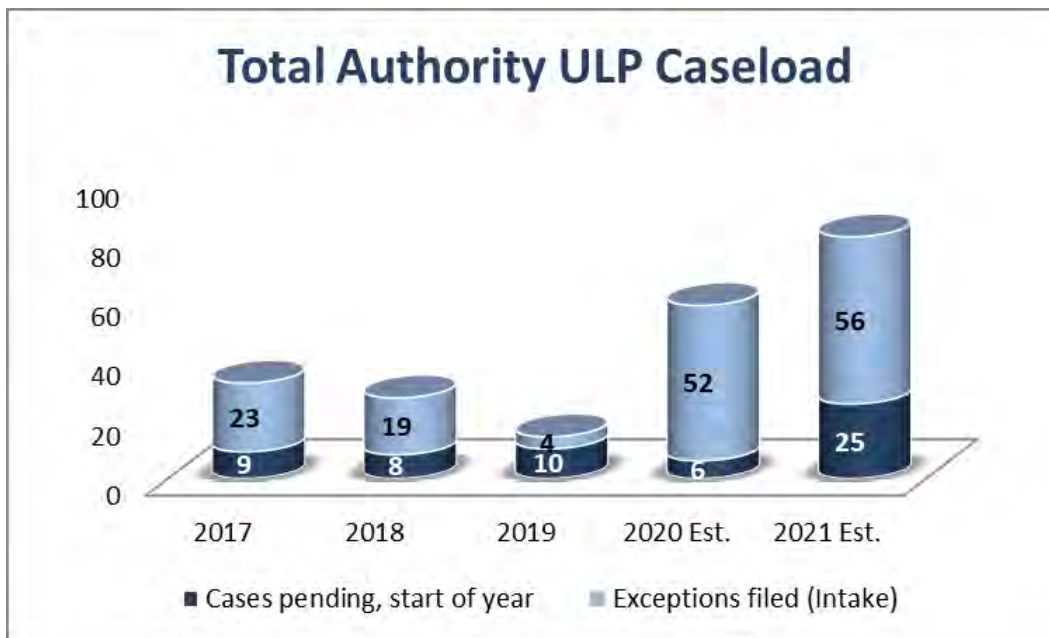
<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	80% – (144/181)	<b>FY 2019</b>	80%
<b>FY 2017</b>	93% – (186/200)	<b>FY 2020</b>	80%
<b>FY 2018</b>	77% – (72/93)	<b>FY 2021</b>	80%
<b>FY 2019</b>	N/A		

**Measure 1a-9: The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 365 days of the complaint being issued.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	89% – (161/181)	<b>FY 2019</b>	95%
<b>FY 2017</b>	97% – (194/200)	<b>FY 2020</b>	95%
<b>FY 2018</b>	90% – (84/93)	<b>FY 2021</b>	95%
<b>FY 2019</b>	N/A		



<i>Authority</i> ULP Cases	2017	2018	2019	2020 Est.	2021 Est.
Cases pending, start of year	9	8	10	6	25
<b>Cases filed (Intake)</b>	<u>23</u>	<u>19</u>	<u>4</u>	<u>52</u>	<u>56</u>
Total caseload	32	27	14	58	81
Cases closed procedurally	22	9	1	27	27
Cases closed based on merits	<u>2</u>	<u>8</u>	<u>7</u>	<u>6</u>	<u>6</u>
<b>Total cases closed (Output)</b>	<u>24</u>	<u>17</u>	<u>8</u>	<u>33</u>	<u>33</u>
Cases pending, end of year	8	10	6	25	48





**Measure 1a-10: The average age of ULP exceptions decided by the Authority.\***

Results		Targets	
<b>FY 2019</b> Goal: 165 days	238 days	<b>FY 2019</b>	Reduce by 5%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-11: The percentage of ULP cases decided within 180 days of assignment to an Authority Member.**

Results			
<b>FY 2016</b>	89% – (8/9)		

**Measure 1a-11: The percentage of ULP cases decided within 150 days of assignment to an Authority Member.**

Results			
<b>FY 2017</b>	50% – (1/2)		
<b>FY 2018</b>	50% – (4/8)		

**Measure 1a-11: The percentage of ULP cases decided by the Authority within 300 days of issuance of an OALJ decision.\***

Results		Targets	
<b>FY 2019</b>	75% – (6/8)	<b>FY 2019</b>	75%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	75%
		<b>FY 2021</b>	75%

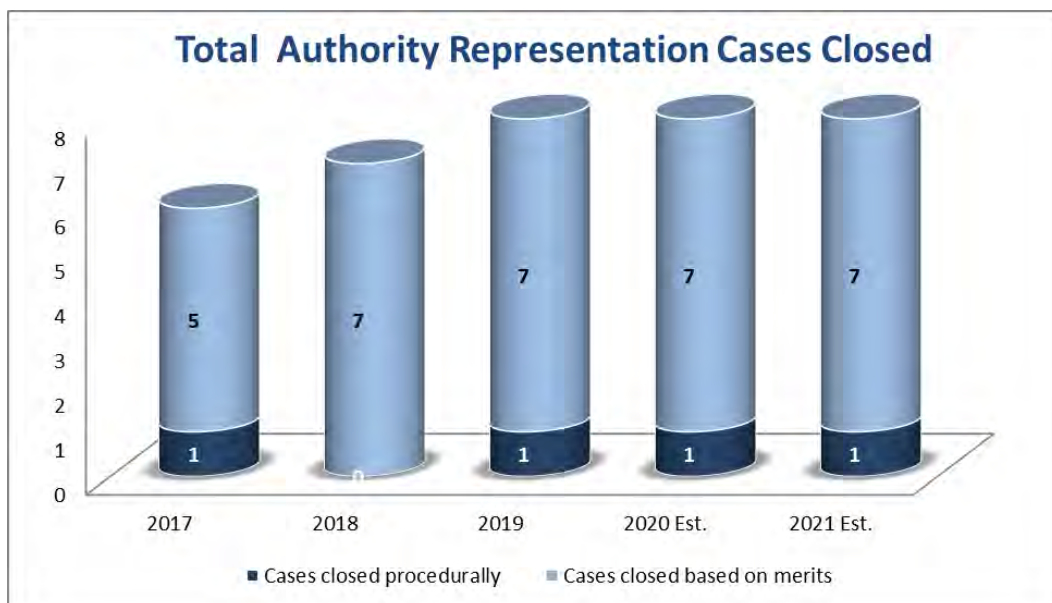
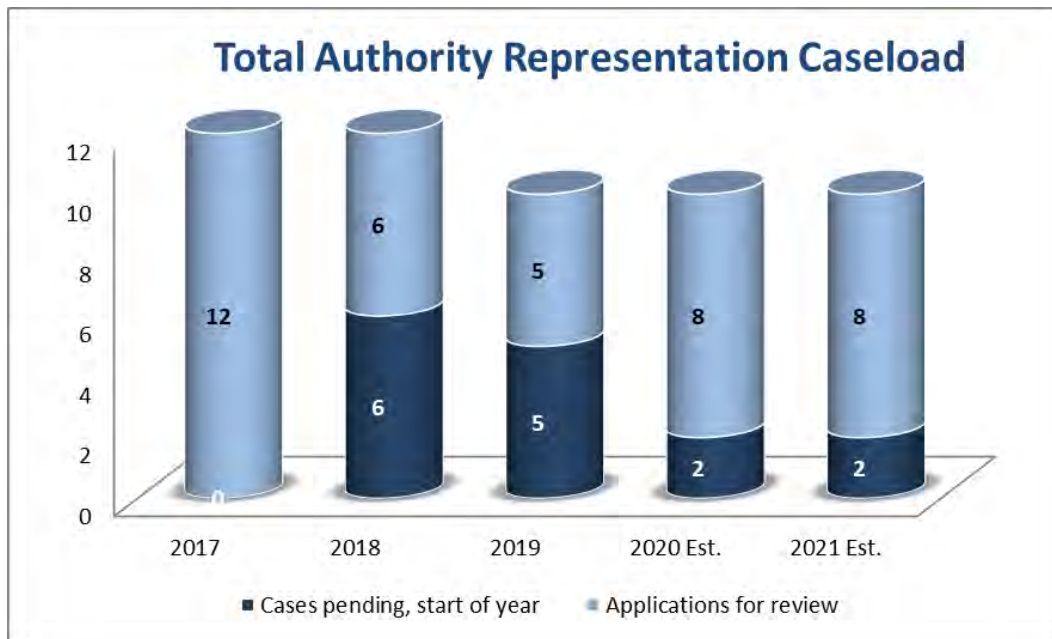
**Measure 1a-12: The percentage of ULP cases decided within 365 days of assignment to an Authority Member.**

Results			
<b>FY 2017</b>	100% – (2/2)		
<b>FY 2018</b>	100% – (8/8)		

**Measure 1a-12: The percentage of ULP cases decided by the Authority within 365 days of issuance of an OALJ decision.\***

Results		Targets	
<b>FY 2019</b>	88% – (7/8)	<b>FY 2019</b>	90%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	90%
		<b>FY 2021</b>	90%

<i>Authority Representation Cases</i>	2017	2018	2019	2020 Est.	2021 Est.
Cases pending, start of year	0	6	5	2	2
<b>Applications for review (Intake)</b>	<b>12</b>	<b>6</b>	<b>5</b>	<b>8</b>	<b>8</b>
Total caseload	12	12	10	10	10
Cases closed procedurally	1	0	1	1	1
Cases closed based on merits	5	7	7	7	7
<b>Total cases closed (Output)</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>8</b>
Cases pending, end of year	6	5	2	2	2



<b>Measure 1a-13: The average age of representation cases decided by the Authority.*</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b> Goal: 107 days	194 days	<b>FY 2019</b>	Reduce by 5%
* This measure calculates case age based on the “date filed,” to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

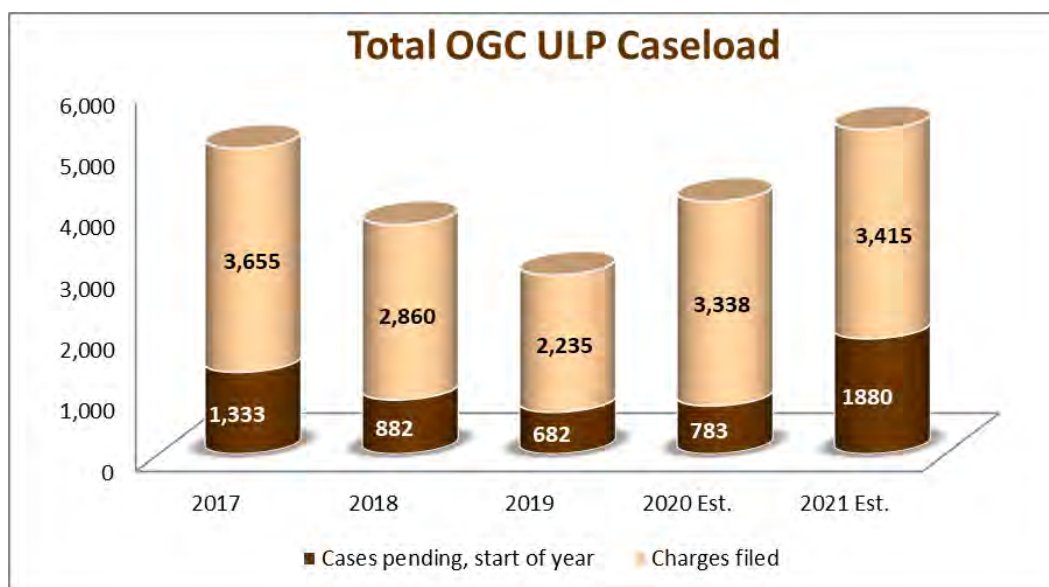
<b>Measure 1a-14: The percentage of representation cases in which the Authority <i>issued a decision whether to grant review</i> within 60 days of the filing of an application for review.</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	100% – (21/21)	<b>FY 2019</b>	100%
<b>FY 2016</b>	100% – (8/8)	<b>FY 2020</b>	100%
<b>FY 2017</b>	100% – (6/6)	<b>FY 2021</b>	100%
<b>FY 2018</b>	100% – (7/7)		
<b>FY 2019</b>	100% – (8/8)		

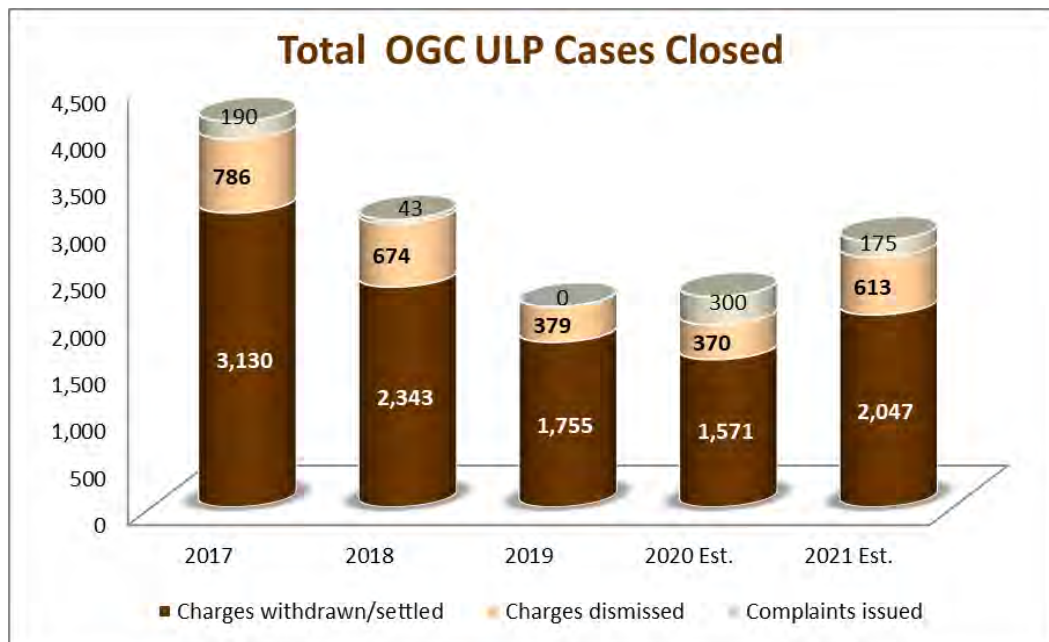
<b>Measure 1a-15: The percentage of representation cases <i>decided by the Authority</i> within 210 days of the filing of an application for review.*</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b>	75% – (6/8)	<b>FY 2019</b>	75%
* This measure calculates case age based on the date that a final decision is issued in the case, to reflect “day in-day out” case-processing times.		<b>FY 2020</b>	75%
		<b>FY 2021</b>	75%

<b>Measure 1a-16: The percentage of representation cases decided by the Authority within 365 days of the filing of an application for review.</b>			
<b>Results</b>		<b>Targets</b>	
<b>FY 2017</b>	100% – (6/6)	<b>FY 2019</b>	95%
<b>FY 2018</b>	100% – (7/7)	<b>FY 2020</b>	95%
<b>FY 2019</b>	88% – (7/8)	<b>FY 2021</b>	95%

<b>OGC ULP Cases</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020 Est.</b>	<b>2021 Est.</b>
Cases pending, start of year	1,133	882	682	783	1,880
Charges filed (Intake)	<u>3,655</u>	<u>2,860</u>	<u>2,235</u>	<u>3,338</u>	<u>3,415</u>
<b>Total caseload</b>	<b>4,988</b>	<b>3,742</b>	<b>2,917</b>	<b>4,121</b>	<b>5,295</b>
Charges withdrawn/settled	3,130	2,343	1,755	1,571	2,047
Charges dismissed	786	674	379	370	613
Complaints issued	<u>190</u>	<u>43</u>	<u>0</u>	<u>300</u>	<u>175</u>
<b>Total cases closed (Output)</b>	<b>4,106</b>	<b>3,060</b>	<b>2,134</b>	<b>2,241</b>	<b>2,835</b>
<b>Cases pending, end of year</b>	<b>882</b>	<b>682</b>	<b>783</b>	<b>1,880</b>	<b>2,460</b>

\*The OGC was unable to issue decisions on appeals or issue complaints in the absence of a General Counsel after November 16, 2017. Those cases are currently held in abeyance. The estimates for 2020 and 2021 assume FLRA will have a General Counsel in 2020.





**Measure 1a-17: The average age of ULP charges resolved by the OGC.**

Results		Targets	
<b>FY 2019</b> Goal: 99 Days	68 days	<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-18: The percentage of ULP charges resolved by the Office of the General Counsel by complaint, withdrawal, dismissal, or settlement within 120 days of filing of the charge.**

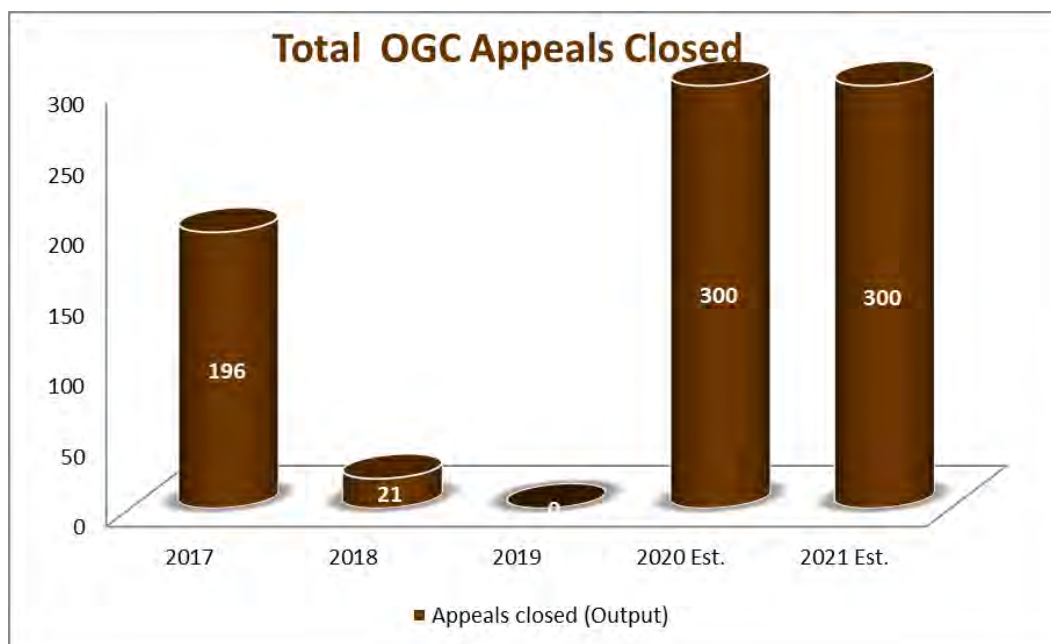
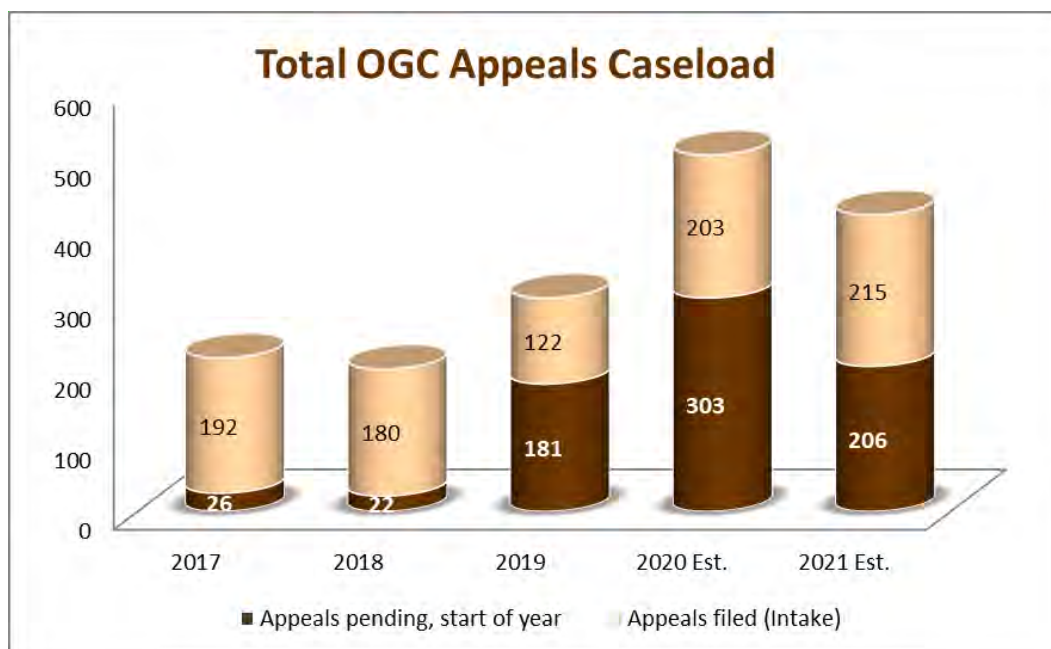
Results		Targets	
<b>FY 2016</b>	71% – (2,973/4,190)	<b>FY 2019</b>	70%
<b>FY 2017</b>	73% – (2,984/4,106)	<b>FY 2020</b>	70%
<b>FY 2018</b>	88% – (2,682/3,060)	<b>FY 2021</b>	70%
<b>FY 2019</b>	88% - (1,867/2,134)		

**Measure 1a-19: The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 240 days of filing of the charge.**

Results		Targets	
<b>FY 2016</b>	95% – (3,963/4,190)	<b>FY 2019</b>	95%
<b>FY 2017</b>	95% – (3,883/4,106)	<b>FY 2020</b>	95%
<b>FY 2018</b>	99% – (3,039/3,060)	<b>FY 2021</b>	95%
<b>FY 2019</b>	99% - (2,114/2,134)		

<b>OGC ULP Appeals</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020 Est.</b>	<b>2021 Est.</b>
Appeals pending, start of year	26	22	181	306	209
<b>Appeals filed (Intake)</b>	<b><u>192</u></b>	<b><u>180</u></b>	<b><u>125</u></b>	<b><u>203</u></b>	<b><u>215</u></b>
Total caseload	218	202	306	509	424
<b>Appeals closed (Output)</b>	<b><u>196</u></b>	<b><u>21*</u></b>	<b><u>0*</u></b>	<b><u>300</u></b>	<b><u>300</u></b>
Appeals pending, end of year	22	181	306	209	124

\*The OGC was unable to issue decisions on appeals in the absence of a General Counsel after November 16, 2017. Those cases are currently held in abeyance. The estimates for 2020 and 2021 assume FLRA will have a General Counsel in 2020.



**Measure 1a-20: The average age of ULP appeals decided by the General Counsel.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2019</b> Goal: 45 days	N/A	<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-21: The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued by the General Counsel within 60 days of the date filed.**

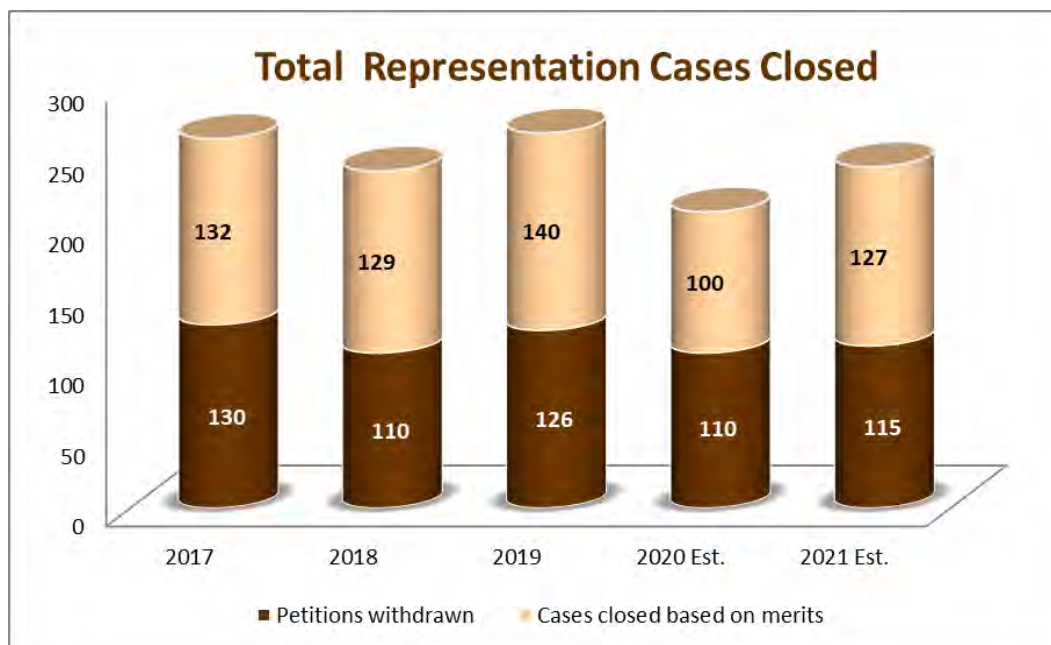
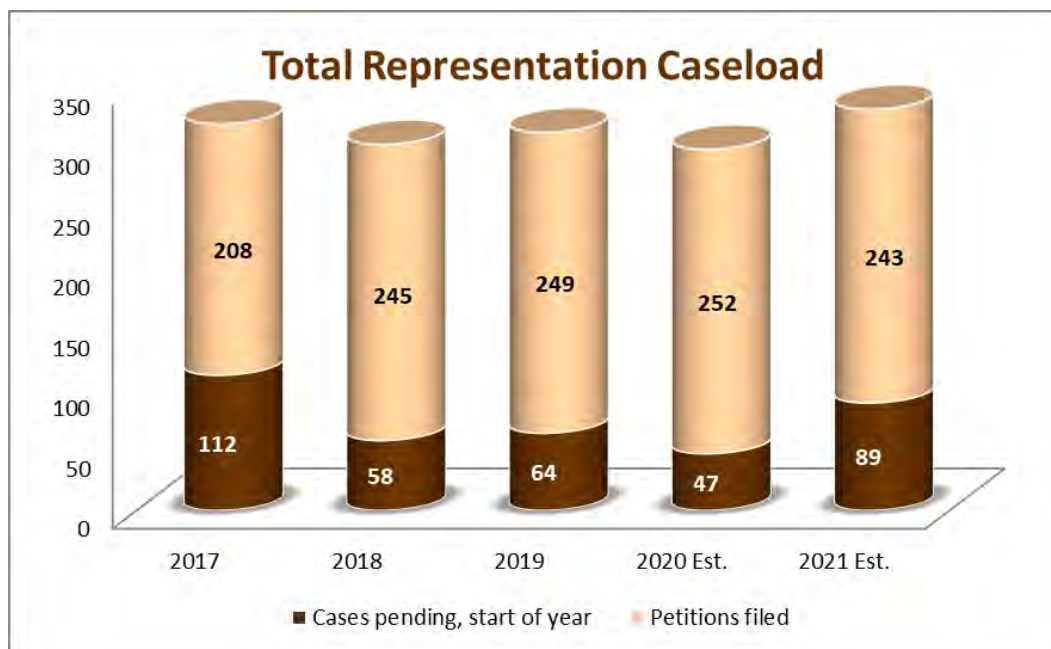
<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	100% – (245/245)	<b>FY 2019</b>	95%
<b>FY 2017</b>	96% – (188/196)	<b>FY 2020</b>	95%
<b>FY 2018</b>	100% – (21/21)	<b>FY 2021</b>	95%
<b>FY 2019</b>	N/A		

**Measure 1a-22: The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued by the General Counsel within 120 days of the date filed.**

<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	100% – (245/245)	<b>FY 2019</b>	100%
<b>FY 2017</b>	100% – (196/196)	<b>FY 2020</b>	100%
<b>FY 2018</b>	100% - (21/21)	<b>FY 2021</b>	100%
<b>FY 2019</b>	N/A		



<b>OGC Representation Cases</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020 Est.</b>	<b>2021 Est.</b>
Cases pending, start of year	112	58	64	47	89
<b>Petitions filed (Intake)</b>	<b><u>208</u></b>	<b><u>245</u></b>	<b><u>249</u></b>	<b><u>252</u></b>	<b><u>243</u></b>
Total caseload	320	303	313	299	332
Petitions withdrawn	130	110	126	110	115
Cases closed based on merits	<b><u>132</u></b>	<b><u>129</u></b>	<b><u>140</u></b>	<b><u>100</u></b>	<b><u>127</u></b>
<b>Total cases closed (Output)</b>	<b>262</b>	<b>239</b>	<b>266</b>	<b>210</b>	<b>242</b>
Cases pending, end of year	58	64	47	89	90





**Measure 1a-23:** The average age of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order.

Results		Targets	
<b>FY 2019</b> Goal: 114 days	92 days	<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

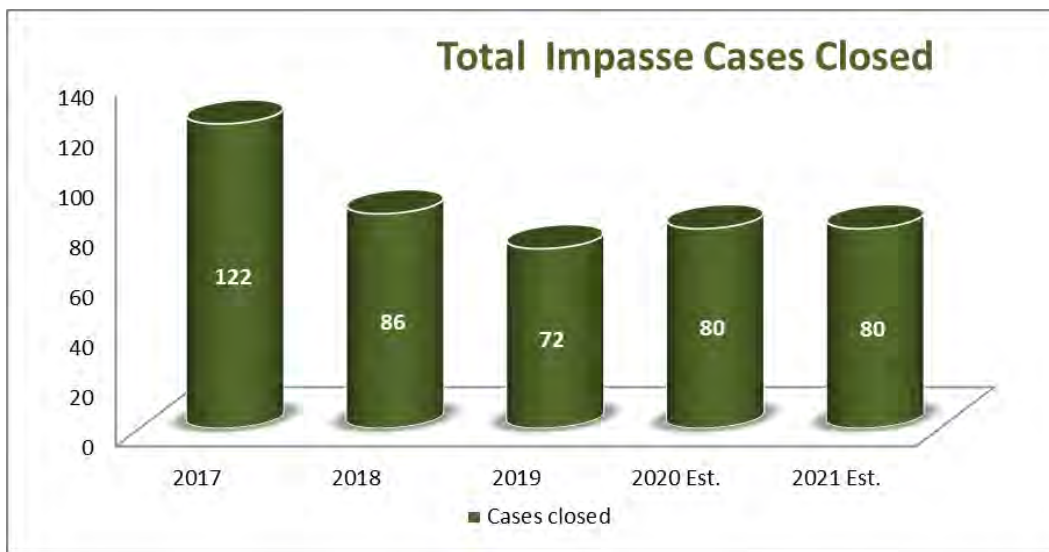
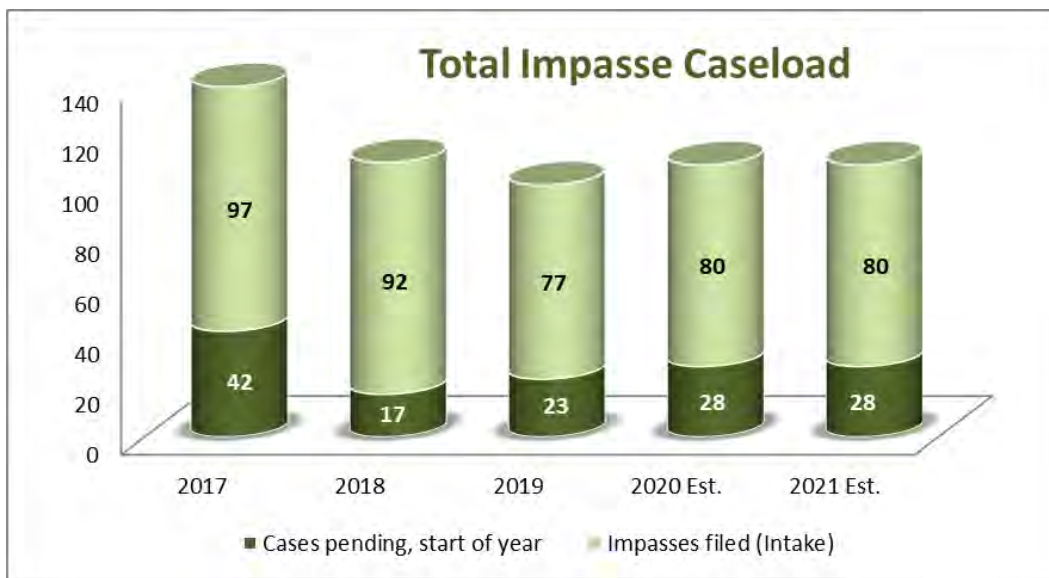
**Measure 1a-24:** The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 120 days of the filing of a petition.

Results		Targets	
<b>FY 2016</b>	73% – (163/223)	<b>FY 2019</b>	70%
<b>FY 2017</b>	68% – (179/262)	<b>FY 2020</b>	70%
<b>FY 2018</b>	82% – (195/239)	<b>FY 2021</b>	70%
<b>FY 2019</b>	77% - (205/266)		

**Measure 1a-25:** The percentage of cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 365 days of the filing of a petition.

Results		Targets	
<b>FY 2016</b>	98% (219/223)	<b>FY 2019</b>	95%
<b>FY 2017</b>	95% (250/262)	<b>FY 2020</b>	95%
<b>FY 2018</b>	100% (348/349)	<b>FY 2021</b>	95%
<b>FY 2019</b>	99% (259/266)		

<b>FSIP Impasses</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020 Est.</b>	<b>2021 Est.</b>
Cases pending, start of year	42	17	23	28	28
<b>Impasses filed (Intake)</b>	<b><u>97</u></b>	<b><u>92</u></b>	<b><u>77</u></b>	<b><u>80</u></b>	<b><u>80</u></b>
Total caseload	139	109	100	108	108
Panel Decision	12	21	24	--	--
Panel declined jurisdiction	22	11	11	--	--
Settled with Panel assistance	24	7	9	--	--
Voluntarily withdrawn	64	47	28	--	--
<b>Cases closed total (Output)</b>	<b><u>122</u></b>	<b><u>86</u></b>	<b><u>72</u></b>	<b><u>80</u></b>	<b><u>80</u></b>
Cases pending, end of year	17	23	28	28	28



**Measure 1a-26:** The average age of bargaining-impasse cases in which the FSIP declines jurisdiction.

Results		Targets	
<b>FY 2019</b> Goal: 90 days	95 days (11 cases)	<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-27:** The percentage of bargaining-impasse cases in which the FSIP declines jurisdiction within 140 days of the date filed.

Results		Targets	
<b>FY 2016</b>	100% – (9/9)	<b>FY 2019</b>	90%
<b>FY 2017</b>	95% – (21/22)	<b>FY 2020</b>	90%
<b>FY 2018</b>	100% – (11/11)	<b>FY 2021</b>	90%
<b>FY 2019</b>	90% - (10/11)		

**Measure 1a-28:** The percentage of bargaining-impasse cases that are voluntarily settled, after the FSIP asserts jurisdiction, within 160 days of the date filed.

Results		Targets	
<b>FY 2016</b>	100% – (22/22)	<b>FY 2019</b>	90%
<b>FY 2017</b>	93% – (22/24)	<b>FY 2020</b>	90%
<b>FY 2018</b>	71% – (5/7)	<b>FY 2021</b>	90%
<b>FY 2019</b>	100% – (15/15)		

**Measure 1a-29:** The average age of bargaining-impasse cases that the FSIP resolves through final action.

Results		Targets	
<b>FY 2019</b> Goal: 146 days	140 days (24 cases)	<b>FY 2019</b>	Reduce by 5%
		<b>FY 2020</b>	Reduce by 5%
		<b>FY 2021</b>	Maintain

**Measure 1a-30:** The percentage of bargaining-impasse cases that the FSIP resolves through final action that are closed within 200 days of the date filed.

Results		Targets	
<b>FY 2016</b>	88% – (21/24)	<b>FY 2019</b>	80%
<b>FY 2017</b>	77% – (9/12)	<b>FY 2020</b>	80%
<b>FY 2018</b>	100% – (21/21)	<b>FY 2021</b>	80%
<b>FY 2019</b>	100% – (24/24)		

**STRATEGIC OBJECTIVE 1B: ENSURE EXCELLENCE IN INVESTIGATIONS AND CLEARLY ARTICULATED WRITTEN WORK PRODUCTS BY ESTABLISHING AND ATTEMPTING TO SURPASS CASE-PROCESSING QUALITY GOALS THAT BUILD UPON THE AGENCY’S LONGSTANDING TRADITIONS OF IMPARTIALITY AND CONSISTENT DETERMINATIONS THAT ARE CLEARLY ARTICULATED.**

Excelling at FLRA’s core functions requires the Agency to perform thorough investigations and produce clearly articulated written products. From informal communications, to FLRA determinations, to information on the FLRA website, FLRA’s written work is one of the primary means by which the Agency communicates with parties and the federal labor-management community.

FLRA’s ability to achieve its mission depends on its ability to issue impartial and consistent determinations that are clearly articulated. Even *the appearance* of partiality can cause parties to lose trust in the FLRA’s determinations, and ultimately, in FLRA as an institution.

**Performance Goal 1b-1:** Conduct high-quality investigations and produce high-quality written work products.

**Measure 1b-1:** Establish and surpass case-processing quality goals.

Results	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Developed internal tools to establish agency case quality goals and identify areas where improvement is needed, to be used in conjunction with performance reviews.</li> </ul>
Targets	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Complete development of Agency-wide quality assessment tools and finalize pilot implementation.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Target areas for improvement in case-processing quality based on data gathered from internal tool(s) and survey results.</li> <li>Set case-quality goals, as measured by surveys or other quality assessment tools.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Written work products should reflect an increase in quality as measured by the tools.</li> </ul>

**Performance Goal 1b-2:** Implement effective methods to maintain and improve the quality of FLRA investigations and written work products, including FLRA staff training and internal education resources.

**Measure 1b-2:** Train FLRA staff and provide internal educational resources to improve the quality of investigations and written work products.

**Results**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Developed and instituted Agency-wide informal training program using brown bag sessions.</li> <li>Developed and administered internal survey on training.</li> <li>Encouraged employees to increase awareness of Authority decisions by using electronic distribution tool for Agency-wide dissemination of decisions.</li> <li>Implemented Individual Development Plans for each staff member to identify training needs.</li> </ul>
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**Targets**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop internal training programs and other educational tools Agency-wide in order to improve the quality of investigations and written work products (e.g., component-specific mentoring programs, Agency-wide or component-specific brown bag sessions, Agency-wide dissemination of decisions and other relevant legal opinions).</li> <li>Develop and administer internal surveys or other measures to assess the effectiveness of pilot internal training programs and educational tools.</li> <li>Make necessary adjustments to make internal training programs more effective.</li> <li>Formally implement those internal training programs and educational tools that are deemed effective in order to improve the quality of investigations and written work products.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Target ways to improve the effectiveness of internal educational resources based on survey results.</li> <li>Show a 10% increase in the effectiveness of internal educational resources, as measured by internal survey instruments or other measures developed in FY 2019.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Continue to make necessary adjustments to maximize efficiency of internal training programs.</li> <li>Increase professional development options for FLRA staff in order to improve the quality of investigations and written work products.</li> </ul>

<b>Performance Goal 1b-3:</b> Ensure external stakeholder confidence in the FLRA's abilities.	
<b>Measure 1b-3:</b> Customer perceptions about the FLRA's impartiality.	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Developed a survey to assess parties' perceptions of FLRA's impartiality.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and administer an external survey(s) to assess the parties' perceptions of the FLRA's impartiality.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Maintain or improve overall perceptions about the FLRA's impartiality year over year.</li> <li>Pilot external survey.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Deliver external survey electronically with every decision issued by the Agency.</li> </ul>

**STRATEGIC GOAL 2: WE WILL DEVELOP AND PROVIDE TOOLS AND RESOURCES TO ENABLE THE PARTIES TO PREVENT OR MORE EFFECTIVELY AND EFFICIENTLY RESOLVE THEIR LABOR-RELATIONS DISPUTES AND IMPROVE THEIR LABOR-MANAGEMENT RELATIONSHIPS.**

FLRA is specifically empowered and obligated to “provide leadership in establishing policies and guidance” related to matters arising under the Statute. 5 U.S.C. § 7105(a)(1). Educating parties regarding statutory obligations promotes FLRA’s mission of protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient Government. FLRA accomplishes this goal first through its written determinations and by providing parties with quality educational resources through FLRA’s website; by identifying, and offering targeted assistance to, parties with significant labor-management challenges; and by offering external training to Federal agencies and labor organizations regarding their rights and obligations under the Statute.

**STRATEGIC OBJECTIVE 2A: MAINTAIN AND EXPAND EDUCATIONAL RESOURCES ON [WWW.FLRA.GOV](http://WWW.FLRA.GOV).**

Offering high-quality educational resources through FLRA’s website is a key component of promoting stability in the Federal labor-management community. Parties who are better informed about their rights and obligations under the Statute are less likely to pursue frivolous matters or defenses, and they are more likely to approach their labor-management relations in a manner that is consistent with the Statute.

The Agency will continue to explore ways to supplement and enhance the educational resources on its website, such as expanding parties’ access to statutory and other training, online training modules, and short animated training videos.

**Performance Goal 2a-1:** Routinely review and update educational resources on the FLRA website.

**Performance Goal 2a-2:** Develop a growing library of online training modules on the FLRA website.

**Performance Goal 2a-3:** Develop and maintain case digests of new Authority decisions on the FLRA website.

<b>Measure 2a: Expand the relevancy, currency, and reach of educational tools.</b>	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Began publishing digests on a quarterly basis.</li> <li>▪ Acquired animation software to begin developing short animated training videos.</li> <li>▪ Piloted desktop video teleconferencing to expand capabilities for providing interactive external training online.</li> <li>▪ Developed 5 pre-recorded training modules in preparation for posting.</li> <li>▪ Updated OGC Unfair Labor Practice Case Law Outline.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Update at least 3 guides or manuals Agency-wide.</li> <li>▪ Establish a mechanism to live stream trainings online or offer pre-recorded trainings on the <a href="http://www.flra.gov">www.flra.gov</a> website.</li> <li>▪ Offer at least 5 training sessions online Agency-wide.</li> <li>▪ Begin publishing case digest summaries for all Authority decisions. OGC and FSIP to evaluate doing the same for their decisions.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Critically review and update the relevancy and currency of Agency regulations.</li> <li>▪ Update 2 guides or manuals Agency-wide.</li> <li>▪ Offer 7 training sessions online Agency-wide.</li> <li>▪ Continue to provide case digest summaries for all Authority decisions. Provide OGC and FSIP case digests, if deemed appropriate.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>▪ Critically review and update the relevancy and currency of Agency regulations.</li> <li>▪ Update remaining guides or manuals Agency-wide as needed.</li> <li>▪ Offer 10 additional training sessions online as developed.</li> <li>▪ Continue to provide case digest summaries for all Authority decisions. Provide OGC and FSIP case digests, if deemed appropriate.</li> </ul>

**STRATEGIC OBJECTIVE 2B: IDENTIFY AND OFFER TARGETED ASSISTANCE TO PARTIES WITH SIGNIFICANT LABOR-MANAGEMENT CHALLENGES.**

In situations where parties experience labor-management challenges, targeted assistance can promote stable labor-management relationships by educating the parties regarding their statutory rights and obligations. It can also promote effective and efficient Government by assisting parties in addressing their disputes without necessarily resorting to formal filings.

As part of the Agency's strategic commitment to develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships, the Authority signed a memorandum of understanding (MOU) with the Federal Mediation and Conciliation Service (FMCS) creating a new pilot procedure to offer alternative dispute resolution opportunities at no cost to the parties. Under its terms, the Authority will train a unique cadre of FMCS mediators so that they may assist the parties in the



resolution of negotiability appeals through mediation. Under the pilot program, before a negotiability appeal is considered by the Authority's Members for a decision, the Authority may refer such appeals to FMCS, either on the Authority's own initiative or based upon a request from the parties. The negotiability-appeal-mediation procedure is expected to take between 30 and 60 days. The Authority anticipates that this will reduce case-processing time in negotiability appeals as well as provide opportunities for parties to expeditiously resolve appropriate negotiability disputes without the need for a formal Authority decision.

Additional targeted assistance may take various forms, including offering training to parties on particular topics that have given rise to frequent ULP charges, negotiability disputes, or arbitration exceptions. Other types of assistance might be most appropriate for parties experiencing broader labor-management challenges. For parties involved in complex representational matters, targeted assistance can include conducting conferences with the parties to assist them in identifying and, if feasible, resolving relevant issues.

For example, OGC conducted 30 training sessions to more than 25 federal agencies and labor organizations in 2019. These sessions were requested by the organizations based on their perceived needs in the Federal labor-management relations area. FLRA staff tailored each session to meet the individualized needs of the particular group and received consistent positive feedback from the participants. The targeted training sessions focused on a range of issues, including unfair labor practices and representation matters.

**Performance Goal 2b-1:** Identify and evaluate parties with significant labor-management challenges.

**Performance Goal 2b-2:** Refer appropriate parties to suitable resources.

**Performance Goal 2b-3:** Implement highly effective targeted assistance programs and associated materials.

**Measure 2b:** Develop and implement a highly effective, totally voluntary targeted-assistance program and related procedures.

**Results**

**FY 2019**

- Collaborated with FMCS on a pilot program to offer alternative dispute resolution in appropriate negotiability disputes.
- Addressed specific requests of parties for targeted training.

**Targets**

**FY 2019**

- Develop the criteria for identifying parties with significant labor-management challenges.
- Develop procedures for offering targeted assistance to identified parties or referring such parties to appropriate resources.
- Pilot a targeted-assistance program.
- Identify metrics for evaluating the program's success.
- Formally implement a targeted-assistance program with appropriately ambitious measures to assess its effectiveness.

**FY 2020**

- Train FMCS mediators and support the pilot mediation program.
- Establish metrics for evaluating the effectiveness of the mediation program.
- Evaluate the effectiveness of the targeted-assistance program using the metrics established in FY 2019.
- Make necessary refinements and improvements based on customer feedback.
- Increase the program's overall success as measured by the metrics established in FY 2019.

**FY 2021**

- Evaluate the effectiveness of the FMCS mediation pilot program using metrics established in FY 2020.
- Continue to evaluate the effectiveness of the targeted-assistance program.

**STRATEGIC OBJECTIVE 2C: MAINTAIN AND EXPAND OUR EXTERNAL TRAINING PROGRAMS TO ENABLE THE PARTIES TO BETTER UNDERSTAND THEIR RIGHTS AND OBLIGATIONS UNDER THE STATUTE.**

Agency components have traditionally provided training on statutory principles governing ULPs, representational issues, negotiability disputes, and arbitration exceptions. Providing such external training to federal agencies and labor organizations regarding their rights and obligations under the Statute directly promotes FLRA's mission of protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient government. For this reason, it is essential that FLRA maintain and, where possible, expand these external training programs.

**Performance Goal 2c-1:** Exceed an annual target number of highly rated in-person training programs for a target number of participants concerning the full range of statutory matters.

**Performance Goal 2c-2:** Find additional ways to deliver real-time and pre-recorded external trainings that have been successfully developed and implemented utilizing appropriate technology and participant-friendly best practices.

**Performance Goal 2b-3:** Exceed an annual target number of highly rated training programs for a target number of participants regarding procedures for filing and processing FLRA cases.

Measure 2c-1: The number of <i>training, outreach, and facilitation activities</i> delivered.			
Results			
FY 2016	280		
FY 2017	273		
FY 2018	100		
Measure 2c-1: The number of <i>in-person statutory training</i> programs delivered.			
Results		Targets	
FY 2019	95	FY 2019	50
		FY 2020	50
		FY 2021	50

Measure 2c-2: The number of participants involved in <i>training, outreach, and facilitation</i> activities.			
Results			
FY 2016	8,440		
FY 2017	8,122		
FY 2018	2,574		
Measure 2c-2: The number of participants who receive <i>in-person statutory training</i> .			
Results		Targets	
FY 2019	4,807	FY 2019	2,500
		FY 2020	2,500
		FY 2021	2,500

**Measure 2c-3:** The percentage of participants who highly rate the statutory training that they received.

Results		Targets	
<b>FY 2019</b>	Evaluations in development	<b>FY 2019</b>	Develop evaluations.
		<b>FY 2020</b>	80% of participants rate the training as effective or highly effective
		<b>FY 2021</b>	80% of participants rate the training as effective or highly effective

**Measure 2c-4:** The number of training programs delivered regarding procedures for filing and processing FLRA cases.

Results		Targets	
<b>FY 2019</b>	72	<b>FY 2019</b>	40
		<b>FY 2020</b>	40
		<b>FY 2021</b>	FLRA will discontinue this measure; covered by statutory training

**Measure 2c-5:** The number of participants who receive training regarding procedures for filing and processing FLRA cases.

Results		Targets	
<b>FY 2019</b>	3,082	<b>FY 2019</b>	2,000
		<b>FY 2020</b>	2,000
		<b>FY 2021</b>	FLRA will discontinue this measure; covered by statutory training

**Measure 2c-6:** The percentage of participants who highly rate the training that they received regarding procedures for filing and processing FLRA cases.

Results		Targets	
<b>FY 2019</b>	Evaluations in development	<b>FY 2019</b>	Develop evaluations.
		<b>FY 2020</b>	80% of participants rate the training as effective or highly effective
		<b>FY 2021</b>	FLRA will discontinue this measure; covered by statutory training

**Measure 2c-7:** The number of real-time and pre-recorded online training programs developed and implemented.

Results		Targets	
<b>FY 2019</b>	5	<b>FY 2019</b>	5
		<b>FY 2020</b>	7
		<b>FY 2021</b>	10

**Measure 2c-8:** The percentage of participants who highly rate the real-time and pre-recorded online training that they received.

Results		Targets	
<b>FY 2019</b>	In Development	<b>FY 2019</b>	Develop evaluations.
		<b>FY 2020</b>	80% of participants rate the training as effective or highly effective
		<b>FY 2021</b>	80% of participants rate the training as effective or highly effective

**STRATEGIC GOAL 3: WE WILL MANAGE OUR RESOURCES EFFECTIVELY AND EFFICIENTLY, AND RECOGNIZE THAT OUR DEDICATED WORKFORCE IS CRITICAL TO THE RESOLUTION OF LABOR-RELATIONS DISPUTES.**

The FLRA honors the trust that the public has placed in it to use Agency resources wisely on behalf of the American taxpayer. Recognizing that trust, FLRA has always focused its resources on carrying out its mission. It will continue to do so.

The core of FLRA's mission is to protect rights and facilitate stable labor-management relationships. FLRA will continue to achieve that goal by employing committed, experienced professionals.

FLRA will continue to explore ways to manage its workforce effectively and efficiently. A key component of that commitment is to continue developing IT systems, with the goal of enabling FLRA employees to spend more time on mission-critical, substantive work. FLRA will also reexamine its performance-management systems to ensure that they align with the goals in the Strategic Plan, that individual employee standards reflect organizational goals, and that the Agency appropriately recognizes employee achievements in support of these goals. Finally, FLRA will continue to encourage employee growth, development, and innovation.

**STRATEGIC OBJECTIVE 3A: ENSURE THAT THE FLRA'S PERFORMANCE-MANAGEMENT SYSTEMS ARE SYNCHRONIZED WITH AND SUPPORT THE AGENCY'S STRATEGIC GOALS.**

At the foundation of the Agency's 2018-2022 Strategic Plan is FLRA's renewed commitment to developing the most effective ways to evaluate Agency performance, as well as the contributions of the Agency's components and individual employees. To do this, employee performance-management targets will be adapted to support Agency goals. This will help ensure that the evaluation of FLRA employees will include consideration of how well they assist the Agency to achieve its strategic and performance goals.

**Performance Goal 3a-1:** FLRA employees perceive that the Agency's performance-management systems, and their individual performance plans, directly align with achieving this strategic plan.

**Performance Goal 3a-2:** FLRA employees have a clear understanding of how their individual achievement contributes to achievement of Agency priorities and successful implementation of FLRA strategic goals.

**Performance Goal 3a-3:** FLRA employees perceive that their performance recognition and rewards are also directly linked to their contribution to the successful achievement of the FLRA's strategic goals.

**Measure 3a-1: Align performance-management systems and individual performance plans with current Strategic Plan.**

<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Evaluated Agency performance-management systems and individual employee performance plans for alignment with the Strategic Plan.</li> <li>▪ Formed Strategic Implementation Teams for the three types of positions-- (1) OGC Attorneys, (2) Non-OGC attorneys, (3) Non-Attorneys--and tasked those teams with offering recommended revisions to employees' standards and elements.</li> <li>▪ Strategic Implementation Teams have provided Agency leadership with recommended revisions of performance plans to pilot in 2020.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>▪ Develop communications strategies, educational tools, and other materials to successfully implement the new systems.</li> <li>▪ Develop and administer an internal survey(s) to assess whether employees perceive that performance management systems (GS and SL/SES) and individual employee performance plans align with the Strategic Plan.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>▪ Develop revised performance plans for remaining positions.</li> <li>▪ Pilot all revised performance plans.</li> <li>▪ Implement appropriate communications strategies and educational tools to successfully achieve the transition.</li> <li>▪ Implement automated employee performance assessment system to streamline performance management process and utilize existing technologies.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>▪ Evaluate pilot and revise performance plans as appropriate.</li> </ul>

**Measure 3a-2: Employees understand how their individual performance contributes to overall Agency strategic goals.**

<b>Results</b>	
<b>FY 2019</b>	FLRA did not administer a separate survey, but relied on data provided through FEVS.
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether FLRA employees understand how their individual achievements contribute to Agency priorities and successful implementation of FLRA strategic goals. (E.g., FEVS Question #12, "I know how my work relates to the agency's goals and priorities"; FEVS Question #16, "I am held responsible for achieving results.")
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.
<b>FY 2021</b>	FLRA will continue to review and analyze most recent FEVS results and discontinue this measure.

**Measure 3a-3:** Employees believe that there is alignment between the recognition and rewards that they receive and their individual contributions towards achieving the FLRA's strategic goals.

**Results**

**FY 2019**

FLRA did not administer a separate survey, but relied on data provided through FEVS.

**Targets**

**FY 2019**

Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that recognition and rewards relate to their contribution toward achievement of FLRA strategic goals. (E.g., FEVS Question #24, "In my work unit, differences in performance are recognized in a meaningful way"; FEVS Question #25, "Awards in my work unit depend on how well employees perform their jobs"; FEVS Question #32, "Creativity and innovation are rewarded.")

**FY 2020**

Maintain or improve positive responses to relevant question(s) in existing survey instruments the internal survey(s) year over year.

**FY 2021**

FLRA will continue to review and analyze most recent FEVS results and discontinue this measure.



**STRATEGIC OBJECTIVE 3B: CONTINUE TO EXPAND THE FLRA’S TECHNOLOGICAL CAPABILITIES TO ENABLE EMPLOYEES TO DELIVER MISSION RESULTS MORE EFFECTIVELY AND EFFICIENTLY.**

FLRA’s IT systems have provided, and will continue to provide, a key means by which the FLRA will more effectively and efficiently deliver quality services and increase internal efficiencies. For example, the Agency has connected all FLRA components in ways that improve internal communication, and FLRA staff works more efficiently by using a cloud-based Document Management System that allows for simplified document management and internal collaboration.

The Agency implemented a new and improved version of its eFiling system in FY 2018 that provides a more intuitive, user-friendly customer experience. This improved eFiling experience allows the parties to submit ULP, representation, arbitration, and negotiability filings in an electronic format. The Agency is currently using the same software and agile methodology to develop a more user-friendly electronic Case Management System. FLRA will integrate these three systems — document management, eFiling, and case management — to fully implement electronic case file capability throughout the Agency.

Thereafter, as resources permit, FLRA continues to enhance and leverage these technological capabilities. Work has begun to fully implement electronic case files, to encourage the widest uses of eFiling and to serve FLRA-generated case documents on the parties electronically—saving time, human-capital resources, and postage costs.

**Performance Goal 3b-1:** Implement a new and improved FLRA electronic case-management system. Integrate the case-management system with the FLRA document management and eFiling systems in order to fully implement electronic case file capability throughout the Agency.

**Performance Goal 3b-2:** FLRA employees and parties understand how to make the most effective use of the FLRA’s electronic systems.

**Performance Goal 3b-3:** Enhance the positive impact of technological advancements on the customer experience.

<b>Measure 3b-1: Expand the use of eFiling.</b>	
<b>Results</b>	
<b>FY 2016</b>	<ul style="list-style-type: none"> <li>22% of cases eFiled Agency-wide.</li> </ul>
<b>FY 2017</b>	<ul style="list-style-type: none"> <li>35% of cases eFiled Agency-wide.</li> </ul>
<b>FY 2018</b>	<ul style="list-style-type: none"> <li>35% of cases eFiled Agency-wide.</li> </ul>
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>46% of cases eFiled Agency-wide.</li> <li>Authority and FSIP exceeded target of 10% increase.</li> <li>80% of case eFiled in the Authority; 78 % in FSIP</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>50% of cases eFiled Agency-wide.</li> <li>10% increase in eFiling in each component – the OGC, the Authority, and the FSIP.</li> <li>Amend FLRA’s regulations to eliminate the use of facsimile service for case filings throughout the Agency.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>75% of cases eFiled Agency-wide.</li> <li>Critically review and revise FLRA regulations to modernize filing requirements.</li> <li>Pilot mandatory eFiling in at least one Regional Office.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Expand mandatory eFiling pilot to all components.</li> </ul>

<b>Measure 3b-2: Implement end-to-end electronic case files.</b>	
<b>Results</b>	
<b>FY 2016</b>	<p>With the merger of the eFiling and Case Management System (CMS) applications complete, and the bridge between the two systems in place to support end-to-end electronic case-processing capability, enhanced the available features for the integration of the eFiling and CMS applications. eFiled cases are routinely automatically entered into the CMS. Neared completion of an improved eFiling user interface (eFiling 2.0) to make the application more user-friendly and intuitive. Began efforts to implement a Document Management System, which is a critical step in accomplishing the FLRA’s multi-year electronic-case-file plan.</p>
<b>FY 2017</b>	<p>Deployed an Agency-wide, cloud-based DMS, which replaced the existing network shares with an integrated document and email communications system that will facilitate document sharing and electronic case-processing initiatives. Adopted a new, more cost-effective approach to achieving end-to-end electronic case files. Using agile methodology and open-source code, and responding to user feedback, completed initial development of a brand new, user-friendly eFiling application (eFiling 3.0) with a Ruby on Rails user interface and a Postgres backend database that is housed in Amazon Web Services – a cloud-based solution. The new application will be launched in 2018 once final testing and additional enhancements are completed. Began modernizing the infrastructure of the Agency’s electronic CMS and eFiling by transitioning to a new cloud-based, backend product – Postgres database housed in Amazon Web Services – that will allow for a more user friendly and complete integration of the CMS, the eFiling system, and the DMS.</p>

<b>FY 2018</b>	Developed and launched eFiling 3.0, which both internal and external users report is significantly more user-friendly and intuitive. Began development of a new and improved CMS that, over time, will provide significant (\$100,000 annually) cost savings and allow for more efficient integration of the CMS and eFiling systems with the DMS, enabling end-to-end electronic case processing throughout the Agency. Identified the basic structure of electronic case files for each component/office in the DMS. Completed transition of all major IT functions – CMS, DMS, eMail – to the cloud, which improves both IT security, consistent with the PMA, and Agency continuity of operations plans.
<b>FY 2019</b>	Developed CMS for the Authority. Developed electronic case file structure in the DMS and initial planning to automate creating the electronic folders from the CMS.
<b>Targets</b>	
<b>FY 2019</b>	Develop and fully implement the new and improved CMS in at least one FLRA component.
<b>FY 2020</b>	Develop and implement the new and improved CMS for the OGC.
<b>FY 2021</b>	Develop and implement the new and improved CMS in all remaining components/offices. Implement end-to-end electronic case files throughout the Agency.

<b>Measure 3b-3: Internal and external customer perceptions of the eFiling System.</b>	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Received feedback from external users via the provided engagement email address. Implemented suggestions and replied to customer feedback.</li> <li>Developed and distributed notices to customers promoting the use of eFiling.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop a communications strategy for sharing with internal and external customers the benefits and advantages of eFiling (e.g., notice to go out with all Authority decisions).</li> <li>Develop and administer internal and external survey tools to assess customer perceptions of the eFiling System.</li> <li>Develop online, pop-up eFiling surveys that appear while users are logged into the eFiling System.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to internal and external survey instruments.</li> <li>Adopt suggested enhancements to the eFiling System, as appropriate.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to internal and external survey instruments.</li> <li>Adopt suggested enhancements to the eFiling System, as appropriate.</li> </ul>

**Measure 3b-4:** Assess how internal and external customers perceive the effectiveness of the Agency's IT modernization efforts.

**Results**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Developed and administered internal surveys to assess how FLRA employees perceive the effectiveness of the Agency's IT modernization efforts.</li> <li>Evaluated survey results.</li> </ul>
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**Targets**

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and administer internal and external survey(s) to assess: (1) whether FLRA employees and customers know how to maximize available technology; and (2) how FLRA employees and customers perceive the effectiveness of the Agency's IT modernization efforts.</li> <li>Develop and implement appropriate communications to promote and enhance these efforts.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Craft an effective, targeted communications strategy based on the results of the customer-satisfaction surveys.</li> <li>Develop and provide any necessary internal or external training programs so that employees and customers have the tools to maximize technological improvements.</li> <li>Achieve improved survey results year over year.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Annually distribute internal customer satisfaction survey and continue to receive point of service surveys.</li> </ul>

**STRATEGIC OBJECTIVE 3C: RECRUIT, RETAIN, AND DEVELOP A DIVERSE, RESPECTED WORKFORCE IN AN ENVIRONMENT THAT FOSTERS EMPLOYEE INPUT AND SATISFACTION AND MAKES THE BEST USE OF FLRA RESOURCES.**

FLRA's charge to uphold and administer the Statute relies on its employees. Accordingly, FLRA's success relies on the expertise and engagement of its workforce. A key component of attracting and retaining an effective workforce is creating a positive work environment in which employees see themselves as stakeholders and innovators. FLRA will continue to assess the skills and professional education/training needs of its workforce, and it will seek new, cost-effective ways to cultivate employee development and commitment. FLRA will provide opportunities for experienced employees to share their institutional knowledge by providing internal training and through other means. FLRA's continued focus on human-capital development will help ensure continued mission accomplishment and leadership of the federal-sector labor-management relations program.

**Performance Goal 3c-1:** Internal and external survey respondents perceive that diverse and respected FLRA employees demonstrate expertise in federal-sector labor-management relations; minimal gaps exist in succession plans; and the Agency develops nontraditional resources for employee education and development.

**Performance Goal 3c-2:** The FLRA workforce expresses a stable and improving level of overall job satisfaction, as well as satisfaction with the manner in which internal problem-solving occurs.

**Performance Goal 3c-3:** FLRA managers and employees perceive that the Agency appropriately uses telework and technology to promote employee efficiency and a healthy work-life balance.

**Measure 3c-1: Recruit, retain, and develop a diverse, respected workforce.**

<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Reviewed a portion of Agency performance-management systems and individual performance plans to ensure that they align directly with the 2018-2022 Strategic Plan.</li> <li>Completed review of all position descriptions Agency-wide, to ensure that all Agency positions reflect the actual duties of the position.</li> <li>Issued a revised Reasonable Accommodation Policy – including Personal Assistive Device policy – that is fully compliant with recent EEOC regulatory amendments and guidance.</li> <li>Ensured compliance with Government-wide goals for Schedule A hiring.</li> <li>Expanded recruitment efforts to target persons with disabilities.</li> <li>Formed Diversity and Inclusion Team to develop programs to highlight and celebrate the diversity of Agency employees.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Review Agency performance-management systems and individual performance plans to ensure that they align directly with the 2018-2022 Strategic Plan.</li> <li>Conduct a comprehensive, Agency-wide position classification review to confirm that all Agency positions reflect the actual duties of the</li> </ul>

	<p>position.</p> <ul style="list-style-type: none"> <li>Assess time-to-hire results for Agency positions by reviewing recruitment and staffing processes and procedures.</li> <li>Issue a revised Reasonable Accommodation Policy – including Personal Assistive Device policy – that is fully compliant with recent EEOC regulatory amendments and guidance.</li> <li>Ensure compliance with Government-wide goals for Schedule A hiring.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Improve time-to-hire metrics based on results of FY 2019 assessment.</li> <li>Meet or exceed Government-wide standards for diversity and Schedule A hiring.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Maintain a diverse and respected workforce through targeted recruitment.</li> </ul>
<b>Measure 3c-2: Maintain and grow Agency expertise through employee development.</b>	
New measure FY 2016.	
<b>Results</b>	
<b>FY 2017</b>	<ul style="list-style-type: none"> <li>Managers assessed employees' developmental needs and provided at least one targeted developmental opportunity to each, many of those in-house (e.g., details, workgroups, and special projects).</li> <li>In the 2017 FEVS, had 55 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). Continued to rank in the top ten among small agencies (those with 100-999 employees) in two important indices – Employee Engagement and New IQ – with #6 and #5 rankings, respectively.</li> <li>78 percent of FLRA employees responded positively to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47), which is 5 percent above the small-agency score of 73 percent, and 10 percent above the Government-wide score of 68 percent.</li> </ul>
<b>FY 2018</b>	<ul style="list-style-type: none"> <li>Offered cross-component details to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency's mission and operations.</li> <li>Managers assessed annually employees on their developmental needs and provided appropriate training and developmental opportunities.</li> <li>Maintained sustained growth of positive responses to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47).</li> </ul>
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Held 3 component specific brown bag sessions (Authority, FSIP, OALJ).</li> <li>Developed and administered surveys to solicit feedback on employee education and development.</li> <li>Provided promotional opportunities for internal agency staff prior to advertising key leadership positions externally.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and implement use of nontraditional resources for employee education and development (e.g., component-specific mentoring programs, Agency-wide or component-specific brown bag sessions, Agency-wide dissemination of decisions and other relevant legal opinions).</li> </ul>

	<ul style="list-style-type: none"> <li>Develop and administer survey(s) to solicit feedback on and assess the effectiveness of nontraditional resources for employee education and development.</li> <li>Maintain sustained growth of positive responses to FEVS Question #47 – “Supervisors in my work unit support employee development.”</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Enhance and continue to use those nontraditional resources for employee education and development that were found to be most successful.</li> <li>Show a 10% increase in satisfaction with nontraditional methods, as measured by surveys or other measures developed in 2019.</li> <li>Maintain sustained growth of positive responses to FEVS Question #47 – “Supervisors in my work unit support employee development.”</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>FLRA will discontinue this measure because it is incorporated in Measure 1b-2.</li> </ul>

<b>Measure 3c-3: Internal and external perceptions about the workforce.</b>	
New measure FY 2019.	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and administer an <i>internal</i> survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations (e.g., FEVS Question #29 – “The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.”)</li> <li>Develop and administer an <i>external</i> survey(s) to assess whether external respondents perceive that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>FLRA will discontinue this measure regarding internal surveys because it will be measured through FEVS.</li> <li>FLRA will discontinue this measure regarding external surveys because it is incorporated in Measure 1b-3.</li> </ul>

<b>Measure 3c-4: Internal perceptions about succession plans.</b>	
New measure FY 2019.	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>
<b>Targets</b>	

<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that minimal gaps exist in succession planning (e.g., FEVS Question #68 – “How satisfied are you with your opportunity to get a better job in your organization?”)</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>FLRA will discontinue this measure. This will be measured through FEVS.</li> </ul>

<b>Measure 3c-5: Overall employee job satisfaction.</b>	
New measure FY 2019.	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>FLRA formed an employee engagement Team and began conducting focus groups with all employees to better understand all aspects of job satisfaction.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations (e.g., FEVS Global Satisfaction Index; FEVS Question #69 – “Considering everything, how satisfied are you with your job?”)</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to relevant questions in FEVS.</li> </ul>

<b>Measure 3c-6: Internal satisfaction with the manner in which internal problem-solving occurs.</b>	
New measure FY 2019.	
<b>Results</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>
<b>Targets</b>	
<b>FY 2019</b>	<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess employee satisfaction with internal problem-solving practices.</li> </ul>
<b>FY 2020</b>	<ul style="list-style-type: none"> <li>Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.</li> </ul>
<b>FY 2021</b>	<ul style="list-style-type: none"> <li>FLRA will continue to review and analyze most recent FEVS results and discontinue this measure.</li> </ul>



<b>Measure 3c-7:</b> Internal perceptions about use of technology to promote employee efficiency and work-life balance.	
New measure FY 2019.	
<b>Results</b>	
<b>FY 2019</b>	FLRA did not administer a separate survey, but relied on data provided through FEVS.
<b>Targets</b>	
<b>FY 2019</b>	Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess internal perceptions about the use of technology to promote efficiency and work-life balance (e.g., FEVS Question #42 – “My supervisor supports my need to balance work and other life issues.”)
<b>FY 2020</b>	Maintain or improve positive responses to relevant question(s) in existing survey instruments or internal survey(s) year over year.
<b>FY 2021</b>	FLRA will continue to review and analyze most recent FEVS results and discontinue this measure.

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**Washington, DC 20424**  
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## **Agency Financial Report | Annual Performance Report | Performance & Accountability Report**

Since Fiscal Year 2019, the FLRA has chosen to produce an Agency Financial Report (AFR), with a primary focus on financial results and an Annual Performance Report (APR), which focuses on strategic goals and performance results. As such, Fiscal Year 2018 was the last year that the FLRA produced a Performance & Accountability Report (PAR).

The FLRA's most recent AFR, APR, and PAR are linked below:

- [FY2019 Agency Financial Report](#)
- [FY2019 Annual Performance Report](#)
- [FY2018 Performance & Accountability Report](#)



# U.S. FEDERAL LABOR RELATIONS AUTHORITY

*Promoting and protecting labor-management relations for  
effective, efficient Government.*



## AGENCY FINANCIAL REPORT



# 2019





# **TABLE OF CONTENTS**

MESSAGE FROM THE CHAIRMAN .....	1
Management Assurances .....	1
Annual FMFIA Statement of Assurance.....	1
MANAGEMENT’S DISCUSSION AND ANALYSIS .....	2
BACKGROUND AND MISSION .....	2
ORGANIZATIONAL STRUCTURE .....	3
STRATEGIC GOALS / PERFORMANCE SUMMARY .....	6
Strategic Goal 1: We will resolve disputes under the Statute in a timely, high-quality, and impartial manner. ....	6
Strategic Goal 2: We will promote stability in the Federal Labor-Management community by providing leadership and guidance through ADR and education. ....	7
Strategic Goal 3: We will manage our resources effectively and efficiently in order to achieve organizational excellence.....	7
FINANCIAL SECTION .....	9
Principal Financial Statements.....	9
Balance Sheet.....	9
Statement of Net Cost .....	10
Statement of Changes in Net Position .....	11
Statement on Budgetary Resources .....	11
Notes to the Financial Statements.....	16
Independent Auditor’s Report.....	26
OTHER INFORMATION .....	32
SUMMARY OF FINANCIAL STATEMENT AUDIT .....	32
SUMMARY OF MANAGEMENT ASSURANCES.....	32
IMPROPER PAYMENTS ELIMINATION AND RECOVERY .....	33

## MESSAGE FROM THE CHAIRMAN



I am pleased to present the Federal Labor Relations Authority's (FLRA) Agency Financial Report (AFR) for fiscal year (FY) 2019. This report provides an assessment of the Agency's financial status along with information on our financial management and performance. The financial statements and notes that follow explain the FLRA's financial position as of September 30, 2019, and how the Agency's financial resources were expended to achieve results. For the fourteenth consecutive year, the FLRA has received an unqualified audit opinion on its financial statements. Along with the unqualified opinion, the report of independent auditors found no material weaknesses in the design and operation of the Agency system of internal controls over financial reporting.

We are confident that the FLRA's financial and performance data are complete, accurate, and reliable.

### **Management Assurances**

The Federal Managers Financial Improvement Act (FMFIA) of 1982 requires agencies to establish internal-control and financial systems that provide reasonable assurance that the integrity of Federal programs and operations are protected. The FMFIA also requires the Chairman to annually assess and report on the effectiveness of internal controls and to provide an annual Statement of Assurance on whether the Agency has met this requirement.

### **Annual FMFIA Statement of Assurance**

In accordance with the requirements of OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, the FLRA conducted an assessment of the effectiveness of the organization's internal controls to support effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations, and to determine whether the financial management system conforms to applicable financial requirements.

Based on the results of this assessment, the FLRA provides reasonable assurance that its internal controls over the effectiveness and efficiency of operations, reliable financial reporting, and compliance with applicable laws and regulations as of September 30, 2019, were operating effectively and that no material weaknesses were found in the design or operation of our internal controls.

Further, based on our assessment, we determined that the FLRA financial-management system conforms to applicable financial-systems requirements.



Colleen Duffy Kiko, Chairman  
Federal Labor Relations Authority  
November 19, 2019



# MANAGEMENT'S DISCUSSION AND ANALYSIS

The FLRA has chosen to produce an Agency Financial Report (AFR), with a primary focus on financial results, and an Annual Performance Report (APR), which focuses on strategic goals and performance results, in lieu of a combined Performance and Accountability report (PAR). The FLRA will submit its final 2019 APR to OMB with its Congressional Budget Justification and, once approved, post it on the FLRA website at the time the President's 2021 Budget is submitted to Congress in 2020. Both the AFR and APR will be posted on the FLRA website.

## BACKGROUND AND MISSION

The FLRA is an independent administrative Federal Agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The purpose of the Statute is to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures that are designed to meet the special requirements and needs of the Government. *Id.* § 7101(b). The provisions of the Statute are to be interpreted in a manner consistent with the requirement of an effective and efficient Government. *Id.*

The FLRA applied its Federal-sector expertise to execute its mission primarily by carrying out the following statutory responsibilities:

1. Conduct hearings and resolve complaints of unfair labor practices (ULPs) under § 7118 of the Statute. *Id.* § 7105(a)(2)(G). The FLRA is responsible for investigating, prosecuting, and adjudicating claims that an Agency or a labor organization has failed to uphold its legal obligations under the Statute.
2. Determine the appropriateness of units for labor-organization representation under the Statute, and supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees in an appropriate unit. *Id.* § 7105(a)(2)(A). The FLRA also resolves disputes about which employees may be included in bargaining units under the Statute. *Id.* § 7105(a)(2)(B).
3. Resolve exceptions to grievance-arbitration awards under § 7122 of the Statute. *Id.* § 7105(a)(2)(H). The FLRA adjudicates appeals – known as exceptions – to arbitration awards that result from grievances filed by employees, labor organizations, or agencies under parties' negotiated grievance procedures. The FLRA reviews those awards to assess whether they are contrary to any law, rule, or regulation, or are deficient on other grounds similar to those applied by Federal courts in private-sector labor-management disputes.
4. Resolve issues relating to the duty to bargain in good faith under § 7117(c) of the Statute. *Id.* § 7105(a)(2)(E). The FLRA resolves negotiability disputes that arise during bargaining under two circumstances – when an Agency claims that a contract proposal is outside the duty to bargain and when an Agency head disapproves a negotiated agreement claiming that it contains provisions that are contrary to law, rule, or regulation.

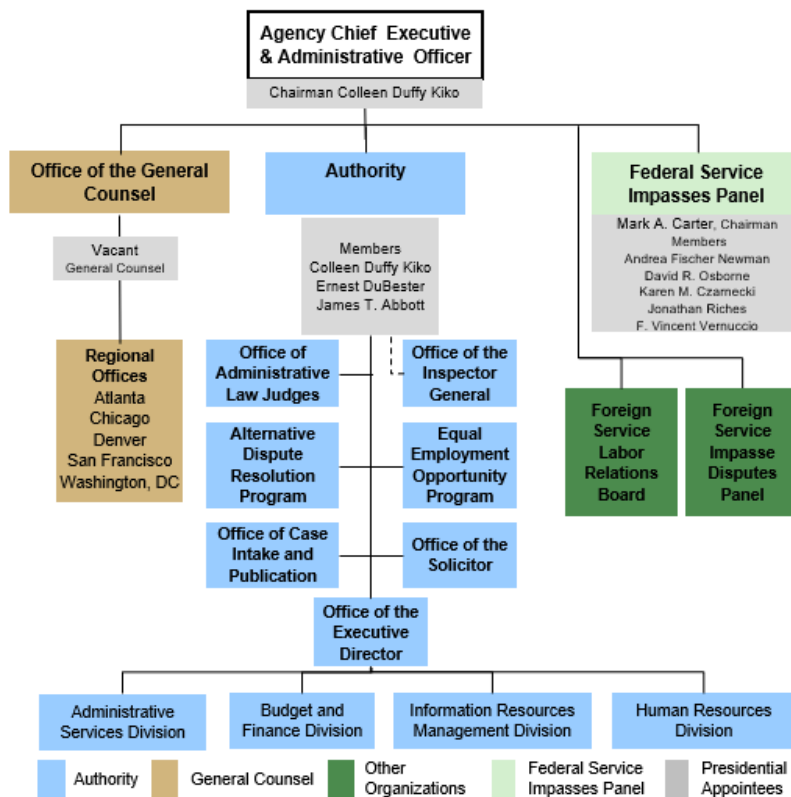
5. Provide assistance in resolving negotiation impasses between Federal agencies and exclusive representatives. *Id.* § 7119.

In addition, Congress directed the FLRA to prescribe criteria and resolve issues relating to the granting of national consultation rights under § 7113 of the Statute; prescribe criteria and resolve issues relating to determining compelling need for Agency rules or regulations under § 7117(b) of the Statute; prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under § 7117(d) of the Statute; and take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute.

Moreover, the FLRA is to “provide leadership in establishing policies and guidance” related to matters under the Statute. *Id.* § 7105(a)(1). The FLRA satisfies this directive primarily through its written determinations, but also by offering training and other services.

## ORGANIZATIONAL STRUCTURE

Headquartered in Washington, D.C., the FLRA has three statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (the FSIP or the Panel) – each with unique adjudicative or prosecutorial roles. The Agency also provides full program and staff support to two other organizations – the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, pursuant to the Foreign Service Act of 1980, 22 U.S.C. §§ 4101-4118.



## **Chief Executive and Administrative Officer**

The President of the United States designates one Member as Chairman who serves as the FLRA's chief executive and administrative officer. 5 U.S.C. § 7104(b).

## **The Authority**

The Authority – the FLRA's adjudicatory body – is led by three full-time, presidentially nominated and Senate-confirmed Members who are appointed to fixed, staggered five-year terms.

The Authority is responsible for adjudicating ULP complaints, ruling on exceptions to arbitrators' awards, resolving disputes over the negotiability of collective-bargaining proposals and provisions, and deciding applications for review of Regional Directors' decisions in representation disputes. The Authority Members appoint Administrative Law Judges (ALJs) to hear and prepare recommended decisions that may be appealed to the Authority in cases involving ULP complaints.

Other offices and programs under the jurisdiction of the Authority include the Office of the Solicitor, the Office of Administrative Law Judges (OALJ), the Office of Case Intake and Publication (CIP), the Alternative Dispute Resolution Program, and the Equal Employment Opportunity Program. Standing as an independent entity within the Authority is the Office of Inspector General.

## **The Office of the General Counsel**

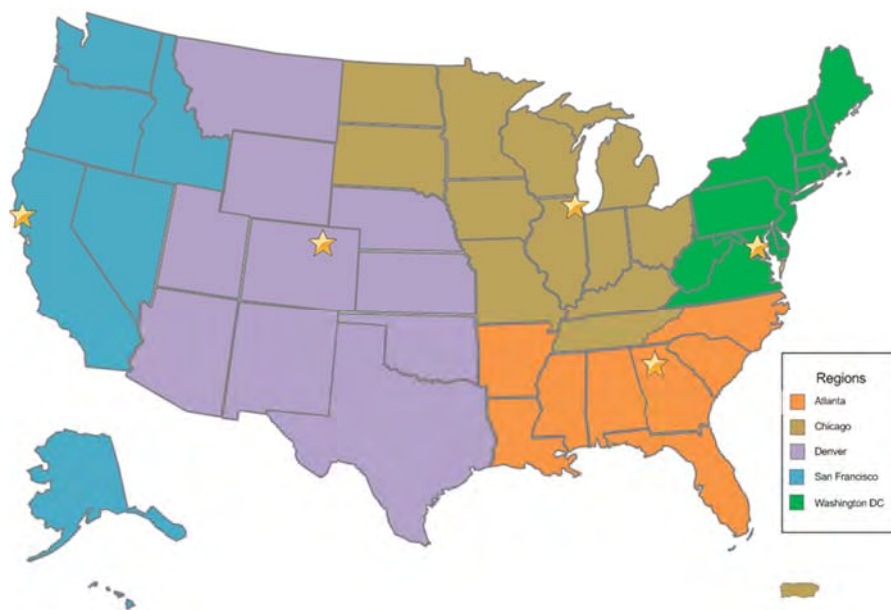
The OGC is led by a presidentially nominated and Senate-confirmed General Counsel who has direct authority over, and responsibility for, all employees in the OGC, including those in the FLRA's Regional Offices.

Under the Statute, the General Counsel has sole responsibility – independent of the Authority – over the investigation and prosecution of ULP cases. The General Counsel's determinations in these matters are final and unreviewable. The OGC investigates and resolves ULP charges, files and prosecutes ULP complaints, and provides training, as appropriate. In addition, through delegation by the Authority, the Regional Offices investigate and resolve representation (REP) cases and conduct secret-ballot elections.

An external challenge beyond the FLRA's control is the absence of a presidentially appointed, Senate-confirmed General Counsel (GC). Absent a GC throughout 2019, no ULP complaints or ULP appeal decisions have issued. In the absence of a GC, the Regional Offices may investigate ULP charges and dismiss those found to lack merit, but they cannot issue ULP complaints in meritorious cases – preventing the complaint from moving forward to a hearing before an ALJ. In addition, only the GC can decide appeals from a Regional Director's dismissal of a charge.

The General Counsel has a small staff at FLRA Headquarters, located in Washington, D.C. Headquarters management provides administrative oversight; develops policies, guidance, procedures, and manuals that provide programmatic direction for the Regional Offices and training and education for the parties; and processes appeals from the Regional Offices' dismissals of ULP charges. Each Regional Office is headed by a Regional Director who provides leadership and management expertise for the respective region. Collectively, the Regional Directors work with senior management throughout the FLRA to develop and implement policy and strategic initiatives to accomplish the FLRA mission.

With the closure of the Boston Regional Office on November 30, 2018, in accordance with the Agency Reform Plan, there are five Regional Offices in Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C.



### **The Federal Service Impasses Panel**

The FSIP is composed of part-time Presidential appointees – a Chairman and at least six other Members – who are appointed to fixed, staggered five-year terms. The FSIP provides assistance in resolving negotiation impasses between Federal agencies and labor organizations representing Federal employees that arise from collective-bargaining negotiations under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.

## STRATEGIC GOALS / PERFORMANCE SUMMARY

### **Strategic Goal 1: We will resolve disputes under the Statute in a timely, high-quality, and impartial manner.**

#### The Authority

In 2019, the Authority issued a total of 92 merits decisions. Staff shortages during much of the year have made it difficult to reduce the backlog of pending cases. As the Authority worked to clear its oldest cases, many of the decisions the Agency issued in 2019 were already “overage.” This resulted in the Authority missing some of its 2019 targets. In 37 percent (32/87 cases) of arbitration cases the Authority met its case-processing target of 210 days. The Authority’s concerted effort to clear the oldest cases in its inventory by the end of 2019 is reflected in its performance meeting its outer targets. For example, in 75 percent (6/8) of ULP cases and 83 percent (30/36) of negotiability cases the Authority met its 300-day target. And in 92 percent (33/36) of negotiability cases, 88 percent (7/8) of ULP cases, and 84 percent (73/87) of arbitration cases it met its outer 365-day target.

Further, the Authority continued to meet the statutory requirement to determine whether to grant review in 100 percent of representation cases within 60 days of filing of an application for review from a Regional Director’s determination. Where the Authority has granted applications for review, it met its 210-day target in 75 percent (6/8) of cases and met its outer 365-day target in 88 percent (7/8) of cases.

#### The Office of Administrative Law Judges

The OALJ – also part of the Authority – met or substantially met all of its performance goals in 2018. Absent a General Counsel or Acting General Counsel, the OALJ has received no new cases since November 2017. All of the cases that were on the OALJ docket were issued by the end of 2018. In the meantime, the Administrative Law Judges (ALJs) are performing work for other agencies through the ALJ Loan Program on a reimbursable basis. Additionally, the ALJs – consistent with governing regulations – are drafting decisions for the Authority in matters other than ULP cases.

#### The Federal Service Impasses Panel

In 2019, the Federal Service Impasses Panel received 77 filings (more than six new filings per month). The FSIP exceeded most of its timeliness measures for assisting parties in resolving their negotiation impasses. Specifically, it issued decisions to decline jurisdiction on cases not appropriately before the Panel within 140 days of the date that the parties filed their request for assistance in 90 percent (9/10) of the cases. It assisted the parties in achieving voluntary settlement within 160 days of the date that the parties filed their request for assistance in 100 percent (15/15) of cases. And, it issued its final order within 200 days of the date that the parties filed their request for assistance in 100 percent (24/24) of cases.

## Office of General Counsel

The FLRA has been without a presidentially-nominated, Senate-confirmed General Counsel since January 20, 2017. Despite the challenges this vacancy created, the OGC has continued delivering strong results in 2019. The OGC exceeded its strategic performance goals for the timely resolution of ULP cases, resolving 87 percent (1,867 of 2,134) by the withdrawal, dismissal or settlement of the ULP charge, within 120 days of the charge's filing date. It also exceeded its performance goals for timely resolution of representation cases, resolving 77 percent (205 of 266) of representation petitions by withdrawal, election or issuance of a Decision and Order within 120 days of filing.

### **Strategic Goal 2: We will promote stability in the Federal Labor-Management community by providing leadership and guidance through ADR and education.**

In 2019, the FLRA, as a whole, provided over 100 training sessions to over 3,000 participants. The Authority, the OGC, and the FSIP provided in-person case-law updates and training at several annual conferences nationwide. These sessions included presentations of newly prepared materials of current relevance, as well as updated materials for more standard sessions. The OGC consistently provided statutory training courses across the country.

In order to serve its customers and fulfill its statutory obligation to expedite negotiability appeals to the extent practicable, the Authority signed a memorandum of understanding (MOU) with the Federal Mediation and Conciliation Service (FMCS) creating a new pilot procedure for resolving negotiability appeals at no cost to the parties. Under its terms, FMCS will develop a unique cadre of mediators, who will receive specialized training from the Authority, to assist the parties in the resolution of negotiability appeals through mediation. Under the pilot program, before a negotiability appeal is considered by the Authority's Members for a decision, the Authority may refer such appeals to FMCS, either on the Authority's own initiative or based upon a request from the parties. The negotiability-appeal-mediation procedure is expected to take between 30 and 60 days.

### **Strategic Goal 3: We will manage our resources effectively and efficiently in order to achieve organizational excellence**

Consistent with the President's Management Agenda (PMA) Cross-Agency Priority (CAP) Goal 1, *Modernize IT to Increase Productivity and Security*, and the Agency's strategic plan, the FLRA continued its ongoing efforts to expand its IT capabilities to enhance mission performance by improving the quality and effectiveness of its internal and external customer-facing services – including increased use of cloud-based solutions, such as email, case management, and document management.

In 2019, the FLRA continued to execute its multi-year, four-phase plan to achieve its long-term goal of implementing end-to-end electronic case files throughout the Agency and complying with OMB mandates. Phase 1 was implementation of upgraded eFiling 3.0. Phase 2 is to provide a similar, more user-friendly and intuitive user interface for the Agency's internal

electronic Case Management System (CMS). Phase 2 also includes implementation of an Agency-wide Document Management System (DMS) – an electronic, cloud-based “filing cabinet” that provides a framework for organizing digital and paper documents. The DMS also provides the necessary storage capacity and IT platform for the eventual integration of eFiling, CMS, and DMS. The Agency has already implemented the DMS, and in early 2020 expects to complete the first pilot of the CMS with the Authority office. The Agency continues to make tremendous strides toward advancing our new and improved case management system to allow for integration with our Document Management System and our new eFiling 3.0.

# FINANCIAL SECTION

## Principal Financial Statements

The FLRA's principal financial statements have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. § 3515(b). While the statements have been prepared from the books and records of the FLRA in accordance with U.S. Generally Accepted Accounting Principles for Federal entities and the formats prescribed by the OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records. The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

## Balance Sheet

The Balance Sheet presents the FLRA's financial position through the identification of Agency assets, liabilities, and net position. The FLRA's fund balance with the Department of the Treasury (the Treasury) is nearly 90% of the total assets in both FY 2018 and FY 2019. The FLRA does not maintain any cash in commercial bank accounts or foreign currency balances, nor does it have any revolving or trust funds. The Agency's second largest asset is its furniture, equipment, and IT hardware and software, which is recorded at original acquisition cost, and then depreciated using the straight-line method over the estimated useful life of the asset.

Total assets increased to \$6.5 million at the end of FY 2019 from \$4.6 million at the end of FY 2018. New fixed-asset purchases of \$270,613 were made in FY 2019 and the net book value of property and equipment already owned experienced further depreciation.

Assets as of September 30,	2019	2018
Fund balance with the Treasury	\$6,167,641	\$4,474,299
General property and equipment	248,062	78,734
Prepaid expenses	49,655	18,141
Accounts receivable	48,607	10,114
<b>Total</b>	<b>\$6,513,966</b>	<b>\$4,581,288</b>

Totals may not add due to rounding.

Funds held with the Treasury are available to pay Agency liabilities, which represent the amount of monies or other resources likely to be paid by the FLRA as a result of transactions or events that have already occurred. Accrued employee leave, payroll, and benefits costs, along with accrued workers' compensation under the Federal Employees Compensation Act (FECA), accounted for 95 percent of total liabilities at the end of FY 2019. The remaining 5 percent reflects the amount owed by the FLRA to vendors and other Federal agencies for purchased



goods and services. Agency liabilities totaled \$4.2 million in FY 2018, and \$3.9 million in FY 2019.

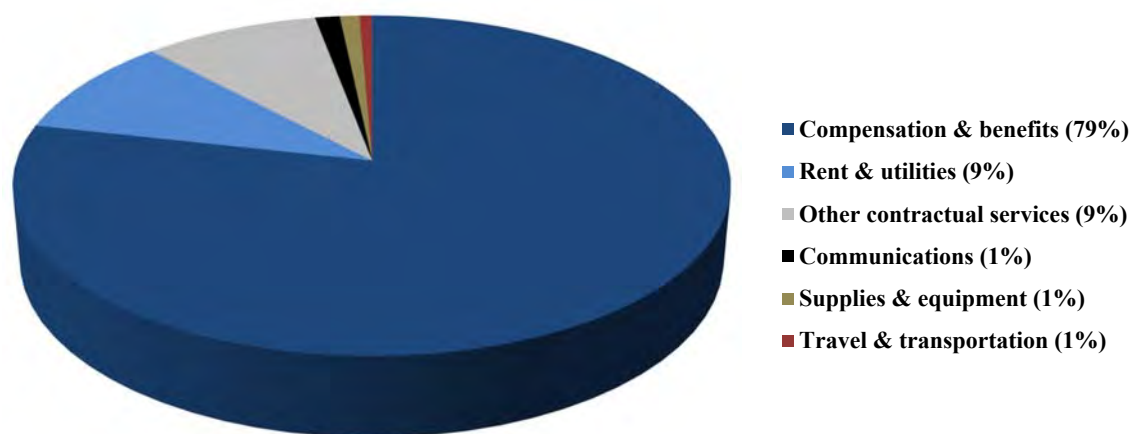
Liabilities as of September 30,	2019	2018
Unfunded leave	\$1,019,222	\$1,102,800
FECA liability	1,792,524	1,471,575
Accrued payroll and benefits	882,702	980,575
Accounts payable	166,022	654,739
Other Liabilities	11,138	261
<b>Total</b>	<b>3,871,608</b>	<b>4,209,950</b>

The FLRA's total net position at the end of FY 2019 was \$2.6 million, a \$2.3 million increase from the previous year.

### Statement of Net Cost

The Statement of Net Cost presents the gross cost of operating the FLRA's three major programs, less any reimbursable revenue earned from those activities. The net cost of operations in FY 2019 was \$24.5 million, which is \$2.8 million less than FY 2018. In FY 2019, 58 percent of the Agency's direct resources were dedicated to the Authority, which includes central administrative services provided to the entire Agency; 39 percent were dedicated to the OGC; and the remaining 3 percent were devoted to the FSIP.

### FY 2019 Financial Obligations by Budget Object Class



## **Statement of Changes in Net Position**

The Statement of Changes in Net Position reflects the changes that occurred within the cumulative results of operations and any unexpended appropriations. The cumulative results of operations represent the net results of operations since inception, the cumulative amount of prior-period adjustments, the remaining book value of capitalized assets, and future funding requirements. Cumulative results from FY 2018 to FY 2019 reflect a \$38 thousand increase totaling \$2.5 million.

Unexpended appropriations include undelivered orders and unobligated balances. Undelivered orders reflect the amount of goods and services ordered that have yet to be received.

Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The FLRA had an increase of \$2.3 million in total, unexpended Agency appropriations in FY 2019.

## **Statement on Budgetary Resources**

The Statement on Budgetary Resources reports the budgetary resources available to the FLRA during FY 2018 and FY 2019 to carry out the activities of the Agency, as well as the status of those resources at the end of each year. The primary source of FLRA funding is its annual Salaries and Expenses appropriation from the Congress. The Agency also receives reimbursements, pursuant to the Economy Act, for travel expenses associated with training provided by Agency employees on the Statute and FLRA mission.

The FLRA had \$26.7 million in total budgetary resources available to it in FY 2019. The Agency incurred obligations of \$26.4 million in FY 2019, with recording outlays of \$24 million. Total budgetary resources decreased by \$448 thousand in FY 2019, due primarily to the timing of unpaid obligations.

Federal Labor Relations Authority BALANCE SHEET (in dollars)		
As of September 30, 2019 and 2018		
	2019	2018
<b>Assets:</b>		
Intragovernmental		
Fund Balance With Treasury (Note 2)	\$ 6,167,641	\$ 4,474,299
Accounts Receivable (Note 3)	40,368	10,114
Prepaid Expenses	49,655	18,141
Total Intragovernmental	\$ 6,257,664	\$ 4,502,554
Accounts Receivable, Net (Note 3)	\$ 8,239	\$ -
Property, Equipment, and Software, Net (Note 4)	248,062	78,734
<b>Total Assets</b>	<b>\$6,513,966</b>	<b>\$4,581,288</b>
<b>Liabilities:</b>		
Intragovernmental		
Accounts Payable (Note 5)	\$ -	\$ 328,155
Accrued Payroll and Benefits (Note 5)	173,242	187,829
FECA Unfunded (Note 5)	198,927	222,358
Other	10,850	-
Total Intragovernmental	\$ 383,019	\$ 738,342
Accounts Payable (Note 5)	\$ 166,022	\$ 326,584
Unfunded Leave (Note 5)	1,019,222	1,102,800
FECA Actuarial Liability (Note 5)	1,593,597	1,249,217
Accrued Payroll and Benefits (Note 5)	709,460	792,746
Other Liabilities (Note 6)	288	261
<b>Total Liabilities</b>	<b>\$ 3,871,608</b>	<b>\$ 4,209,950</b>
<b>Net Position:</b>		
Unexpended Appropriations - Other Funds	\$ 5,174,568	\$ 2,864,908
Cumulative Results of Operations - Other Funds	(2,532,210)	(2,493,570)
<b>Total Net Position</b>	<b>\$ 2,642,358</b>	<b>\$ 371,338</b>
<b>Total Liabilities and Net Position</b>	<b>\$ 6,513,966</b>	<b>\$ 4,581,288</b>

Accompanying notes are integral to these statements and may reflect rounding differences.

Federal Labor Relations Authority STATEMENT OF NET COST (in dollars)		
For the Years Ended September 30, 2019 and 2018		
	2019	2018
<b>Gross Program Costs:</b>		
Authority:		
Intragovernmental Costs	\$ 5,390,916	\$ 6,039,210
Public Costs	8,793,418	9,121,750
Total Program Costs	\$ 14,184,334	\$ 15,160,960
Less: Earned Revenue	(22,521)	(1,239)
<b>Net Program Costs</b>	<b>\$ 14,161,813</b>	<b>\$ 15,159,721</b>
Federal Services Impasse Panel:		
Intragovernmental Costs	\$ 184,877	\$ 189,605
Public Costs	611,694	669,093
Total Program Costs	\$ 796,571	\$ 858,698
Less: Earned Revenue	-	-
<b>Net Program Costs</b>	<b>\$ 796,571</b>	<b>\$ 858,698</b>
Office of General Counsel:		
Intragovernmental Costs	\$ 2,363,319	\$ 2,757,467
Public Costs	7,219,015	8,531,298
Total Program Costs	\$ 9,582,334	\$ 11,288,765
Less: Earned Revenue	(6,408)	(7,199)
<b>Net Program Costs</b>	<b>\$ 9,575,926</b>	<b>\$ 11,281,566</b>
Total Gross Program Costs	\$ 24,563,239	\$ 27,308,423
Less: Total Earned Revenue	(28,929)	(8,438)
<b>Net Cost of Operations</b>	<b>\$ 24,534,310</b>	<b>\$ 27,299,985</b>

Accompanying notes are integral to these statements and may reflect rounding differences.

**Federal Labor Relations Authority**  
**STATEMENT OF CHANGES IN NET POSITION**  
(in dollars)

**For the Years Ended September 30, 2019 and 2018**

	<b>2019</b>	<b>2018</b>
<b>Unexpended Appropriations:</b>		
Beginning Balances	\$ 2,864,908	\$ 3,333,393
<b>Budgetary Financing Sources:</b>		
Appropriations Received	\$ 26,200,000	\$ 26,200,000
Other Adjustments	(525,964)	(519,592)
Appropriations Used	(23,364,376)	(26,148,893)
Total Budgetary Financing Sources	\$ 2,309,660	\$ (468,485)
Total Unexpended Appropriations	<b>\$ 5,174,568</b>	<b>\$ 2,864,908</b>
<b>Cumulative Results of Operations:</b>		
Beginning Balances	\$ (2,493,570)	\$ (2,548,456)
<b>Budgetary Financing Sources:</b>		
Appropriations Used	\$ 23,364,376	\$ 26,148,893
<b>Other Financing Sources (Non-Exchange):</b>		
Imputed Financing Sources	\$ 1,131,294	\$ 1,205,978
Total Financing Sources	\$ 24,495,670	\$ 27,354,871
Net Cost of Operations	(24,534,310)	(27,299,985)
Net Change	\$ (38,640)	\$ 54,886
Cumulative Results of Operations	\$ (2,532,210)	\$ (2,493,570)
<b>Net Position</b>	<b>\$ 2,642,358</b>	<b>\$ 371,338</b>

Accompanying notes are integral to these statements and may reflect rounding differences.

<b>Federal Labor Relations Authority</b> <b>STATEMENT OF BUDGETARY RESOURCES</b> <b>(in dollars)</b> <b>For the Years Ended September 30, 2019 and 2018</b>		
	<b>2019</b>	<b>2018</b>
<b>Budgetary Resources:</b>		
Unobligated balance from prior year budget authority, net	\$ 467,118	\$ 932,190
Appropriations	26,200,000	26,200,000
Spending authority from offsetting collections	29,662	12,323
<b>Total Budgetary Resources</b>	<b>\$ 26,696,780</b>	<b>\$ 27,144,513</b>
<b>Memorandum (non-add) Entries:</b>		
Net adjustments to unobligated balance brought forward, Oct. 1	\$ (4,182,374)	\$ (4,251,250)
<b>Status of Budgetary Resources:</b>		
New obligations and upward adjustments (Note 10)	\$ 26,386,975	\$ 26,408,865
Unobligated balance, end of year:		
Apportioned, unexpired account	34,427	9,108
Expired unobligated balance, end of year	275,378	726,540
Unobligated balance, end of year (total)	309,805	735,648
<b>Total Budgetary Resources</b>	<b>\$ 26,696,780</b>	<b>\$ 27,144,513</b>
<b>Outlays, net:</b>		
Outlays, net, (total)	\$ 23,980,695	\$ 26,187,577
<b>Agency outlays, net</b>	<b>\$ 23,980,695</b>	<b>\$ 26,187,577</b>

Accompanying notes are integral to these statements and may reflect rounding differences.

## Notes to the Financial Statements

### NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### A. Reporting Entity

The FLRA is an independent, administrative Federal agency created by Title VII of the Civil Service Reform Act of 1978, with a mission to carry out five statutory responsibilities: (1) determining the appropriateness of units for labor organization representation; (2) resolving complaints of unfair labor practices; (3) adjudicating exceptions to arbitrators' awards; (4) adjudicating legal issues relating to duty to bargain; and (5) resolving impasses during negotiations. The agency consists of three components: the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel.

#### B. Basis of Accounting and Presentation

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, and budgetary resources of the FLRA in accordance with the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, and the Accountability of Tax Dollars Act of 2002. The statements have been prepared from agency financial records in accordance with U.S. Generally Accepted Accounting Principles (GAAP), in accordance with guidance issued by the Federal Accounting Standards Advisory Board (FASAB) and the Office of Management and Budget (OMB), as prescribed in OMB Circular A-136, Financial Reporting Requirements, and pursuant to the requirements of 31 U.S.C. § 3515(b). These financial statements include all funds and accounts under the control of the FLRA.

The accounting structure of Federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when incurred, without regard to the receipt or payment of cash. The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases occur before an accrual-based transaction takes place. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of Federal funds. The accompanying financial statements are prepared on the accrual basis of accounting.

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

#### C. Budget Authority

The Congress passes appropriations annually that provide the FLRA with authority to obligate funds for necessary salaries and expenses to carry out mandated program activities. These funds are available until expended, subject to OMB apportionment and to Congressional restrictions on the expenditure of funds. Also, the FLRA places internal restrictions on fund expenditures to ensure the efficient and proper use of all funds.

#### D. Fund Balance with Treasury

FLRA receipts and disbursements are processed by the Department of the Treasury. Fund balances with the Treasury consist of appropriated funds that are available to pay current liabilities and to finance authorized purchase commitments. No cash is held in commercial bank accounts.

#### E. Accounts Receivable

Accounts receivable consists of amounts owed to FLRA by other federal agencies and the public. Amounts due from federal agencies are considered fully collectible and consist of interagency agreements. An allowance for uncollectible accounts receivable from the public is established when

either (1) management determines that collection is unlikely to occur after a review of outstanding accounts and the failure of all collection efforts, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 120 days delinquent. Based on historical experience, all receivables are considered collectible and no allowance is provided.

#### F. General Property and Equipment (P&E)

This category consists of equipment and internal use software. The basis for recording purchased P&E is full cost, including all costs incurred to bring FLRA P&E to and from a location suitable for its intended use. P&E is depreciated using the straight-line method over the estimated useful life of the asset. Statement of Federal Financial Accounting Standards (SFFAS) No. 10, Accounting for Internal Use Software, provides accounting standards for internal use software used by each agency. The standards provide for capitalized property to continue to be reported on the Balance Sheet. P&E that are not capitalized because they are under the capitalization threshold are expensed in the year of acquisition.

The FLRA's capitalization threshold for individual purchases is \$25,000. Bulk purchases of similar items that individually are worth less than \$25,000, but collectively are worth more than \$100,000 are also capitalized using the same general P&E categories and useful lives as capital acquisitions. Major building alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred.

General P&E Category	Service Life
Software	3 Years
Computer Equipment	5 Years
Office Equipment	7 Years
Office Furniture	15 Years
Leasehold Improvements	Life of lease

#### G. Liabilities

Liabilities represent the amount of monies or other resources likely to be paid by the FLRA as a result of transactions or events that have already occurred. Liabilities are recognized when they are incurred, regardless of whether they are covered by available budgetary resources. FLRA reports its liabilities under two categories, Intragovernmental and With the Public. Intragovernmental liabilities represent funds owed to another government agency. Liabilities with the Public represent funds owed to any entity or person that is not a federal agency, including private sector firms and federal employees. Each of these categories may include liabilities that are covered by budgetary resources and liabilities not covered by budgetary resources. No liability can be paid, however, absent an appropriation. Liabilities for which an appropriation has not been enacted are, therefore, classified as not covered by budgetary resources, since there is no certainty that the appropriation will be enacted. Liabilities that are covered by budgetary resources consist of intragovernmental and public accounts payable and accrued funded payroll.

Liabilities not covered by budgetary resources in FY 2018 and FY 2019 consist of accrued and actuarial Federal Employees Compensation Act (FECA) compensation and unfunded employee leave. The Federal government, acting in its sovereign capacity, can abrogate liabilities other than contracts.

#### H. FECA Liabilities

An accrued FECA liability is recorded for actual and estimated future payments to be made for workers' compensation pursuant to the FECA. The actual costs incurred are reflected as a liability because agencies will reimburse the Department of Labor (DOL) two years after the actual payment of expenses. Future revenues will be used for their reimbursement to the DOL. The liability consists of: (1) the unreimbursed



cost paid by the DOL for compensation to recipients under the FECA; and (2) the net present value of estimated future payments calculated by the DOL.

An estimated actuarial liability for future workers' compensation benefits is included. The liability estimate is based on the DOL's FECA actuarial model that takes the amount of benefit payments over the last twelve quarters and calculates the annual average of payments for medical expenses and compensation. This average is then multiplied by the liabilities-to-benefits paid ratios for the whole FECA program. The ratios may vary from year to year as a result of economic assumptions and other factors, but the model calculates a liability approximately twelve times the annual payments.

#### I. Annual, Sick and Other Leave

Amounts associated with the payment of annual leave are accrued while leave is being earned by employees, and this accrual is reduced as leave is taken. Each year the balance in the accrued annual leave account is adjusted to reflect current pay rates. To the extent that current or prior-year appropriations are not available to finance annual leave, future financing sources will be used. Sick leave and other types of non-vested leave are expensed as taken.

Any liability for sick leave that is accrued but not taken by a Civil Service Retirement System (CSRS) or a Civil Service Retirement System Offset (CSRS offset)-covered employee is transferred to the Office of Personnel Management (OPM) upon the retirement of that individual. Federal Employees Retirement System (FERS)-covered employees were not entitled to use unused sick leave for additional service credit until October 28, 2009. For retirements effective between October 28, 2009 and December 31, 2013, 50 percent of unused sick leave can be used for additional service credit. For retirements effective after December 31, 2013, 100 percent of unused sick leave can be credited.

#### J. Net Position

The components of net position are unexpended appropriations and cumulative results of operations. Unexpended appropriations include undelivered orders and unobligated balances. Undelivered orders reflect the amount of goods and services ordered that have yet to be actively or constructively received. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations represent the net results of operations since inception, the cumulative amount of prior-period adjustments, the remaining book value of capitalized assets, and future funding requirements.

#### K. Retirement Plans

The FLRA's employees participate in the CSRS or the FERS. For CSRS employees, hired prior to January 1, 1984, the FLRA withholds seven percent of each employee's salary and contributes seven percent of the employee's basic salary to the CSRS Retirement and Disability Fund. These employees may also contribute, on a tax-deferred basis, to a defined contribution plan – the Thrift Savings Plan (TSP). The regular Internal Revenue Service limit in FY 2018 and FY 2019 was \$18,500 and \$19,000, respectively. The FLRA is not required to and does not contribute any matching amounts for CSRS employees.

The FERS was established by enactment of Public Law 99-335. Pursuant to this law, the FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired before January 1, 1984 elected either to join the FERS and Social Security or to remain in the CSRS. For FERS employees, the FLRA withholds 6.2 percent in old age survivors and disability insurance up to a specified wage ceiling and 0.8 percent of an employee's gross earnings for retirement. In FY 2019, the FLRA matched the retirement withholdings with a contribution equal to 13.7 percent of the employee's taxable salary. Due to enactment of the FERS Revised Annuity Employee and Further Revised Annuity Employee programs, the agency matched with a contribution equal to 11.9 percent for employees hired during and after calendar year 2013.

All employees are eligible to contribute to the TSP. For employees under the FERS, a TSP account is automatically established. The FLRA is required to make a mandatory contribution of one percent of the base salary for each employee under the FERS. The agency is required to match the employee's contribution up to a maximum of five percent of his or her salary. Matching contributions are not made to the TSP accounts established by CSRS employees. The FLRA does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, are the responsibility of the OPM.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. CSRS employees who are 65 or older are eligible for Social Security payments (even if they have not retired). In these instances, the FLRA remits the employer's share of the required contribution.

#### L. Imputed Financing from Costs Absorbed by Others

The FASAB's SFFAS No. 5, Accounting for Liabilities of the Federal Government, requires that employer agencies recognize the full cost of pension, health, and life insurance benefits during their employees' active years of service. The OPM, as administrator of the CSRS and FERS plans, the Federal Employees Health Benefits Program, and the Federal Employees Group Life Insurance Program, must provide the "cost factors" that adjust the agency contribution rate to the full cost for the applicable benefit programs. An imputed financing source and corresponding imputed personnel cost is reflected in the Statement of Changes in Net Position and the Statement of Net Cost.

#### M. Revenue and Other Financing Sources

The FLRA's revenues are derived from reimbursable work agreements, Freedom of Information Act collections, and a direct annual appropriation. The FLRA recognizes reimbursable work when earned, i.e., services have been provided. Each reimbursable work agreement specifies the dollar value of the agreement and is based on estimated resources needed to perform the specified services.

The agency receives an annual Salaries and Expenses appropriation from the Congress. Annual appropriations are used, within statutory limits, for salaries and administrative expenses and for operating and capital expenditures for essential P&E. Appropriations are recognized as non-exchange revenues at the time the related program expenses are incurred. Appropriations expended for capitalized P&E are recognized as expenses when an asset is consumed in operations. The FLRA's annual appropriation for FY 2018 and FY 2019 was \$26,200,000.

#### N. Expired Accounts and Cancelled Authority

Unless otherwise specified by law, annual budget authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account into which the annual authority is placed is called an expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period that were not previously reported. At the end of the fifth expired year, the account is cancelled and any remaining money is returned to the Treasury.

#### O. Contingencies

A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to the agency. The uncertainty will ultimately be resolved when one or more future events occur or fail to occur. With the exception of pending, threatened, or potential litigation, a contingent liability is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is more likely than not, and the related future outflow or sacrifice of resources is measurable. For pending, threatened, or potential litigation, a liability is recognized when a past

transaction or event has occurred, a future outflow or other sacrifice of resources is likely, and the related future outflow or sacrifice of resources is measurable.

**P. Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses. Actual results could differ from those estimates.

**Q. Advances and Prepayments**

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable work agreements, subscriptions, and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advance payments and recognized as expenses when the related goods and services are received.

**NOTE 2: FUND BALANCE WITH TREASURY**

U.S. government cash is accounted for on an overall consolidated basis by the Treasury. The amounts shown on the Balance Sheet represent the FLRA's right to draw on the Treasury for valid expenditures. The fund balance as shown on the FLRA records is reconciled monthly with records from the Treasury. Fund Balance with Treasury account balances as of September 30, 2019 and 2018 were as follows (In Dollars):

	2019	2018
<b>Status of Fund Balance with Treasury:</b>		
Unobligated Balance		
Available	\$ 34,427	\$ 9,108
Unavailable	275,377	726,540
Obligated Balance Not Yet Disbursed	5,857,837	3,738,651
<b>Total</b>	<b>\$ 6,167,641</b>	<b>\$ 4,474,299</b>

No discrepancies exist between the Fund Balance reflected on the Balance Sheet and the balances in the Treasury accounts.

The available unobligated fund balances represent the current-period amount available for obligation or commitment. At the start of the next fiscal year, this amount will become part of the unavailable balance as described in the following paragraph.

The unavailable unobligated fund balances represent the amount of appropriations for which the period of availability for obligation has expired. These balances are available for upward adjustments of obligations incurred only during the period for which the appropriation was available for obligation or for paying claims attributable to the appropriations.

The obligated balance not yet disbursed includes accounts payable, accrued expenses, unfilled orders, and undelivered orders that have reduced unexpended appropriations but have not yet decreased the fund balance on hand.

**NOTE 3: ACCOUNTS RECEIVABLE**

The reported amount for accounts receivable consists of amounts owed to the FLRA by other Federal agencies (intragovernmental) and the public. There are no amounts that are deemed uncollectible as of

September 30, 2019 and 2018. Accounts Receivable balances as of September 30, 2019 and 2018 were as follows (In Dollars):

	2019	2018
Intragovernmental		
Accounts Receivable	\$ 40,368	\$ 10,114
<b>Total Intragovernmental Accounts Receivable</b>	<b>\$ 40,368</b>	<b>\$ 10,114</b>
With the Public		
Accounts Receivable	\$ 8,239	\$ -
<b>Total Public Accounts Receivable</b>	<b>\$ 8,239</b>	<b>\$ -</b>
<b>Total Accounts Receivable</b>	<b>\$ 48,607</b>	<b>\$ 10,114</b>

#### NOTE 4: PROPERTY, EQUIPMENT, AND SOFTWARE, NET

Schedule of Property, Equipment, and Software as of September 30, 2019 (In Dollars):

Major Class	Acquisition Cost	Accumulated Amortization/Depreciation	Net Book Value
Computer Equipment	\$ 726,499	\$ 478,437	\$ 248,062
Office Furniture	9,077	9,077	-
<b>Total</b>	<b>\$ 735,576</b>	<b>\$ 487,514</b>	<b>\$ 248,062</b>

Schedule of Property, Equipment, and Software as of September 30, 2018 (In Dollars):

Major Class	Acquisition Cost	Accumulated Amortization/Depreciation	Net Book Value
Computer Equipment	\$ 455,885	\$ 377,756	\$ 78,129
Office Equipment	202,231	202,231	-
Office Furniture	453,695	453,090	605
<b>Total</b>	<b>\$ 1,111,811</b>	<b>\$ 1,033,077</b>	<b>\$ 78,734</b>

#### NOTE 5: LIABILITIES COVERED AND NOT COVERED BY BUDGETARY RESOURCES

Unfunded FECA liabilities consist of workers' compensation claims payable to the DOL, which will be funded in a future year, and an unfunded estimated liability for future workers' compensation claims based on data provided from the DOL. The actuarial calculation is based on benefit payments made over twelve quarters and calculates the annual average of payments. For medical expenses and compensation, this average is then multiplied by the liability-to-benefit paid ratio for the whole FECA program.

Unfunded leave represents a liability for earned leave and is reduced when leave is taken. At the end of each month the balance in the unfunded leave account is adjusted to reflect the liability at current pay rates and leave balances. Unfunded leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken. All other liabilities are considered to be covered by budgetary resources.

Liabilities Covered and Not Covered by Budgetary Resources as of September 30, 2019 consist of the following (In Dollars):

	Covered	Not Covered	Total
<b>Intragovernmental Liabilities</b>			
Accounts Payable	\$ -	\$ -	\$ -
Accrued Payroll and Benefits	173,242	-	173,242
Unfunded FECA	-	198,927	198,927
Other	10,850	-	10,850
<b>Total Intragovernmental Liabilities</b>	<b>\$ 184,092</b>	<b>\$ 198,927</b>	<b>\$ 383,019</b>
<b>Public Liabilities</b>			
Accounts Payable	\$ 166,022	\$ -	\$ 166,022
Unfunded Leave	-	1,019,222	1,019,222
FECA Actuarial Liability	-	1,593,597	1,593,597
Accrued Payroll and Benefits	709,460	-	709,460
Other	288	-	288
<b>Total Public Liabilities</b>	<b>\$ 875,770</b>	<b>\$ 2,612,819</b>	<b>\$ 3,488,589</b>
<b>Total Liabilities</b>	<b>\$ 1,059,862</b>	<b>\$ 2,811,746</b>	<b>\$ 3,871,608</b>

Liabilities Covered and Not Covered by Budgetary Resources as of September 30, 2018 consist of the following (In Dollars):

	Covered	Not Covered	Total
<b>Intragovernmental Liabilities</b>			
Accounts Payable	\$ 328,155	\$ -	\$ 328,155
Accrued Payroll and Benefits	187,829	-	187,829
Unfunded FECA	-	222,358	222,358
<b>Total Intragovernmental Liabilities</b>	<b>\$ 515,984</b>	<b>\$ 222,358</b>	<b>\$ 738,342</b>
<b>Public Liabilities</b>			
Accounts Payable	\$ 326,584	\$ -	\$ 326,584
Unfunded Leave	-	1,102,800	1,102,800
FECA Actuarial Liability	-	1,249,217	1,249,217
Accrued Payroll and Benefits	792,746	-	792,746
Other	261	-	261
<b>Total Public Liabilities</b>	<b>\$ 1,119,591</b>	<b>\$ 2,352,017</b>	<b>\$ 3,471,608</b>
<b>Total Liabilities</b>	<b>\$ 1,635,575</b>	<b>\$ 2,574,375</b>	<b>\$ 4,209,950</b>

## NOTE 6: OTHER LIABILITIES

Other liabilities as of September 30, 2019 consisted of the following (In Dollars):

	Current	Non-Current	2019 Total
Intragovernmental			
Unemployment Insurance Liability	\$ 10,798	\$ -	\$ 10,798
Custodial Liability	52	-	52
<b>Total Intragovernmental Other Liabilities</b>	<b>\$ 10,850</b>	<b>\$ -</b>	<b>\$ 10,850</b>
With the Public			
Withholdings Payable	\$ (445)	\$ -	\$ (445)
Advances and Prepayments	733	-	733
<b>Total Public Other Liabilities</b>	<b>\$ 288</b>	<b>\$ -</b>	<b>\$ 288</b>

Other liabilities as of September 30, 2018 consisted of the following (In Dollars):

	Current	Non-Current	2018 Total
With the Public			
Advances and Prepayments	\$ 261	\$ -	\$ 261
<b>Total Other Liabilities</b>	<b>\$ 261</b>	<b>\$ -</b>	<b>\$ 261</b>

## NOTE 7: LEASES

The FLRA has operating leases for rental of office space and equipment. As a Federal agency, the FLRA is not liable for any lease terms beyond one year. All leases are federal.

### Current Operating Leases

#### **233 Peachtree Street NE, Atlanta, GA**

The FLRA has an interagency agreement with the General Services Administration for office space at 233 Peachtree Street NE, Atlanta, GA. The term is for 120 months beginning on or about January 18, 2012. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

#### **10 Causeway Street, Boston, MA**

The FLRA has an interagency agreement with the General Services Administration for office space at 10 Causeway Street, Boston, MA. The term is for 48 months beginning on or about May 15, 2016. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy. FLRA terminated this lease effective November 30, 2018.

#### **224 S. Michigan Avenue, Suite 445, Chicago, IL**

The FLRA has an interagency agreement with the General Services Administration for office space at 224 S. Michigan Avenue, Suite 445, Chicago, IL. The term is for 120 months beginning on or about June 16,

2012. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**525 Griffin Street, Dallas, TX**

The FLRA had an interagency agreement with the General Services Administration for office space at 525 Griffin Street, Dallas, TX. The term was for 120 months beginning on or about October 1, 2017. FLRA terminated this lease effective September 30, 2018.

**1244 Speer Boulevard, Denver, CO**

The FLRA has an interagency agreement with the General Services Administration for office space at 1244 Speer Boulevard, Denver, CO. The previous term of 57 months began on July 1, 2013 and expired on March 24, 2018. The term for the current agreement is for 120 months beginning on or about March 25, 2018. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**1400 K Street NW, Washington, DC**

The FLRA has an interagency agreement with the General Services Administration for office space at 1400 K Street NW, Washington, DC. The term is for 87 months beginning on or about June 1, 2014. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**901 Market Street, San Francisco, CA**

The FLRA has an interagency agreement with the General Services Administration for office space at 901 Market Street, San Francisco, CA. The term is for 120 months beginning on or about August 1, 2011. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**NOTE 8: COMMITMENTS AND CONTINGENCIES**

The FLRA is, at times, a party in various administrative proceedings, legal actions, and claims brought by or against the agency. In the opinion of FLRA management, the ultimate resolution of any proceedings, actions, and claims will not materially affect financial position or results of operations of the FLRA. The agency examined its FY 2014 obligations prior to cancellation and believes that it does not have any outstanding commitments or contingencies that will require future resources to liquidate.

**NOTE 9: INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE**

The classification of revenue or cost as “intragovernmental” or “with the public” is determined on a transaction by transaction basis. Preceding transactions in the lifecycle of a product will not have an impact on subsequent transactions. If the FLRA purchases goods or services from another Federal entity, capitalizes them into inventory, and later resells them to the public, the cost of the original purchase of resale assets from the other Federal entity will be classified as “intragovernmental” at the time of the purchase. At ultimate sale to the end user, the resulting cost of goods will be classified as “with the public.” The purpose of this classification is to enable the Federal government to provide consolidated financial statements, and not to match public and intragovernmental revenue with costs that are incurred to produce public and intragovernmental revenue.

**NOTE 10: APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED**

All obligations incurred are characterized as Category A, quarterly apportioned, on the Statement of Budgetary Resources. Obligations incurred and reported in the Statement of Budgetary Resources in fiscal years 2019 and 2018 consisted of the following:

	2019	2018
Direct Obligations, Category A	\$ 26,357,314	\$ 26,395,924
Reimbursable Obligations, Category A	29,662	12,942
<b>Total Obligations Incurred</b>	<b>\$ 26,386,975</b>	<b>\$ 26,408,865</b>

**NOTE 11: UNDELIVERED ORDERS AT THE END OF THE PERIOD**

The amount of budgetary resources obligated for undelivered orders at the end of September 30, 2019 consisted of the following (In Dollars):

	Federal	Non-Federal	Total
Paid Undelivered Orders	\$ 49,656	\$ -	\$ 49,656
Unpaid Undelivered Orders	1,148,819	3,667,021	4,815,840
<b>Total Undelivered Orders</b>	<b>\$ 1,198,475</b>	<b>\$ 3,667,021</b>	<b>\$ 4,865,496</b>

The amount of budgetary resources obligated for undelivered orders at the end of September 30, 2018 consisted of the following (In Dollars):

	Federal	Non-Federal	Total
Paid Undelivered Orders	\$ 18,141	\$ -	\$ 18,141
Unpaid Undelivered Orders	(299,939)	2,411,319	2,111,380
<b>Total Undelivered Orders</b>	<b>\$ (281,798)</b>	<b>\$ 2,411,319</b>	<b>\$ 2,129,521</b>

**NOTE 12: EXPLANATION OF DIFFERENCES BETWEEN THE SBR AND THE BUDGET OF THE U.S. GOVERNMENT**

SFFAS No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanation of material differences between amounts reported in the Statement of Budgetary Resources and the actual balances published in the Budget of the U.S. Government (the President's Budget). The FY 2020 President's Budget, with actual amounts for FY 2018, has been reconciled to the Statement of Budgetary Resources. The FY 2021 President's Budget, with actual amounts for FY 2019, will not be published until February 2020.

**NOTE 13: INCIDENTAL CUSTODIAL COLLECTIONS**

Custodial collections are reflected in Fund Balance with Treasury during the year. While these collections are considered custodial, they are neither primary to the mission of the agency nor material to the overall financial statements. FLRA's custodial collections are \$1 for the year ended September 30, 2018. There were no custodial collections for the year ended September 30, 2019. Custodial collections



are transferred to the Treasury General Fund on September 30 and are not reflected in the financial statements of the Agency.

#### NOTE 14: RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

Details of the relationship between budgetary resources obligated and the net costs of operations for the fiscal year ended September 30, 2019 are shown in the following table:

Federal Labor Relations Authority RECONCILIATION OF NET COST AND BUDGET OUTLAYS (in dollars) For the Year Ended September 30, 2019			
	Intragovernmental	With the Public	Total
<b>Net Operating Cost (SNC)</b>	<b>\$ 7,932,704</b>	<b>\$ 16,601,606</b>	<b>\$ 24,534,310</b>
<b>Components of Net Operating Cost Not Part of the Budgetary Outlays</b>			
Property, plant, and equipment depreciation	\$ -	\$ (101,285)	\$ (101,285)
<b>Increase/(decrease) in assets:</b>			
Accounts receivable	\$ 30,254	\$ 8,239	\$ 38,493
Other assets	31,514	-	31,514
<b>(Increase)/decrease in liabilities not affecting Budget Outlays:</b>			
Accounts payable	\$ 328,155	\$ 160,563	\$ 488,718
Salaries and benefits	14,587	83,287	97,874
Other liabilities	12,581	(260,829)	(248,248)
<b>Other financing sources:</b>			
Federal employee retirement benefit costs	\$ (1,131,294)	\$ -	\$ (1,131,294)
<b>Total Components of Net Operating Cost Not Part of the Budget Outlays</b>	<b>\$ (714,203)</b>	<b>\$ (110,025)</b>	<b>\$ (824,228)</b>
<b>Components of the Budget Outlays That Are Not Part of Net Operating Cost</b>			
Acquisition of capital assets	\$ -	\$ 270,613	\$ 270,613
Other	2	(2)	-
<b>Total Components of the Budget Outlays That Are Not Part of Net Operating Cost</b>	<b>\$ 2</b>	<b>\$ 270,611</b>	<b>\$ 270,613</b>
<b>Net Outlays (Calculated Total)</b>	<b>\$ 7,218,503</b>	<b>\$ 16,762,192</b>	<b>\$ 23,980,695</b>
<b>Related Amounts on the Statement of Budgetary Resources</b>			
Outlays, net, (total) (SBR 4190)			\$ 23,980,695
Distributed offsetting receipts (SBR 4200)			-
<b>Outlays, Net (SBR 4210)</b>			<b>\$ 23,980,695</b>

#### Independent Auditor's Report

## Independent Auditor's Report

The Honorable Colleen Duffy Kiko  
Chairman  
Federal Labor Relations Authority

In our audits of the Fiscal Years 2019 and 2018 financial statements of Federal Labor Relations Authority (FLRA) we found:

- a) FLRA's financial statements as of and for the Fiscal Years ended September 30, 2019 and 2018, are presented fairly, in all material respects, in accordance with U.S. generally accepted accounting principles;
- b) no material weaknesses in internal control over financial reporting based on the limited procedures we performed; and
- c) no reportable noncompliance for Fiscal Year 2019 with provisions of applicable laws, regulations, and contracts we tested.

The following sections discuss in more detail (1) our report on the financial statements, which includes required supplementary information (RSI), such as "Management's Discussion and Analysis"; (2) our report on internal control over financial reporting; (3) our report on compliance with laws, regulations, and contracts; and (4) agency comments.

### Report on the Financial Statements

In accordance with U.S. generally accepted government auditing standards (GAGAS) and Office of Management and Budget (OMB) Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*, we have audited FLRA's financial statements. FLRA's financial statements comprise the balance sheets as of September 30, 2019 and 2018; the related statements of net cost, changes in net position, and budgetary resources for the Fiscal Years then ended; and the related notes to the financial statements.

We conducted our audits in accordance with GAGAS. We believe that the audit evidence we obtained is sufficient and appropriate to provide a basis for our audit opinions.

## Management's Responsibility for the Financial Statements

FLRA's management is responsible for (1) the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; (2) preparing, measuring, and presenting the RSI in accordance with U.S. generally accepted accounting principles; (3) preparing and presenting other information included in documents containing the audited financial statements and auditor's report, and ensuring the consistency of that information with the audited financial statements and the RSI; and (4) maintaining effective internal control over financial reporting, including the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

## Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. GAGAS require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. We are also responsible for applying certain limited procedures to RSI and other information included with the financial statements.

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

## Opinion on Financial Statements

In our opinion, FLRA's financial statements present fairly, in all material respects, FLRA's financial position as of September 30, 2019 and 2018, and its net costs of operations, changes in net position, and budgetary resources for the Fiscal Years then ended in accordance with U.S. generally accepted accounting principles.

## Other Matters

### Required Supplementary Information

U.S. generally accepted accounting principles issued by the Federal Accounting Standards Advisory Board (FASAB) require that the RSI be presented to supplement the financial statements. Although the RSI is not a part of the financial statements, FASAB considers this information to be an essential part of financial reporting for placing the financial statements in appropriate operational, economic, or historical context. We have applied certain limited procedures to the RSI in accordance with GAGAS, which consisted of

inquiries of management about the methods of preparing the RSI and comparing the information for consistency with management's responses to the auditor's inquiries, the financial statements, and other knowledge we obtained during the audit of the financial statements, in order to report omissions or material departures from FASAB guidelines, if any, identified by these limited procedures. We did not audit and we do not express an opinion or provide any assurance on the RSI because the limited procedures we applied do not provide sufficient evidence to express an opinion or provide any assurance.

#### Other Information

FLRA's other information contains a wide range of information, some of which is not directly related to the financial statements. This information is presented for purposes of additional analysis and is not a required part of the financial statements or the RSI. We read the other information included with the financial statements in order to identify material inconsistencies, if any, with the audited financial statements. Our audit was conducted for the purpose of forming an opinion on FLRA's financial statements. We did not audit and do not express an opinion or provide any assurance on the other information.

#### **Report on Internal Control over Financial Reporting**

In connection with our audits of the FLRA's financial statements, we considered the FLRA's internal control over financial reporting, consistent with our auditor's responsibility discussed below. We performed our procedures related to the FLRA's internal control over financial reporting in accordance with GAGAS.

#### Management's Responsibility

FLRA management is responsible for maintaining effective internal control over financial reporting, including the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### Auditor's Responsibility

In planning and performing our audit of FLRA's financial statements as of and for the year ended September 30, 2019, in accordance with GAGAS, we considered the FLRA's internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the FLRA's internal control over financial reporting. Accordingly, we do not express an opinion on the FLRA's internal control over financial reporting. We are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses. We did not consider all internal controls relevant to operating objectives, such as those controls relevant to preparing performance information and ensuring efficient operations.

### Definition and Inherent Limitations of Internal Control over Financial Reporting

An entity's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel, the objectives of which are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition, and (2) transactions are executed in accordance with provisions of applicable laws, including those governing the use of budget authority, regulations, and contracts, noncompliance with which could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent, or detect and correct, misstatements due to fraud or error. |

### Results of Our Consideration of Internal Control over Financial Reporting

Our consideration of internal control was for the limited purpose described above, and was not designed to identify all deficiencies in internal control that might be material weaknesses and significant deficiencies or to express an opinion on the effectiveness of the FLRA's internal control over financial reporting. Given these limitations, during our audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

During our 2019 audit, we identified deficiencies in FLRA's internal control over financial reporting that we do not consider to be material weaknesses. Nonetheless, these deficiencies warrant FLRA management's attention. We have communicated these matters to FLRA management and, where appropriate, will report on them separately.

### Intended Purpose of Report on Internal Control over Financial Reporting

The purpose of this report is solely to describe the scope of our consideration of the FLRA's internal control over financial reporting and the results of our procedures, and not to provide an opinion on the effectiveness of the FLRA's internal control over financial reporting. This report is an integral part of an audit performed in accordance with GAGAS in considering internal control over financial reporting. Accordingly, this report on internal control over financial reporting is not suitable for any other purpose.

### **Report on Compliance with Laws and Regulations**

In connection with our audits of FLRA's financial statements, we tested compliance with selected provisions of applicable laws, regulations, and contracts consistent with our auditor's responsibility discussed below. We caution that noncompliance may occur and not be detected by these tests. We performed our tests of compliance in accordance with GAGAS.



#### Management's Responsibility

FLRA management is responsible for complying with laws, regulations, and contracts applicable to FLRA.

#### Auditor's Responsibility

Our responsibility is to test compliance with selected provisions of applicable laws, regulations, and contracts applicable to FLRA that have a direct effect on the determination of material amounts and disclosures in FLRA's financial statements, and perform certain other limited procedures. Accordingly, we did not test compliance with all laws, regulations, and contracts applicable to FLRA.

#### Results of Our Tests for Compliance with Laws and regulations

Our tests for compliance with selected provisions of applicable laws, regulations, and contracts disclosed no instances of noncompliance for Fiscal Year 2019 that would be reportable under GAGAS. However, the objective of our tests was not to provide an opinion on compliance with laws, regulations, and contracts applicable to FLRA. Accordingly, we do not express such an opinion.

#### Intended Purpose of Report on Compliance with Laws and regulations

The purpose of this report is solely to describe the scope of our testing of compliance with selected provisions of applicable laws, regulations, and contracts, and the results of that testing, and not to provide an opinion on compliance. This report is an integral part of an audit performed in accordance with GAGAS in considering compliance. Accordingly, this report on compliance with laws, regulations, and contracts is not suitable for any other purpose.

*Daniel Jones, P.C.*

*Rockville, Maryland  
November 19, 2019*

## OTHER INFORMATION

### SUMMARY OF FINANCIAL STATEMENT AUDIT

<b>Audit Opinion:</b>	Unqualified				
<b>Restatement:</b>	No				
	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Ending Balance</b>
Material weaknesses	0	0	0	0	0

### SUMMARY OF MANAGEMENT ASSURANCES

Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)						
Statement of Assurance:	Unqualified					
	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Material weaknesses	0	0	0	0	0	0
Effectiveness of Internal Control over Operations (FMFIA § 2)						
Statement of Assurance:	Unqualified					
	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Material weaknesses	0	0	0	0	0	0
Conformance with Financial Management System Requirements (FMFIA § 4)						
Statement of Assurance:	Systems conform					
	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Non-conformances	0	0	0	0	0	0

## **IMPROPER PAYMENTS ELIMINATION AND RECOVERY**

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), requires agencies to annually report information on improper payments. The FLRA has reviewed all of its programs and determined that none are susceptible to significant improper payment. The IPERA also requires agencies to conduct payment-recapture audits for each program that expends \$1 million or more annually, if conducting such audits would be cost-effective. Based on the criteria set forth in Appendix C of OMB Circular A-123, the agency has also determined that it would not be cost-effective to establish a recovery-audit program for its programs that expend more than \$1 million. Recoveries are not expected to be greater than the costs incurred to identify any overpayments.



**FEDERAL LABOR RELATIONS AUTHORITY**

**1400 K Street, N.W.  
Washington, DC 20424**

**[www.flra.gov](http://www.flra.gov)**

**[WWW.FLRA.GOV](http://WWW.FLRA.GOV)**



# U.S. FEDERAL LABOR RELATIONS AUTHORITY

*Promoting and protecting labor-management relations for  
effective, efficient Government.*



## ANNUAL PERFORMANCE REPORT



# 2019



FLRA.GOV



## TABLE OF CONTENTS

MESSAGE FROM THE CHAIRMAN .....	1
MANAGEMENT’S DISCUSSION AND ANALYSIS .....	3
Background and Mission .....	3
Organizational Structure .....	4
Strategic and Performance-Planning Framework .....	7
Performance Overview .....	8
ANNUAL PERFORMANCE GOALS, MEASURES, AND RESULTS .....	15
Strategic Goal 1: We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated. ....	15
Strategic Goal 2: We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships. ....	28
Strategic Goal 3: We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the resolution of labor-relations disputes. ....	33
INSPECTOR GENERAL: TOP MANAGEMENT AND PERFORMANCE CHALLENGES FOR FISCAL YEAR 2020 .....	45

## MESSAGE FROM THE CHAIRMAN



I am pleased to submit the 2019 Annual Performance Report (APR) for the Federal Labor Relations Authority (FLRA). Although this has been a challenging year with a key leadership vacancy remaining, it was also another successful and productive year.

FLRA, in one small agency, serves as investigator, prosecutor, adjudicator, and interest arbitrator for labor-management disputes involving 1.2 million Federal employees worldwide. The agency is committed to fostering an efficient and effective Federal Government, providing leadership in establishing policies and guidance related to federal-sector labor-management relations, and ensuring compliance with the Federal Service Labor-Management Relations Statute (the Statute), which it enforces.

In fiscal year (FY) 2019, FLRA transitioned to the Strategic Plan put in place for 2018-2022. In the Strategic Plan, we reaffirmed our commitment to chart the course of federal-sector labor-management relations through impartial, clear, and timely actions based on the Statute. We also renewed our focus on the legislative foundation enabling FLRA to serve as a responsible leader in this arena. In addition, FLRA began implementing the new and expanded performance measures set out in the Annual Performance Plan in the FY 2020 Congressional Budget Justification.

With respect to mission performance, 2019 was another strong year for FLRA, particularly given staffing and budget challenges. The Authority issued a total of 92 merits decisions. Staff shortages during much of the year made it difficult to reduce the backlog of pending cases. As the Authority worked to clear its oldest cases, many of the decisions the Agency issued in 2019 were already “overage.” As a result, the Authority missed some of its 2019 targets.

As part of FLRA’s commitment to providing clear, understandable guidance to its customers, the Authority launched its initiative to publish case-summary digests online. The Authority intends for these summaries to be a valuable tool for researchers and members of the Federal labor-management community to allow them to more quickly and efficiently identify decisions of interest to them.

In 2019, the Federal Service Impasses Panel (the FSIP) received 77 filings (approximately six new filings per month). The FSIP exceeded most of its timeliness measures for assisting parties in resolving negotiation impasses.

FLRA has been without a presidentially-nominated, Senate-confirmed General Counsel (GC) since January 20, 2017. Despite the challenges this vacancy created, the Office of General Counsel (OGC) delivered strong results in 2019. Without a GC, no unfair labor practice (ULP) complaints could issue. Nevertheless, the OGC exceeded its strategic performance goals for the timely resolution of ULP cases, resolving nearly 90 percent of such cases by withdrawal, dismissal, or settlement of the ULP charge within 120 days of the charge’s filing date. It also exceeded its performance goals for timely resolution of representation cases, resolving 82

percent of representation petitions by withdrawal, election, or issuance of a Decision and Order within 120 days of filing.

The Agency continues to make tremendous strides toward advancing our new and improved case management system to allow for integration with our Document Management System and our new eFiling 3.0.

FLRA's many successes and accomplishments could not have been achieved without the extraordinary efforts of our dedicated, diverse, and talented workforce who continue to deliver for our stakeholders and the American people. I look forward to working with all the employees of FLRA, my fellow Authority Members, and our stakeholders to continue providing high quality products and service to the labor-management relations community and federal agencies as we do our part in promoting an effective and efficient government.

A handwritten signature in black ink, appearing to read 'Colleen Kiko', with a stylized, flowing script.

Colleen Kiko, Chairman  
Federal Labor Relations Authority  
January 10, 2020

# MANAGEMENT'S DISCUSSION AND ANALYSIS

## Background and Mission

---

The FLRA is an independent administrative Federal Agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The Statute prescribes certain rights and obligations to employees of the Federal Government and establishes procedures designed to meet the special requirements and needs of the Government. *Id.* § 7101(b). The provisions of the Statute are to be interpreted in a manner consistent with the requirement of an effective and efficient Government. *Id.*

FLRA applied its Federal-sector expertise to execute its mission primarily by carrying out the following statutory responsibilities:

1. Conduct hearings and resolve complaints of unfair labor practices (ULPs) under § 7118 of the Statute. *Id.* § 7105(a)(2)(G). FLRA is responsible for investigating, prosecuting, and adjudicating claims that an Agency or a labor organization has failed to uphold its legal obligations under the Statute.
2. Determine the appropriateness of units for labor-organization representation under the Statute, and supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees in an appropriate unit. *Id.* § 7105(a)(2)(A). FLRA also resolves disputes about which employees may be included in bargaining units under the Statute. *Id.* § 7105(a)(2)(B).
3. Resolve exceptions to grievance-arbitration awards under § 7122 of the Statute. *Id.* § 7105(a)(2)(H). FLRA adjudicates appeals – known as exceptions – to arbitration awards that result from grievances filed by employees, labor organizations, or agencies under parties' negotiated grievance procedures. FLRA reviews those awards to assess whether they are contrary to any law, rule, or regulation, or are deficient on other grounds similar to those applied by Federal courts in private-sector labor-management disputes.
4. Resolve issues relating to the duty to bargain in good faith under § 7117(c) of the Statute. *Id.* § 7105(a)(2)(E). FLRA resolves negotiability disputes that arise during bargaining under two circumstances – when an Agency claims that a contract proposal is outside the duty to bargain and when an Agency head disapproves a negotiated agreement claiming that it contains provisions that are contrary to law, rule, or regulation.
5. Provide assistance in resolving negotiation impasses between Federal agencies and exclusive representatives. *Id.* § 7119.

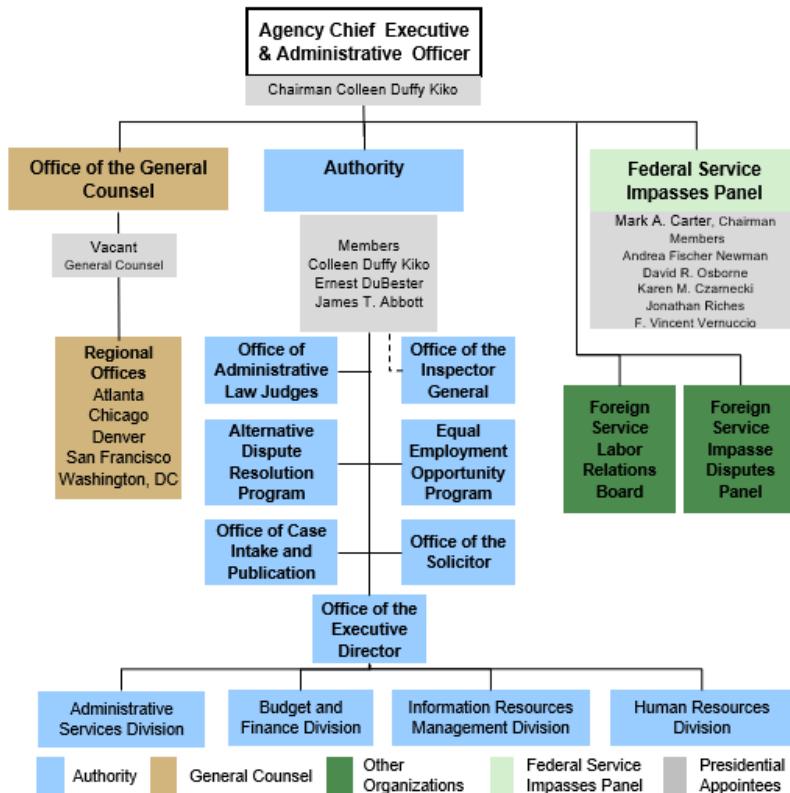
In addition, Congress directed FLRA to prescribe criteria and resolve issues relating to the granting of national consultation rights under § 7113 of the Statute; prescribe criteria and resolve issues relating to determining compelling need for Agency rules or regulations under § 7117(b) of the Statute; prescribe criteria relating to the granting of consultation rights with respect to

conditions of employment under § 7117(d) of the Statute; and take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute.

Moreover, FLRA is to “provide leadership in establishing policies and guidance” related to matters under the Statute. *Id.* § 7105(a)(1). FLRA satisfies this directive primarily through its written determinations, but also by offering training and other services.

## Organizational Structure

Headquartered in Washington, D.C., FLRA has three statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (the FSIP or the Panel) – each with unique adjudicative or prosecutorial roles. The Agency also provides full program and staff support to two other organizations – the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, pursuant to the Foreign Service Act of 1980, 22 U.S.C. §§ 4101-4118.



## Chief Executive and Administrative Officer

The President of the United States designates one Member as Chairman who serves as FLRA’s chief executive and administrative officer. 5 U.S.C. § 7104(b).



## **The Authority**

The Authority – FLRA’s adjudicatory body – is led by three full-time, presidentially nominated and Senate-confirmed Members who are appointed to fixed, staggered five-year terms.

The Authority is responsible for adjudicating ULP complaints, ruling on exceptions to arbitrators’ awards, resolving disputes over the negotiability of collective-bargaining proposals and provisions, and deciding applications for review of Regional Directors’ decisions in representation disputes. The Authority Members appoint Administrative Law Judges (ALJs) to hear and prepare recommended decisions that may be appealed to the Authority in cases involving ULP complaints.

Other offices and programs under the jurisdiction of the Authority include the Office of the Solicitor, the Office of Administrative Law Judges (OALJ), the Office of Case Intake and Publication (CIP), the Alternative Dispute Resolution Program, and the Equal Employment Opportunity Program. Standing as an independent entity within the Authority is the Office of Inspector General.

## **The Office of the General Counsel**

The Office of the General Counsel (OGC) is led by a presidentially nominated and Senate-confirmed General Counsel who has direct authority over, and responsibility for, all employees in the OGC, including those in FLRA’s Regional Offices.

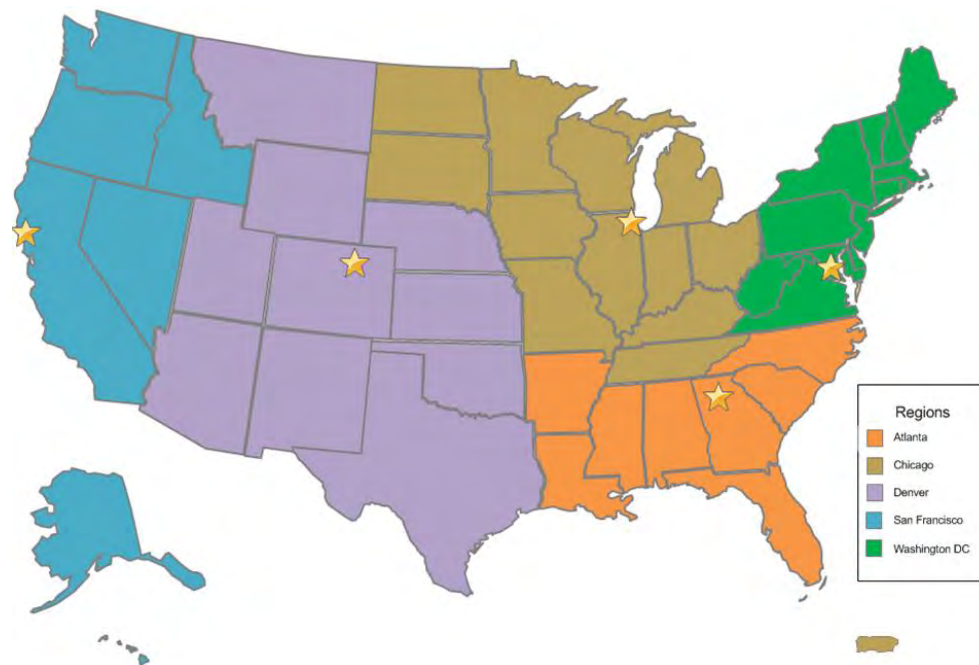
Under the Statute, the General Counsel has sole responsibility – independent of the Authority – over the investigation and prosecution of ULP cases. The General Counsel’s determinations in these matters are final and unreviewable. The OGC investigates and resolves ULP charges, files and prosecutes ULP complaints, and provides training, as appropriate. In addition, through delegation by the Authority, the Regional Offices investigate and resolve representation (REP) cases and conduct secret-ballot elections.

An external challenge beyond FLRA’s control is the absence of a presidentially appointed, Senate-confirmed General Counsel (GC). Absent a GC throughout 2019, no ULP complaints or ULP appeal decisions have issued. In the absence of a GC, the Regional Offices may investigate ULP charges and dismiss those found to lack merit, but for those cases the Regional Director recommends that a complaint be issued, no complaint can issue – preventing the complaint from moving forward to a merits hearing before an ALJ. In addition, only the GC can decide appeals from a Regional Director’s dismissal of a charge.

The General Counsel has a small staff at FLRA Headquarters, located in Washington, D.C. Headquarters management provides administrative oversight; develops policies, guidance, procedures, and manuals that provide programmatic direction for the Regional Offices and training and education for the parties; and processes appeals from the Regional Offices’ dismissals of ULP charges. Each Regional Office is headed by a Regional Director who provides leadership and management expertise for the respective region. Collectively, the

Regional Directors work with senior management throughout FLRA to develop and implement policy and strategic initiatives to accomplish the FLRA mission.

With the closure of the Dallas Regional Office on September 30, 2018, and the Boston Regional Office on November 30, 2018, in accordance with the Agency Reform Plan, there are five Regional Offices in Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C.



### **The Federal Service Impasses Panel**

The FSIP is composed of part-time Presidential appointees – a Chairman and other Members – who are appointed to fixed, staggered five-year terms. The FSIP provides assistance in resolving negotiation impasses between Federal agencies and labor organizations representing Federal employees that arise from collective-bargaining negotiations under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.

## Strategic and Performance-Planning Framework

---

FLRA established strategies and goals designed to maximize the delivery of Agency services throughout the Federal Government through a comprehensive review – by leadership at all levels throughout the Agency – of its operations, staffing, work processes, resource allocations, and performance. Throughout 2019, FLRA engaged in a continuous assessment of performance and other data to ensure that it accomplished its mission effectively and efficiently, and that it promoted innovation throughout the Agency.

FLRA's fiscal year 2019 performance-planning framework was initially based on the Agency's 2019 Annual Performance Plan, which established the Agency's annual performance goals and measures. The Annual Performance Plan reflects the Agency's commitment to meaningful metrics to assist in assessing performance outcomes, aligning resources, and effectively identifying staffing and training needs. The 2019 Annual Performance Plan, as set forth in the 2019 Congressional Budget Justification, was developed in 2018 to implement the 2015-2018 Strategic Plan.

However, in 2018, FLRA also issued its new 2018-2022 Strategic Plan, which revised some of the strategic objectives. In 2019, when FLRA prepared its Annual Plan for 2020, the Agency developed new performance measures based on the 2018-2022 Strategic Plan. These measures will take full effect in 2020, but the Annual Performance Plan in the Congressional Budget Justification for 2020 included performance measures for 2019. **NOTE:** This report shows the FLRA's 2019 performance as measured against the new strategic plan and the 2019 measures contained in the 2020 Annual Performance Plan.

### ***2018-2022 Strategic Plan***

The 2018-2022 Strategic Plan established strategies and goals designed to maximize the delivery of Agency services throughout the Federal Government. In addition, FLRA identified performance goals that allowed the Agency to both monitor progress towards achieving its strategic goals and to recalibrate strategies, as necessary, for maximum mission performance. This continued FLRA's increased focus on targeted data collection and data-driven leadership and decision-making. In developing the strategic plan, FLRA referenced evidence-based performance and resource trends. Data collected was intended to measure progress against this strategic plan and overall mission performance and effectiveness.

FLRA's vision, which drives achievement of its mission, is: *Charting the course of Federal-sector labor-management relations through impartial, clear, and timely actions by dedicated and accountable employees.* Three strategic goals, each supported by several strategic objectives, guide FLRA's pursuit of its vision and achievement of its mission.

FLRA developed this strategic plan against a canvas of strengths and challenges that can affect overall mission delivery. The source of FLRA's internal strengths is its skilled workforce guided by the Agency's values of transparency and accountability, along with its increasing focus on the innovative use of information technology (IT) and data-driven analysis. Challenges arise from

budget uncertainty and Presidential-appointee vacancies. The goals and objectives in this plan support FLRA's mission in light of these strengths and challenges.

FLRA sought to achieve its strategic goals primarily through the timely, high-quality, and impartial review and disposition of cases. The Agency supplemented these efforts with a focus on reducing litigation and its attendant costs by helping parties to resolve their own disputes through improved labor-management relationships. Further supporting these efforts in 2019 was FLRA's continued focus on more effective and efficient use of human capital and internal improvements in IT.

## **Performance Overview**

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### ***Strategic Goal 1 – We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated***

Continued improvements in the timeliness of case disposition further FLRA's critical role in facilitating orderly, effective, and efficient change within the Federal Government. In large part, FLRA exists to promote effective labor-management relations that, in turn, permit improved employee performance and Government operations. Timely resolution of FLRA cases is critical to this endeavor. Effective case resolution includes quality issues: effective process execution; clear communication with the parties around case processes; and the issuance of well-written and understandable decisions that provide deliberate, impartial, and legally sound analyses and consideration of the issues in dispute.

With respect to mission accomplishment, FLRA as a whole has shown tremendous ability to provide its customers with timely and quality adjudication, while adapting to fluctuations in the number of case filings that it receives and staffing changes. In 2019, FLRA met or exceeded many mission-related performance goals, as it did in 2018.

- **Authority**

Consistent with the Strategic Plan, the Authority changed its performance measures in 2019 to measure case age based on the date of filing, rather than the date a case is assigned to a Member office for decision. This determination led the Authority to decide to predominantly focus its efforts on issuing decisions on the oldest cases in its inventory.

However, in early 2019, significant staff turnover (11 attorneys or 61 percent) dramatically reduced the Authority's ability to process cases. During that time (August 2018-June 2019), an average of 8 merits decisions a month were issued. In contrast, in 2018, the Authority averaged approximately 12 merits decisions a month.

As the Authority worked to clear its oldest cases, many of the decisions the Agency issued in 2019 were already "overage." This resulted in the Authority missing some of its 2019 targets. In only 37 percent (32/87 cases) of arbitration cases did the Authority meet its case-processing target of 210 days.

The Authority's concerted effort to clear the oldest cases in its inventory by the end of 2019 is reflected in its performance meeting its outer targets. For example, in 75 percent (6/8) of ULP cases and 83 percent (30/36) of negotiability cases the Authority met its 300-day target. And in 92 percent (33/36) of negotiability cases, 88 percent (7/8) of ULP cases, and 84 percent (73/87) of arbitration cases it met its outer 365-day target.

Further, the Authority continues to meet the statutory requirement to determine whether to grant review in 100 percent of representation cases within 60 days of filing of an application for review from a Regional Director's determination. Where the Authority has granted applications for review, it met its 210-day target in 75 percent (6/8) of cases and met its outer 365-day target in 88 percent (7/8) of cases.

In short, staff vacancies during much of the year have made it difficult to reduce the backlog of pending cases, and the Authority is currently focusing its efforts on processing the oldest cases in inventory. With a growing number of staff now on board, the Authority expects to eliminate, or significantly reduce, the backlog in 2020.

- **Authority – OALJ**

The OALJ, also part of the Authority, completed all of its remaining ULP cases (remands) and continued performing work for other agencies on a reimbursable basis through the ALJ Loan Program. In addition, to support the Authority due to attrition and staff reductions, the OALJ helped draft decisions in accordance with regulations on matters other than ULP cases. Because there was no Presidentially nominated and Senate-confirmed General Counsel in 2019, there were no new filed ULP complaints with the OALJ.

- **OGC**

FLRA has been without a presidentially-nominated, Senate-confirmed General Counsel since January 20, 2017. Because the General Counsel's position is subject to the Federal Vacancies Reform Act (Vacancies Act), the career Deputy General Counsel served as Acting General Counsel from that date until November 16, 2017, the statutory maximum under the Vacancies Act. In the absence of a General Counsel, the OGC's Regional Directors may investigate ULP charges and dismiss those found to lack merit, but they cannot issue ULP complaints in cases in which they find merit, a power reserved by the Statute exclusively to the General Counsel. In addition, only the General Counsel can decide appeals of a Regional Director's dismissal of a ULP charge.

Despite these challenges, the OGC continued delivering strong results in 2019. The OGC exceeded its strategic performance goals for the timely resolution of ULP cases, resolving 88 percent (or 1,867 of 2,134) of ULP cases by the withdrawal, dismissal or settlement of the ULP charge, within 120 days of the charge's filing date. It also exceeded its performance goals for timely resolution of representation cases, resolving 77 percent (or 205 of 266) of representation petitions by withdrawal, election or issuance of a Decision and Order within 120 days of filing.

The OGC has also continued to resolve cases through voluntary settlement during the investigative process. The OGC has the largest case intake among all FLRA components, and is FLRA component with which the parties have the most direct contact. The beneficial effects of voluntary resolutions are obvious, and they advance the effective and efficient utilization of Government resources.

In 2019, the OGC resolved over 385 ULP cases by voluntary settlement during the investigative process. The OGC also used its resources to facilitate resolution of complex representation petitions. For example, in response to a representation petition seeking clarification of 80 positions, an OGC attorney met with the parties telephonically several times, pursuant to section 2422.13(b) of the Authority's regulations, and resolved the status of 79 positions. The OGC attorney assisted the parties in drafting stipulations to reflect these agreements, resulting in only one position remaining in dispute. By working cooperatively with the parties, the OGC was able to narrow the issues in dispute quickly and effectively.

- **FSIP**

President Trump appointed the most recent Panel in July 2017, with two reappointments in May 2019. Although in previous years the Panel received an average of 140 assistance requests each year (averaging close to 11 new filings per month), in 2019 the Panel received only 77 new filings (an average of six new filings each month).

Beginning with the issuance of President Trump's Executive Orders in May 2018 regarding timely and effective resolution of collective bargaining (E.O. 13836), case filings have begun to increase from a low of four new cases per month in October 2018 to an average of 6-7 new cases in September 2019 (Note: In May 2019, case filing jumped to 10 new cases).

In 2019, the FSIP exceeded most of its timeliness measures for assisting parties in resolving their negotiation impasses. Specifically, it issued decisions to decline jurisdiction on cases not appropriately before the Panel within 140 days of the filing date in 90 percent (10/11) of the cases. It assisted the parties in achieving voluntary settlement within 160 days of the filing date in 100 percent (15/15) of cases. And, it issued its final order within 200 days of the filing date in 100 percent (24/24) of cases.

While the number of cases decreased, the complexity of issues involved in the impasses have become more complex and the interest of the parties to voluntarily resolve the impasse has decreased, resulting in the need for the Panel to issue final orders to resolve the impasse. For example, in 2017, the Panel issued a final order in 12 cases, which was 10 percent of the cases filed. In 2019, the number of cases where the Panel issued a final decision doubled to 24 cases – 33 percent of the cases resolved.

***Strategic Goal 2 – We will develop and provide tools and resources to enable the parties to effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships***

FLRA speaks first through its decisions. Consistent with the President’s Management Agenda, the Agency emphasized Improving the Customer Experience by providing more meaningful information to parties about case-processing timelines. For example, starting in 2019, the Authority began measuring case age starting from the date that the case is filed until the date that a decision is issued. In addition, the Agency began reporting “average ages” of closed cases within all FLRA components and offices, which will provide the parties with the average amount of time that it takes to process each case type. Making all of this information available to the parties will help them reach better, more informed decisions regarding their litigation options. It also provides them with more realistic expectations around case processing.

FLRA also provides valuable education and training tools to the Federal labor-management-relations community in all aspects of its case law and processes. Providing meaningful and clear guidance on statutory rights and responsibilities so that its customers are knowledgeable furthers timely and efficient case processing and is an important function of FLRA under the Statute. FLRA delivers its educational materials through a variety of means, such as: in-person training sessions; web-based training modules; and case outlines, manuals, and subject-matter guides that are easily accessible on [www.flra.gov](http://www.flra.gov).

In 2019, FLRA, as a whole, provided over 95 training sessions to nearly 5,000 participants. The Authority, the OGC, and the FSIP provided in-person case-law updates and training at several nationwide, annual conferences. These sessions included presentations of newly prepared materials of current relevance, as well as updated materials for more standard sessions. The OGC consistently provided statutory training courses across the country.

However, these numbers are significantly lower than in prior years. For example, in 2016 and 2017, FLRA conducted 280 and 273 training, outreach, and facilitation activities, respectively. In 2018, FLRA conducted only 124. Due to staffing challenges, the Authority limited its external training offerings in 2019 to ensure that all available staff was working to process cases. Similarly, the number of participants reached through these activities has decreased from over 8,000 in 2015 through 2017 to 4,289 in 2018, but increased to 4,807 in 2019. In 2020, FLRA plans to increase customer engagement by, among other things, offering more training sessions to parties appearing before the Authority and reaching more participants through newly-developed online training and greater use of social media.

Many of the trainings FLRA provided in 2019 were “Case Law Updates,” to provide training on topics where the case law has been changing. For example, the Authority presented training on management rights and procedural arbitrability. During 2019, the Authority also began publishing case-summary “digests” to provide additional, easy-to-understand guidance to its customers.

In addition, due to budget uncertainty, the OGC scaled back its provision of training that required FLRA-funded travel. Consistent with the 2018-2022 Strategic Plan, FLRA is

developing creative ways to provide educational material in new, innovative, and more cost-effective ways that allow for wider reach and less travel. In 2020 and 2021, FLRA will develop training videos that anyone can easily access from the Agency website. FLRA is also exploring options to live stream training sessions. Moreover, the Authority and the OGC will continue to update online educational tools, including guides and manuals.

In order to serve its customers and fulfill its statutory obligation to expedite negotiability appeals to the extent practicable, the Authority signed a memorandum of understanding (MOU) with the Federal Mediation and Conciliation Service (FMCS) creating a new pilot procedure for resolving negotiability appeals at no cost to the parties. Under its terms, FMCS developed a unique cadre of mediators, who received specialized training from the Authority, to assist the parties in the resolution of negotiability appeals through mediation. Under the pilot program, before a negotiability appeal is considered by the Authority's Members for a decision, the Authority may refer such appeals to FMCS, either on the Authority's own initiative or based upon a request from the parties. The negotiability-appeal-mediation procedure is expected to take between 30 and 60 days.

***Strategic Goal 3 – We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the prevention and resolution of labor-relations disputes***

### **Information Technology Modernization**

Consistent with the President's Management Agenda (PMA) Cross-Agency Priority Goal 1, *Modernize IT to Increase Productivity and Security*, and the Agency's strategic plan, FLRA continued its ongoing efforts to expand its IT capabilities to enhance mission performance by improving the quality and effectiveness of its internal- and external-customer-facing services – including increased use of cloud-based solutions, such as email, Case Management, and Document Management.

In 2019, FLRA continued to execute its multi-year, four-phase plan to achieve its long-term goal of implementing end-to-end electronic case files throughout the Agency and complying with OMB mandates.

1. Phase 1 was implementation of upgraded eFiling 3.0. Addressing customer feedback, and after refining its approach, the Agency launched a more user-friendly and intuitive user interface that is built on a new, cloud-based technical platform that will better support the Agency's long-term needs. This was completed in 2018.
2. Phase 2 is to provide a similar, more user-friendly and intuitive user interface for the Agency's internal electronic Case Management System (CMS). Phase 2 also includes implementation of an Agency-wide Document Management System (DMS) – an electronic, cloud-based “filing cabinet” that provides a framework for organizing digital and paper documents. The DMS also provides the necessary storage capacity and IT platform for the eventual integration of eFiling, CMS, and DMS. The Agency has already implemented the DMS, and in 2019 initiated the first pilot of the CMS with the Authority component. The Agency expects to complete development for the Office of



General Counsel in 2020 and to fully implement the new CMS across all components by the end of calendar-year 2021.

3. Phase 3 is the integration of the automated connection between eFiling, CMS, and DMS, which is currently underway, with completion anticipated by the end of 2021.
4. Phase 4 is the transition to 100 percent electronic case files throughout the Agency, with a goal of September 30, 2022, for completion. Also, in 2019 the Agency continued to maintain its lifecycle for Agency computer hardware, completing an Agency refresh of all laptops and specific data center hardware.

The Agency has relied on an agile development approach, both in how the systems are developed and with how the project is funded. As such, timelines associated with the four-phase plan have shifted over time, but the Agency still remains within target, and its overall costs are well *below* industry standards for similar undertakings. Further, despite the evolving nature of the approach, the goal and the results have remained the same: implementation of fully electronic case files throughout the Agency to enable FLRA to increase its overall efficiency and effectiveness.

Successful achievement of this goal will enable implementation of additional external and internal case-processing improvements that will further maximize the use of technology and eliminate many of the labor-intensive, manual case processes that are currently in place. These case-processing improvements include: reducing the time and expense that FLRA staff spends copying, scanning, mailing, and entering data; eliminating outdated facsimile service; reducing U.S. Mail costs by implementing electronic service of case-related documents by FLRA on the parties; reducing or eliminating Fed Ex costs for transferring paper case files between FLRA components; implementing a pilot program that would mandate FLRA parties to file all case-related documents electronically, and eventually mandating eFiling for all FLRA case filings. The greatest benefit will be the ability to redirect staff hours currently used to perform manual administrative tasks to perform other mission-critical functions.

In addition, FLRA continues to embrace its “cloud-first” approach. All of the Agency’s major technical components – email, DMS, CMS, and eFiling – are hosted in the cloud. FLRA is planning to move its Video Teleconferencing (VTC) system to the cloud in 2020 and Voice over Internet Protocol (VoIP) in 2021.

### **People: Developing A Workforce for the 21<sup>st</sup> Century**

The mission accomplishments cited above are particularly noteworthy because, in 2019, FLRA has operated with as many as 16 vacant positions – well below its estimated 125 FTEs.

In order to improve performance management, the Agency is currently working with the Office of Personnel Management’s (OPM) to implement the USA Performance automated performance-management system in 2020. Automating the performance-management process using a tool that is compliant with all Federal performance-management regulations and OPM recommendations will assist Agency managers – and the Agency as a whole – in increasing performance accountability. FLRA also completed a review of its performance-management

systems and individual employee performance plans for alignment with the Strategic Plan, and Agency leadership is evaluating recommended revisions of performance plans to pilot in 2020.

OPM's Federal Employee Viewpoint Survey (FEVS) provides employees an opportunity to influence change by submitting feedback about their work environment, Agency leadership, and other important factors affecting morale and employee satisfaction. As in 2018, in 2019, the FLRA FEVS responses declined for certain measures and improved in others.

In response to the 2018 FEVS feedback, the Agency has enhanced its efforts to actively engage employees at all levels in Agency processes and to seek their opinions. For example, building on the Agency's efforts in 2018 to develop an employee-driven 2018-2022 Strategic Plan, FLRA launched several internal Strategic Plan Implementation Teams, which have operated throughout 2019. The teams, each of which includes both managers and non-managers, are:

- (1) Professional Development Team
- (2) Performance Communication Teams (Authority, OGC and Non-Attorney)
- (3) Customer Engagement Team
- (4) Digests Team
- (5) Employee Engagement Team
- (6) Diversity and Inclusion Team

The employee-led teams have focused on a variety of issues including revisions to performance plans for critical positions, expansion of customer engagement, and improvements to professional development opportunities. These employee-led teams have recommended, for example, new performance standards for the majority of positions in the Agency, completion of individual development plans by employees to identify their training needs, purchasing of online legal and professional educational training, and production of educational video clips to be made available on the website. Many of the teams' recommendations have been accepted and will be implemented in 2020. This process has allowed employees to be engaged in the stewardship of the Agency and to offer innovative and creative solutions to problems they see in the workplace or its processes.

# ANNUAL PERFORMANCE GOALS, MEASURES, AND RESULTS

*Strategic Goal 1: We will ensure quality, timely, impartial, and consistent investigative and decision-making processes with determinations that are clearly articulated.*

This strategic goal concerns the core statutory activities of FLRA. The Statute charges FLRA with responsibility for protecting rights and facilitating stable labor-management relationships in the federal sector. To achieve that mandate, FLRA must provide the Federal labor-management community with quality, timely, impartial, and consistent investigations and determinations. Further, FLRA must convey those determinations clearly and enforce them effectively. All FLRA components must help to achieve this goal in order to attain overall Agency success.

*Strategic Objective 1a: Establish and attempt to surpass (1) case-processing productivity goals, and (2) timeliness measures that are meaningful to the parties.*

Parties often have time-sensitive interests at stake in matters pending before FLRA. Delays in the resolution of those matters can impede the ability of the parties to fulfill their missions effectively and efficiently. So, to properly serve the Federal labor-management community and accomplish FLRA's own mission, the Agency must satisfy internal case-processing productivity goals that enable it to investigate and resolve cases in a timely fashion.

Parties are best served when they have a clear understanding of how long it might take FLRA to process cases. Therefore, in 2019, FLRA set its standards for timeliness in a way that gives parties a reasonable expectation as to the duration of the FLRA determination process. This requires the use of simple, straightforward metrics for understanding how long it might take to resolve a given matter before the Agency. The measurement is from date of filing rather than date of assignment to a Member for decision.

<i>Authority</i> Arbitration Cases	2015	2016	2017	2018	2019
Cases pending, start of year	90	50	42	73	73
<b>Exceptions filed (Intake)</b>	<b><u>99</u></b>	<b><u>87</u></b>	<b><u>103</u></b>	<b><u>105</u></b>	<b><u>135</u></b>
Total caseload	189	137	145	178	208
Cases closed procedurally	15	20	16	11	15
Cases closed based on merits	<u>124</u>	<u>75</u>	<u>56</u>	<u>94</u>	<u>72</u>
<b>Total cases closed (Output)</b>	<b>139</b>	<b>95</b>	<b>72</b>	<b>105</b>	<b>87</b>
Cases pending, end of year	50	42	73	73	121

Measure 1a-1 – New Measure	2019		
The average age of arbitration exceptions decided by the Authority.	Target	Actual	Result
	247 days	261 days	Not Met

Measure 1a-2 – New Measure	2019		
The percentage of arbitration cases decided by the Authority within 210 days <i>of the filing of exceptions</i> .	Target	Actual	Result
	75%	37% 32/87	Not Met

Measure 1a-3 – New Measure	2019		
The percentage of arbitration exceptions decided by the Authority within 365 days <i>of the filing of exceptions</i> .	Target	Actual	Result
	90%	84% 73/87	Not Met

<i>Authority</i> Negotiability Cases	2015	2016	2017	2018	2019
Cases pending, start of year	17	23	27	11	23
<b>Petitions filed (Intake)</b>	<u>54</u>	<u>55</u>	<u>40</u>	<u>43</u>	<u>30</u>
Total caseload	<b>71</b>	<b>78</b>	<b>67</b>	<b>54</b>	<b>53</b>
Cases closed procedurally	40	47	52	25	30
Cases closed based on merits	<u>8</u>	<u>4</u>	<u>4</u>	<u>6</u>	<u>6</u>
<b>Total cases closed (Output)</b>	<b>48</b>	<b>51</b>	<b>56</b>	<b>31</b>	<b>36</b>
Cases pending, end of year	<b>23</b>	<b>27</b>	<b>11</b>	<b>23</b>	<b>17</b>

Measure 1a-4 – New Measure	2019		
The average age of negotiability cases decided by the Authority.	Target	Actual	Result
	119 days	169	Not Met

Measure 1a-5 – New Measure	2019		
The percentage of negotiability cases decided by the Authority within 300 days <i>of the filing of a petition for review.</i>	Target	Actual	Result
	75%	83% 30/36	Met

Measure 1a-6 – New Measure	2019		
The percentage of negotiability cases decided by the Authority within 365 days <i>of the filing of a petition for review.</i>	Target	Actual	Result
	75%	92% 33/36	Met

<b><i>OALJ</i> ULP Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Cases pending, start of year	104	60	52	49	0
<b>Complaints received (Intake)</b>	<u>222</u>	<u>179</u>	<u>197</u>	<u>44</u>	<u>0</u>
Total caseload	<b>326</b>	<b>239</b>	<b>249</b>	<b>93</b>	<b>0</b>
Settlements before hearing	188	136	176	66	1
Cases closed by decision	<u>78</u>	<u>51</u>	<u>24</u>	<u>27</u>	<u>1</u>
<b>Total cases closed (Output)</b>	<b>266</b>	<b>187</b>	<b>200</b>	<b>93</b>	<b>2</b>
Cases pending, end of year	<b>60</b>	<b>52</b>	<b>49</b>	<b>0</b>	<b>0</b>

<b>Measure 1a-7 – New Measure</b>	<b>2019</b>		
The average age of ULP complaints decided by the OALJ.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	124 days	90 days	Exceeded

<b>Measure 1a-8</b>	<b>2019</b>		
The percentage of ULP complaints issued by the General Counsel resolved or decided in the OALJ within 180 days of the complaint being issued.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	80%	N/A	N/A

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
77%	80%	93%	77%
205/266	150/187	186/200	72/93

<b>Measure 1a-9</b>	<b>2019</b>		
The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 365 days of the complaint being issued.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	95%	N/A	N/A

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
93%	89%	97%	90%
	166/187	196/200	84/93

<i>Authority</i> ULP Cases	2015	2016	2017	2018	2019
Cases pending, start of year	13	24	9	8	10
<b>Cases filed (Intake)</b>	<u>62</u>	<u>45</u>	<u>23</u>	<u>19</u>	<u>4</u>
Total caseload	<b>75</b>	<b>69</b>	<b>32</b>	<b>27</b>	<b>14</b>
Cases closed procedurally	37	51	22	9	1
Cases closed based on merits	<u>14</u>	<u>9</u>	<u>2</u>	<u>8</u>	<u>7</u>
<b>Total cases closed (Output)</b>	<b>51</b>	<b>60</b>	<b>24</b>	<b>17</b>	<b>8</b>
Cases pending, end of year	<b>24</b>	<b>9</b>	<b>8</b>	<b>10</b>	<b>6</b>

Measure 1a-10 – New Measure	2019		
The average age of ULP exceptions decided by the Authority.	Target	Actual	Result
	165 days	238 days	Not Met

Measure 1a-11 – New Measure	2019		
The percentage of ULP cases decided by the Authority within 300 days <i>of issuance of an OALJ decision.</i>	Target	Actual	Result
	75%	75% 6/8	Met

Measure 1a-12 – New Measure	2019		
The percentage of ULP cases decided by the Authority within 365 days <i>of issuance of an OALJ decision.</i>	Target	Actual	Result
	90%	88% 7/8	Not Met

<i>Authority</i> Representation Cases	2015	2016	2017	2018	2019
Cases pending, start of year	7	2	0	6	5
<b>Applications for review (Intake)</b>	<u>16</u>	<u>6</u>	<u>12</u>	<u>6</u>	<u>5</u>
Total caseload	<b>23</b>	<b>8</b>	<b>12</b>	<b>12</b>	<b>10</b>
Cases closed procedurally	2	0	1	0	1
Cases closed based on merits	<u>19</u>	<u>8</u>	<u>5</u>	<u>7</u>	<u>7</u>
<b>Total cases closed (Output)</b>	<b>21</b>	<b>8</b>	<b>6</b>	<b>7</b>	<b>8</b>
Cases pending, end of year	<b>2</b>	<b>0</b>	<b>6</b>	<b>5</b>	<b>2</b>

Measure 1a-13 – New Measure	2019		
The average age of representation cases decided by the Authority.	Target	Actual	Result
	107 days	194 days	Not Met

Measure 1a-14 – New Measure	2019		
The percentage of representation cases <i>decided by the Authority</i> within 210 days of the filing of an application for review.	Target	Actual	Result
	75%	75% 6/8	Met

Measure 1a-15 – New Measure	2019		
The percentage of representation cases decided by the Authority within 365 days of the filing of an application for review.	Target	Actual	Result
	95%	88% 7/8	Not Met



<b>OGC ULP Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Cases pending, start of year	1,425	1,178	1,133	882	682
Charges filed (Intake)	<u>4,418</u>	<u>4,345</u>	<u>3,655</u>	<u>2,860</u>	<u>2,235</u>
<b>Total caseload</b>	<b>5,843</b>	<b>5,523</b>	<b>4,988</b>	<b>3,742</b>	<b>2,917</b>
Charges withdrawn/settled	3,662	3,268	3,130	2,343	1,755
Charges dismissed	800	749	786	674	379
Complaints issued	<u>203</u>	<u>173</u>	<u>190</u>	<u>43</u>	<u>0</u>
<b>Total cases closed (Output)</b>	<b>4,665</b>	<b>4,190</b>	<b>4,106</b>	<b>3,060</b>	<b>2,134</b>
<b>Cases pending, end of year</b>	<b>1,178</b>	<b>1,333</b>	<b>882</b>	<b>682</b>	<b>783</b>

\*The OGC was unable to issue decisions on appeals or issue complaints in the absence of a General Counsel after November 16, 2017. Those cases are currently held in abeyance.

<b>Measure 1a-16 – New Measure</b>	<b>2019</b>		
The average age of ULP charges resolved by the OGC.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	99 days	68 days	Exceeded

<b>Measure 1a-17</b>	<b>2019</b>		
The percentage of ULP charges resolved by the Office of the General Counsel by complaint, withdrawal, dismissal, or settlement within 120 days of filing of the charge.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	70%	88% 1,867/2,134	Exceeded

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
72% 3,373/4,665	71% 2,973/4,190	73% 2,984/4,106	88% 2,682/3,060

<b>Measure 1a-18</b>	<b>2019</b>		
The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 240 days of filing of the charge.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	95%	99% 2,114/2,134	Exceeded

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
NA	95% 3,963/4190	95% 3,883/4,106	99% 3,039/3,060

<b>OGC ULP Appeals</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Appeals pending, start of year	34	33	26	22	181
<b>Appeals filed (Intake)</b>	<u>220</u>	<u>238</u>	<u>192</u>	<u>180</u>	<u>122</u>
Total caseload	<b>254</b>	<b>271</b>	<b>218</b>	<b>202</b>	<b>303</b>
<b>Appeals closed (Output)</b>	<u>221</u>	<u>245</u>	<u>196</u>	<u>21*</u>	<u>0*</u>
Appeals pending, end of year	<b>33</b>	<b>26</b>	<b>22</b>	<b>181</b>	<b>303</b>

\*The OGC was unable to issue decisions on appeals in the absence of a General Counsel after November 16, 2017. Those cases are currently held in abeyance.

<b>Measure 1a-19 – New Measure</b>	<b>2019</b>		
The average age of ULP appeals decided by the General Counsel.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	45 days	N/A	N/A

<b>Measure 1a-20</b>	<b>2019</b>		
The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued by the General Counsel within 60 days of the date filed.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	95%	N/A	N/A

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
98% 217/221	100% 245/245	96% 188/196	100% 21/21

<b>Measure 1a-21</b>	<b>2019</b>		
The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued by the General Counsel within 120 days of the date filed.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	100%	N/A	N/A

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
100% 221/221	100% 245/245	100% 196/196	100% 21/21

<b>OGC Representation Cases</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Cases pending, start of year	65	70	112	58	64
<b>Petitions filed (Intake)</b>	<u>225</u>	<u>265</u>	<u>208</u>	<u>245</u>	<u>249</u>
Total caseload	<b>290</b>	<b>335</b>	<b>320</b>	<b>303</b>	<b>313</b>
Petitions withdrawn	95	112	130	110	126
Cases closed based on merits	<u>125</u>	<u>111</u>	<u>132</u>	<u>129</u>	<u>140</u>
<b>Total cases closed (Output)</b>	<b>220</b>	<b>223</b>	<b>262</b>	<b>239</b>	<b>266</b>
Cases pending, end of year	<b>70</b>	<b>112</b>	<b>58</b>	<b>64</b>	<b>47</b>

<b>Measure 1a-22 – New Measure</b>	<b>2019</b>		
The average age of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	114 days	92 days	Exceeded

<b>Measure 1a-23</b>	<b>2019</b>		
The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 120 days of the filing of a petition.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	70%	77% 205/266	Exceeded
<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
72% 158/220	73% 163/223	68% 179/262	82% 195/239

<b>Measure 1a-24</b>	<b>2019</b>		
The percentage of cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 365 days of the filing of a petition.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	95%	99% 259/266	Exceeded
<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
NA	98% 219/223	95% 250/262	100% 236/239

<b>FSIP Impasses</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Cases pending, start of year	28	33	42	17	23
<b>Impasses filed (Intake)</b>	<u>139</u>	<u>143</u>	<u>97</u>	<u>92</u>	<u>77</u>
Total caseload	<b>167</b>	<b>176</b>	<b>139</b>	<b>109</b>	<b>100</b>
Panel Decision	15	24	12	21	24
Panel declined jurisdiction	17	9	23	11	11
Settled with Panel assistance	25	22	25	7	15
Voluntarily withdrawn	77	79	62	47	22
<b>Cases closed total (Output)</b>	<u>134</u>	<u>134</u>	<u>122</u>	<u>86</u>	<u>72</u>
Cases pending, end of year	<b>33</b>	<b>42</b>	<b>17</b>	<b>23</b>	<b>28</b>

<b>Measure 1a-26 – New Measure</b>	<b>2019</b>		
The average age of bargaining-impasse cases in which the FSIP declines jurisdiction.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	90 days	95	Not Met

<b>Measure 1a-27</b>	<b>2019</b>		
The percentage of bargaining-impasse cases in which the FSIP declines jurisdiction within 140 days of the date filed.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	90%	90% 10/11	Met

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
100% 17/17	100% 9/9	95% 21/22	100% 11/11

<b>Measure 1a-28</b>	<b>2019</b>		
The percentage of bargaining-impasse cases that are voluntarily settled, after the FSIP asserts jurisdiction, within 160 days of the date filed.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	90%	100% 15/15	Exceeded

<b>Previous Years Data (Actual)</b>			
<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
84% 21/25	100% 22/22	92% 22/24	86% 6/7

Measure 1a-29 – New Measure	2019		
The average age of bargaining-impasse cases that the FSIP resolves through final action.	Target	Actual	Result
	146 days	140	Exceeded

Measure 1a-30	2019		
The percentage of bargaining-impasse cases that the FSIP resolves through final action that are closed within 200 days of the date filed.	Target	Actual	Result
	80%	100% 24/24	Exceeded

Previous Years Data (Actual)			
FY 2015	FY 2016	FY 2017	FY 2018
100% 15/15	88% 21/24	77% 9/12	100% 21/21

**Strategic Objective 1b:** *Ensure excellence in investigations and clearly articulated written work products by establishing and attempting to surpass case-processing quality goals that build upon the Agency's longstanding traditions of impartiality and consistent determinations that are clearly articulated.*

Excelling at FLRA's core functions requires the Agency to perform thorough investigations and produce clearly articulated written products. From informal communications, to FLRA determinations, to information on the FLRA website, FLRA's written work is one of the primary means by which the Agency communicates with parties and the federal labor-management community.

FLRA's ability to achieve its mission depends on its ability to issue impartial and consistent determinations that are clearly articulated. Even *the appearance* of partiality can cause parties to lose trust in the FLRA's determinations, and ultimately, in FLRA as an institution.

**PERFORMANCE GOAL 1b-1: CONDUCT HIGH-QUALITY INVESTIGATIONS AND PRODUCE HIGH-QUALITY WRITTEN WORK PRODUCTS**

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<b>Measure 1b-1: Establish and surpass case-processing quality goals.</b>	
<b>2019 Target</b>	<b>Result</b>
<ul style="list-style-type: none"><li>▪ Develop and pilot use of internal tool(s) throughout the Agency to establish case-processing quality goals (e.g., quality-assessment checklist)</li><li>▪ Solicit feedback on and assess the effectiveness of pilot internal tool(s) to measure quality.</li><li>▪ Make necessary adjustments to make new internal tool(s) more effective.</li><li>▪ Formally implement use of new internal tool(s) in order to surpass established case-processing quality goals.</li><li>▪ Develop and administer internal survey(s) to assess baseline case-processing quality.</li></ul>	Developed internal tools to establish agency case quality goals and identify areas where improvement is needed, to be used in conjunction with performance reviews.

**PERFORMANCE GOAL 1b-2: IMPLEMENT EFFECTIVE METHODS TO MAINTAIN AND IMPROVE THE QUALITY OF FLRA INVESTIGATIONS AND WRITTEN WORK PRODUCTS, INCLUDING FLRA STAFF TRAINING AND INTERNAL EDUCATION RESOURCES**

**Measure 1b-2:** Train FLRA staff and provide internal educational resources to improve the quality of investigations and written work products.

2019 Target	Result
<ul style="list-style-type: none"> <li>▪ Develop internal training programs and other educational tools Agency-wide in order to improve the quality of investigations and written work products (e.g., component-specific mentoring programs, Agency-wide or component-specific brown bag sessions, Agency-wide dissemination of decisions and other relevant legal opinions).</li> <li>▪ Develop and administer internal surveys or other measures to assess the effectiveness of pilot internal training programs and educational tools.</li> <li>▪ Make necessary adjustments to make internal training programs more effective.</li> <li>▪ Formally implement those internal training programs and educational tools that are deemed effective in order to improve the quality of investigations and written work products.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Developed and instituted Agency-wide informal training program using brown bag sessions.</li> <li>▪ Developed and administered internal survey on training.</li> <li>▪ Encouraged employees to increase awareness of Authority decisions by using electronic distribution tool for Agency-wide dissemination of decisions.</li> <li>▪ Implemented Individual Development Plans for each staff member to identify training needs.</li> </ul>

**PERFORMANCE GOAL 1b-3: ENSURE EXTERNAL STAKEHOLDER CONFIDENCE IN FLRA'S ABILITIES.**

**Measure 1b-3:** Customer perceptions about FLRA's impartiality.

2019 Target	Result
<ul style="list-style-type: none"> <li>▪ Develop and administer an external survey(s) to assess the parties' perceptions of FLRA's impartiality.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Developed a survey to assess parties' perceptions of FLRA's impartiality.</li> </ul>

***Strategic Goal 2: We will develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships.***

FLRA is specifically empowered and obligated to “provide leadership in establishing policies and guidance” related to matters arising under the Statute. 5 U.S.C. § 7105(a)(1). Educating parties regarding statutory obligations promotes FLRA’s mission of protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient Government. FLRA accomplishes this goal first through its written determinations and by providing parties with quality educational resources through FLRA’s website; by identifying, and offering targeted assistance to, parties with significant labor-management challenges; and by offering external training to Federal agencies and labor organizations regarding their rights and obligations under the Statute.

***Strategic Objective 2a: Maintain and expand educational resources on [www.flra.gov](http://www.flra.gov).***

Offering high-quality educational resources through FLRA’s website is a key component of promoting stability in the Federal labor-management community. Parties who are better informed about their rights and obligations under the Statute are less likely to pursue frivolous matters or defenses, and they are more likely to approach their labor-management relations in a manner that is consistent with the Statute.

The Agency will continue to explore ways to supplement and enhance the educational resources on its website, such as expanding parties’ access to statutory and other training, online training modules, and short animated training videos.

**Performance Goal 2a-1:** Routinely review and update educational resources on the FLRA website.

**Performance Goal 2a-2:** Develop a growing library of online training modules on the FLRA website.

**Performance Goal 2a-3:** Develop and maintain case digests of new Authority decisions on the FLRA website.



**Measure 2a: Expand the relevancy, currency, and reach of educational tools.**

2019 Target	Result
<ul style="list-style-type: none"> <li>▪ Update at least 3 guides or manuals Agency-wide.</li> <li>▪ Establish a mechanism to live stream trainings online or offer pre-recorded trainings on the <a href="http://www.flra.gov">www.flra.gov</a> website.</li> <li>▪ Offer at least 5 training sessions online Agency-wide.</li> <li>▪ Begin publishing case digest summaries for all Authority decisions. OGC and FSIP to evaluate doing the same for their decisions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Began publishing digests on a quarterly basis.</li> <li>▪ Acquired animation software to begin developing short animated training videos.</li> <li>▪ Piloted desktop video teleconferencing to expand capabilities for providing interactive external training online.</li> <li>▪ Developed 5 pre-recorded training modules in preparation for posting.</li> <li>▪ Updated OGC Unfair Labor Practice Case Law Outline.</li> </ul>

**Strategic Objective 2b: *Identify and address labor-management challenges.***

***Targeted assistance to parties with significant labor-management challenges.***

In situations where parties experience labor-management challenges, targeted assistance can promote stable labor-management relationships by educating the parties regarding their statutory rights and obligations. It can also promote effective and efficient Government by assisting parties in addressing their disputes without necessarily resorting to formal filings.

As part of the Agency's strategic commitment to develop and provide tools and resources to enable the parties to prevent or more effectively and efficiently resolve their labor-relations disputes and improve their labor-management relationships, the Authority signed an MOU with the FMCS creating a new pilot procedure for resolving negotiability appeals at no cost to the parties. Under its terms, the Authority trained a unique cadre of FMCS mediators so that they may assist the parties in the resolution of negotiability appeals through mediation. Under the pilot program, before a negotiability appeal is considered by the Authority's Members for a decision, the Authority may refer such appeals to FMCS, either on the Authority's own initiative or based upon a request from the parties. The negotiability-appeal-mediation procedure is expected to take between 30 and 60 days. The Authority anticipates that this will reduce case-processing time in negotiability appeals as well as provide opportunities for parties to expeditiously resolve appropriate negotiability disputes without the need for a formal Authority decision.

Additional targeted assistance may take various forms, including offering training to parties on particular topics that have given rise to frequent ULP charges, negotiability disputes, or arbitration exceptions. Other types of assistance might be most appropriate for parties experiencing broader labor-management challenges. For parties involved in complex representational matters, targeted assistance can include conducting conferences with the parties to assist them in identifying and, if feasible, resolving relevant issues.

For example, OGC conducted 72 training sessions to more than 25 federal agencies and labor organizations in 2019. These sessions were requested by the organizations based on their

perceived needs in the Federal labor-management relations area. FLRA staff tailored each session to meet the individualized needs of the particular group and received consistent positive feedback from the participants. The targeted training sessions focused on a range of issues, including unfair labor practices and representation matters.

**Performance Goal 2b-1:** Identify and evaluate parties with significant labor-management challenges.

**Performance Goal 2b-2:** Refer appropriate parties to suitable resources.

**Performance Goal 2b-3:** Implement highly effective targeted assistance programs and associated materials.

**Measure 2b:** Develop and implement a highly effective, totally voluntary targeted assistance program and related procedures.

2019 Target	Result
<ul style="list-style-type: none"> <li>Develop the criteria for identifying parties with significant labor-management challenges.</li> <li>Develop procedures for offering targeted assistance to identified parties or referring such parties to appropriate resources.</li> <li>Pilot a targeted-assistance program.</li> <li>Identify metrics for evaluating the program's success.</li> <li>Formally implement a targeted-assistance program with appropriately ambitious measures to assess its effectiveness.</li> </ul>	<ul style="list-style-type: none"> <li>Collaborated with FMCS on a pilot program for mediation of appropriate negotiability disputes.</li> <li>Addressed specific requests of parties for targeted training.</li> </ul>

**Strategic Objective 2c:** *Maintain and expand our external training programs to enable the parties to better understand their rights and obligations under the Statute.*

Agency components have traditionally provided training on statutory principles governing ULPs, representational issues, negotiability disputes, and arbitration exceptions. Providing such external training to federal agencies and labor organizations regarding their rights and obligations under the Statute directly promotes FLRA's mission of protecting rights and facilitating stable labor-management relationships while advancing an effective and efficient government. For this reason, it is essential that FLRA maintain and, where possible, expand these external training programs.

**Performance Goal 2c-1:** Exceed an annual target number of highly rated in-person training programs for a target number of participants concerning the full range of statutory matters.

**Performance Goal 2c-2:** Find additional ways to deliver real-time and pre-recorded external trainings that have been successfully developed and implemented utilizing appropriate technology and participant-friendly best practices.

**Performance Goal 2c-3:** Exceed an annual target number of highly rated training programs for a target number of participants regarding procedures for filing and processing FLRA cases.

Measure 2c-1	2019		
The number of <i>in-person statutory training</i> programs delivered.	Target	Actual	Result
	50	95	Exceeded

Previous Years Data (Actual)			
FY 2015	FY 2016	FY 2017	FY 2018
	280	273	100

Measure 2c-2	2019		
The number of participants who receive <i>in-person statutory training</i> .	Target	Actual	Result
	2,500	4807	Exceeded

Previous Years Data (Actual)			
FY 2015	FY 2016	FY 2017	FY 2018
	8,440	8,122	2,574

Measure 2c-3	2019		
The percentage of participants who highly rate the statutory training that they received.	Target	Actual	Result
	Develop evaluations	In Development	N/A

Measure 2c-4	2019		
The number of training programs delivered regarding procedures for filing and processing FLRA cases.	Target	Actual	Result
	40	72	Exceeded

<b>Measure 2c-5</b>	<b>2019</b>		
The number of participants who receive training regarding procedures for filing and processing FLRA cases.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	2,000	3,082	Exceeded

<b>Measure 2c-6</b>	<b>2019</b>		
The percentage of participants who highly rate the training that they received regarding procedures for filing and processing FLRA cases.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	Develop evaluations	In Development	N/A

<b>Measure 2c-7</b>	<b>2019</b>		
The number of real-time and pre-recorded online training programs developed and implemented.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	5	5	Met

<b>Measure 2c-8</b>	<b>2019</b>		
The percentage of participants who highly rate the real-time and pre-recorded online training that they received.	<b>Target</b>	<b>Actual</b>	<b>Result</b>
	Develop evaluations	In Development	N/A

***Strategic Goal 3: We will manage our resources effectively and efficiently, and recognize that our dedicated workforce is critical to the resolution of labor-relations disputes.***

FLRA honors the trust that the public has placed in it to use Agency resources wisely on behalf of the American taxpayer. Recognizing that trust, FLRA has always focused its resources on carrying out its mission. It will continue to do so.

In 2019, FLRA provided high quality performance and service delivery. The Agency continued a commitment to empowering and developing a highly engaged and effective workforce. The success of FLRA employees is instrumental to its success as an Agency. The employee-driven Strategic Plan 2018-2022 created in 2018 demonstrates the spirit that FLRA actively manages in its human-capital programs.

FLRA continued to explore ways to manage its workforce effectively and efficiently. A key component of that commitment is to continue developing IT systems, with the goal of enabling FLRA employees to spend more time on mission-critical, substantive work. FLRA also reexamined its performance-management systems to ensure that they align with the goals in the Strategic Plan, that individual employee standards reflect organizational goals, and that the Agency appropriately recognizes employee achievements in support of these goals. Finally, FLRA continued to encourage employee growth, development, and innovation.

***Strategic Objective 3a: Ensure that FLRA's performance-management systems are synchronized with and support the Agency's strategic goals.***

At the foundation of the Agency's 2018-2022 Strategic Plan is FLRA's renewed commitment to developing the most effective ways to evaluate Agency performance, as well as the contributions of the Agency's components and individual employees. To do this, employee performance-management targets should be adapted to support Agency goals. This will help ensure that the evaluation of FLRA employees will include consideration of how well they assist the Agency to achieve its strategic and performance goals.

**Performance Goal 3a-1:** FLRA employees perceive that the Agency's performance-management systems, and their individual performance plans, directly align with achieving this strategic plan.

**Performance Goal 3a-2:** FLRA employees have a clear understanding of how their individual achievement contributes to achievement of Agency priorities and successful implementation of FLRA strategic goals.

**Performance Goal 3a-3:** FLRA employees perceive that their performance recognition and rewards are also directly linked to their contribution to the successful achievement of FLRA's strategic goals.

**Measure 3a-1: Align performance-management systems and individual performance plans with current Strategic Plan.**

2019 Target	Result
<ul style="list-style-type: none"> <li>▪ Develop communications strategies, educational tools, and other materials to successfully implement the new systems.</li> <li>▪ Develop and administer an internal survey(s) to assess whether employees perceive that performance management systems (GS and SL/SES) and individual employee performance plans align with the Strategic Plan.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Evaluated Agency performance-management systems and individual employee performance plans for alignment with the Strategic Plan.</li> <li>▪ Formed Strategic Implementation Teams for the three types of positions--(1) OGC Attorneys, (2) Non-OGC attorneys, (3) Non-Attorneys--and tasked those teams with ering recommended revisions to employees' standards and elements.</li> <li>▪ Strategic Implementation Teams have provided Agency leadership with recommended revisions of performance plans to pilot in 2020.</li> </ul>

**Measure 3a-2: Employees understand how their individual performance contributes to overall Agency strategic goals.**

2019 Target	Result
<p>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether FLRA employees understand how their individual achievements contribute to Agency priorities and successful implementation of FLRA strategic goals. (E.g., FEVS Question #12, "I know how my work relates to the agency's goals and priorities"; FEVS Question #16, "I am held responsible for achieving results.")</p>	<p>FLRA did not administer a separate survey, but relied on data provided through FEVS.</p>

**Measure 3a-3:** Employees believe that there is alignment between the recognition and rewards that they receive and their individual contributions towards achieving the FLRA’s strategic goals.

2019 Target	Result
Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that recognition and rewards relate to their contribution toward achievement of FLRA strategic goals. (E.g., FEVS Question #24, “In my work unit, differences in performance are recognized in a meaningful way”; FEVS Question #25, “Awards in my work unit depend on how well employees perform their jobs”; FEVS Question #32, “Creativity and innovation are rewarded.”)	FLRA did not administer a separate survey, but relied on data provided through FEVS.

**Strategic Objective 3b: *Continue to expand FLRA’s technological capabilities to enable employees to deliver mission results more effectively.***

FLRA’s IT systems have provided, and will continue to provide, a key means by which the FLRA will more effectively and efficiently deliver quality services and increase internal efficiencies. For example, the Agency has connected all FLRA components in ways that improve internal communication, and FLRA works more efficiently by using a cloud-based Document Management System that allows for simplified document management and internal collaboration.

The Agency implemented a new and improved version of its eFiling system in 2018 that provides a more intuitive, user-friendly customer experience. This improved eFiling experience allows the parties to submit ULP, representation, arbitration, and negotiability filings in an electronic format. The Agency is currently using the same software and agile methodology to develop a more user-friendly electronic Case Management System. FLRA will integrate these three systems — document management, eFiling, and case management — to fully implement electronic case file capability throughout the Agency.

Hereafter, as resources permit, FLRA continues to enhance and leverage these technological capabilities. Work has begun to fully implement electronic case files, to encourage the widest uses of eFiling and to serve FLRA-generated case documents on the parties electronically—saving time, human-capital resources, and postage costs.

**Performance Goal 3b-1:** Implement a new and improved FLRA electronic case-management system. Integrate the case-management system with FLRA document management and eFiling systems in order to fully implement electronic case file capability throughout the Agency.

**Performance Goal 3b-2:** FLRA employees and parties understand how to make the most effective use of FLRA’s electronic systems.

**Performance Goal 3b-3:** Enhance the positive impact of technological advancements on the customer experience.



2019		
Measure 3b-1: Expand the use of eFiling.		
Target		Result
<ul style="list-style-type: none"> <li>▪ 50% of cases eFiled Agency-wide.</li> <li>▪ 10% increase in eFiling in each component – the OGC, the Authority, and the FSIP.</li> <li>▪ Amend FLRA’s regulations to eliminate the use of facsimile service for case filings throughout the Agency.</li> </ul>		<ul style="list-style-type: none"> <li>▪ Agency-wide: 46%</li> <li>▪ Authority 80% eFiled</li> <li>▪ OGC 43% eFiled</li> <li>▪ FSIP 78% eFiled</li> <li>▪ Authority and FSIP exceeded target of 10% increase</li> </ul>
<b>FY 2018</b>	<b>Actual</b>	35% eFiled
<b>FY 2017</b>	<b>Actual</b>	35% eFiled
<b>FY 2016</b>	<b>Actual</b>	22% eFiled

2019		
Measure 3b-2: Implement end-to-end electronic case files.		
Target		Result
Develop and fully implement the new and improved CMS in at least one FLRA component.		Developed CMS for the Authority component. Developed electronic case file structure in the DMS and initial planning to automate creating the electronic folders from the CMS.
<b>FY 2018</b>	<b>Actual</b>	Developed and launched eFiling 3.0, which both internal and external users report is significantly more user-friendly and intuitive. Began development of a new and improved CMS that, over time, will provide significant (\$100,000 annually) cost savings and allow for more efficient integration of the CMS and eFiling systems with the DMS, enabling end-to-end electronic case processing throughout the Agency. Identified the basic structure of electronic case files for each component/office in the DMS. Completed transition of all major IT functions – CMS, DMS, eMail – to the cloud, which improves both IT security, consistent with the PMA, and Agency continuity of operations plans.
<b>FY 2017</b>	<b>Actual</b>	Deployed an Agency-wide, cloud-based DMS, which replaced the existing network shares with an integrated document and email communications system that will facilitate document sharing and electronic case-processing initiatives. Adopted a new, more cost-effective approach to achieving end-to-end electronic case files. Using agile methodology and open-source code, and responding to user feedback, completed initial development of a brand new, user-friendly eFiling application (eFiling 3.0) with a Ruby on Rails user interface and a Postgres backend database that is housed in Amazon Web Services – a cloud-based solution. The new application will be launched in 2018 once final testing and additional enhancements are completed. Began modernizing the infrastructure of the Agency’s

		electronic CMS and eFiling by transitioning to a new cloud-based, backend product – Postgres database housed in Amazon Web Services – that will allow for a more user friendly and complete integration of the CMS, the eFiling system, and the DMS.
<b>FY 2016</b>	<b>Actual</b>	With the merger of the eFiling and Case Management System (CMS) applications complete, and the bridge between the two systems in place to support end-to-end electronic case-processing capability, enhanced the available features for the integration of the eFiling and CMS applications. eFiled cases are routinely automatically entered into the CMS. Neared completion of an improved eFiling user interface (eFiling 2.0) to make the application more user-friendly and intuitive. Began efforts to implement a Document Management System, which is a critical step in accomplishing FLRA’s multi-year electronic-case-file plan.

<b>2019</b>	
<b>Measure 3b-3: Internal and external customer perceptions of the eFiling System.</b>	
<b>Target</b>	<b>Result</b>
<ul style="list-style-type: none"> <li>▪ Develop a communications strategy for sharing with internal and external customers the benefits and advantages of eFiling (e.g., notice to go out with all Authority decisions).</li> <li>▪ Develop and administer internal and external survey tools to assess customer perceptions of the eFiling System.</li> <li>▪ Develop online, pop-up eFiling surveys that appear while users are logged into the eFiling System.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Received feedback from external users via the provided engagement email address. Implemented suggestions and replied to customer feedback.</li> <li>▪ Developed and distributed notices to customers promoting the use of eFiling.</li> </ul>

2019	
<b>Measure 3b-4:</b> Assess how internal and external customers perceive the effectiveness of the Agency's IT modernization efforts.	
Target	Result
<ul style="list-style-type: none"> <li>▪ Develop and administer internal and external survey(s) to assess: (1) whether FLRA employees and customers know how to maximize available technology; and (2) how FLRA employees and customers perceive the effectiveness of the Agency's IT modernization efforts.</li> <li>▪ Develop and implement appropriate communications to promote and enhance these efforts.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Developed and administered internal surveys to assess how FLRA employees perceive the effectiveness of the Agency's IT modernization efforts, and the results are being evaluated.</li> </ul>

**Strategic Objective 3c: *Recruit, retain, and develop a diverse, respected workforce in an environment that fosters employee input and satisfaction and makes the best use of FLRA resources.***

FLRA's charge to uphold and administer the Statute relies on its employees. Accordingly, FLRA's success relies on the expertise and engagement of its workforce. A key component of attracting and retaining an effective workforce is creating a positive work environment in which employees see themselves as stakeholders and innovators. FLRA continued to assess the skills and professional education/training needs of its workforce, and seek new, cost-effective ways to cultivate employee development and commitment. FLRA provided opportunities for experienced employees to share their institutional knowledge by providing internal training and through other means. FLRA's continued focus on human-capital development will help ensure continued mission accomplishment and leadership of the federal-sector labor-management relations program.

**Performance Goal 3c-1:** Internal and external survey respondents perceive that diverse and respected FLRA employees demonstrate expertise in federal-sector labor-management relations; minimal gaps exist in succession plans; and the Agency develops nontraditional resources for employee education and development.

**Performance Goal 3c-2:** The FLRA workforce expresses a stable and improving level of overall job satisfaction, as well as satisfaction with the manner in which internal problem-solving occurs.

**Performance Goal 3c-3:** FLRA managers and employees perceive that the Agency appropriately uses telework and technology to promote employee efficiency and a healthy work-life balance.

**2019**

**Measure 3c-1: Recruit, retain, and develop a diverse, respected workforce. – New Measure**

Target	Result
<ul style="list-style-type: none"> <li>▪ Review Agency performance-management systems and individual performance plans to ensure that they align directly with the 2018-2022 Strategic Plan.</li> <li>▪ Conduct a comprehensive, Agency-wide position classification review to confirm that all Agency positions reflect the actual duties of the position.</li> <li>▪ Assess time-to-hire results for Agency positions by reviewing recruitment and staffing processes and procedures.</li> <li>▪ Issue a revised Reasonable Accommodation Policy – including Personal Assistive Device policy – that is fully compliant with recent EEOC regulatory amendments and guidance.</li> <li>▪ Ensure compliance with Government-wide goals for Schedule A hiring.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Reviewed a portion of Agency performance-management systems and individual performance plans to ensure that they align directly with the 2018-2022 Strategic Plan.</li> <li>▪ Completed review of all position descriptions Agency-wide, to ensure that all Agency positions reflect the actual duties of the position.</li> <li>▪ Issued a revised Reasonable Accommodation Policy – including Personal Assistive Device policy – that is fully compliant with recent EEOC regulatory amendments and guidance.</li> <li>▪ Ensured compliance with Government-wide goals for Schedule A hiring.</li> <li>▪ Expanded recruitment efforts to target persons with disabilities.</li> <li>▪ Formed Diversity and Inclusion Team to develop programs to highlight and celebrate the diversity of Agency employees.</li> </ul>

2019		
Measure 3c-2: Maintain and grow Agency expertise through employee development.		
Target		Result
<ul style="list-style-type: none"> <li>Develop and implement use of nontraditional resources for employee education and development (e.g., component-specific mentoring programs, Agency-wide or component-specific brown bag sessions, Agency-wide dissemination of decisions and other relevant legal opinions).</li> <li>Develop and administer survey(s) to solicit feedback on and assess the effectiveness of nontraditional resources for employee education and development.</li> <li>Maintain sustained growth of positive responses to FEVS Question #47 – “Supervisors in my work unit support employee development.</li> </ul>		<ul style="list-style-type: none"> <li>Held 3 component specific brown bag sessions (Authority, FSIP, OALJ).</li> <li>Developed and administered surveys to solicit feedback on employee education and development.</li> <li>Provided promotional opportunities for internal agency prior to advertising key leadership positions externally.</li> </ul>
<b>FY 2018</b>	<b>Actual</b>	<ul style="list-style-type: none"> <li>Offered cross-component details to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency’s mission and operations.</li> <li>Managers assessed annually employees on their developmental needs and provided appropriate training and developmental opportunities.</li> <li>Maintained sustained growth of positive responses to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47).</li> </ul>
<b>FY 2017</b>	<b>Actual</b>	<ul style="list-style-type: none"> <li>Managers assessed employees’ developmental needs and provided at least one targeted developmental opportunity to each, many of those in-house (e.g., details, workgroups, and special projects).</li> <li>In the 2017 FEVS, had 55 identified strengths (items with 65 percent or higher positive ratings) and no identified challenges (items with 35 percent or higher negative ratings). Continued to rank in the top ten among small agencies (those with 100-999 employees) in two important indices – Employee Engagement and New IQ – with #6 and #5 rankings, respectively.</li> <li>78 percent of FLRA employees responded positively to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47), which is 5 percent above the small-agency score of 73 percent, and 10 percent above the Government-wide score of 68 percent.</li> </ul>

2019	
Measure 3c-3: Internal and external perceptions about the workforce. – New Measure	
Target	Result
<ul style="list-style-type: none"> <li>Develop and administer an <i>internal</i> survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations (e.g., FEVS FEVS Question #29 – “The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals.”)</li> <li>Develop and administer an <i>external</i> survey(s) to assess whether external respondents perceive that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations.</li> </ul>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>

2019	
Measure 3c-4: Internal perceptions about succession plans. – New Measure	
Target	Result
<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that minimal gaps exist in succession planning (e.g., FEVS Question #68 – “How satisfied are you with your opportunity to get a better job in your organization?”).</li> </ul>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>

2019	
Measure 3c-5: Overall employee job satisfaction. – New Measure	
Target	Result
<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess whether employees believe that FLRA employees: are diverse, are respected, and demonstrate expertise in Federal sector labor-management relations (e.g., FEVS Global Satisfaction Index; FEVS Question #69 – “Considering everything, how satisfied are you with your job?”)</li> </ul>	<ul style="list-style-type: none"> <li>FLRA formed an employee engagement Team and began conducting focus groups with all employees to better understand all aspects of job satisfaction.</li> <li>FLRA will continue to rely on data provided through FEVS.</li> </ul>

2019	
Measure 3c-6: Internal satisfaction with the manner in which internal problem-solving occurs. – New Measure	
Target	Result
<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess employee satisfaction with internal problem-solving practices.</li> </ul>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>

2019	
Measure 3c-7: Internal perceptions about use of technology to promote employee efficiency and work-life balance. – New Measure	
Target	Result
<ul style="list-style-type: none"> <li>Develop and administer an internal survey(s), or use existing survey instruments (e.g., FEVS), to assess internal perceptions about the use of technology to promote efficiency and work-life balance (e.g., FEVS Question #42 – “My supervisor supports my need to balance work and other life issues.”)</li> </ul>	<ul style="list-style-type: none"> <li>FLRA did not administer a separate survey, but relied on data provided through FEVS.</li> </ul>

### Verification and Validation of Performance Data

The CMS is used by FLRA offices to track and manage caseload. Each office enters information on case filings into the CMS, and is accountable for quality control of the data entered into the system. Case-performance data verification and validation was performed using information from the CMS.



**INSPECTOR GENERAL: TOP MANAGEMENT  
AND PERFORMANCE CHALLENGES FOR  
FISCAL YEAR 2020**



INSPECTOR GENERAL

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

**MEMORANDUM**

DATE: October 28, 2019

TO: Colleen Duffy Kiko  
Chairman

Ernest DuBester  
Member

James Abbott  
Member

FROM: Dana Rooney  
Inspector General

SUBJECT: Top Management and Performance Challenges for Fiscal Year 2020 (MC-20-01)

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

The FLRA Office of Inspector General’s (OIG) statement is based on specific OIG reviews and other reports, as well as our general knowledge of the FLRA programs and operations. Our analysis considers the accomplishments the FLRA reported as of September 5, 2019.

Accordingly, the attached document describes the most serious management and performance challenges facing the FLRA along with a brief assessment and management’s progress in addressing them. These ongoing challenges include: information technology security; and records management.

The above challenges were also noted in the Agency’s Fiscal Year (FY) 2018 PAR. FLRA has made substantial progress in addressing these challenges as further described in the attachment. Further, management has taken sufficient action to effectively mitigate the Closure of Open Recommendations Outstanding for More than 1 Year identified challenge that was reported in the FY 2018 PAR. We appreciate management’s strong commitment in addressing these challenges and welcome comments to our assessment.

Attachment



## **Office of Inspector General Federal Labor Relations Authority**

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### **Information Technology Security**

The Federal Information Security Modernization Act of 2014 (FISMA) requires the Authority to develop, document, and implement an information security program to protect its information systems and data. The Federal Labor Relations Authority (FLRA) depends on information systems to function, and the security of these systems is vital. These systems are always at risk and the FLRA must remain vigilant in establishing a control environment to continuously monitor potential Information Technology (IT) risks, threats, vulnerabilities, mitigation and implementation plans.

As in prior years, the FLRA has either new or repeated weaknesses in its IT program. The Office Inspector General's (OIG) annual FISMA review in Fiscal Year 2018 identified five new weaknesses in IT. The 2018 review closed the only open finding from Fiscal Year (FY) 2015.

The FLRA's ability to effectively manage its IT program has improved greatly over the past few years, providing corrective action plans in response to our recommendations. While the FLRA has had two consecutive clean audits, IT security still remains a management challenge. In our FY 2019 FISMA review, we plan to evaluate the IT deficiencies and the actions taken to correct these weaknesses.

### **Information Security**

Since the passage of the FISMA, the OIG has annually reviewed the FLRA's information security program. The FISMA requires the FLRA OIG to prepare a report summarizing the review findings and submit it to the Office of Management and Budget (OMB). The most recent FISMA evaluation found that management continues to make progress by closing the remaining open recommendation from FY 2015.<sup>1</sup> There were five new recommendations in the FY 2018 review.

### **Progress in Addressing the Challenge**

The FLRA has taken corrective action to resolve the only open finding from FY 2015 reported in the FY 2018 Performance and Accountability Report. FLRA had five new IT security findings from its FY 2018 FISMA review. The FLRA expects to fully mitigate the open FISMA findings by the end of Calendar Year 2019. The impact of this effort will be assessed during the FY 2019 FISMA review.

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<sup>1</sup> This is based on the FY 2018 FISMA review; the FY 2019 FISMA review had not been completed at the time this document was drafted.



## Office of Inspector General Federal Labor Relations Authority

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### What Needs to Be Done

The FLRA should continue to address and resolve the five FISMA weaknesses identified by the OIG in 2018. Although the FLRA has closed its only open recommendation, the Agency must be diligent in continuing to monitor and assess its information security to ensure proper IT security controls are in place.

### Key OIG Resources

- U.S. Federal Labor Relations Authority Performance and Accountability Report 2018;
- OIG Report, Evaluation of the Federal Labor Relations Authority Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2018 (MAR-19-01) October 2018
- OIG Report, Evaluation of the Federal Labor Relations Authority Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2017 (MAR-18-01), October 2017

### Comply with Records Management

Agencies are required to comply with all Federal records management laws, regulations, and policies. In 2011, Presidential Memorandum, *Managing Government Records*, requires Federal agencies to manage both permanent and temporary email records in an electronic format by the end of 2016. By the end of 2019, agencies are directed by the Office of Management and Budget (OMB) and U.S. National Archives and Records Administration (NARA) jointly issued Memorandum M-12-18, *Managing Government Records Directive* to manage all permanent records in an electronic format.

NARA is set to stop accepting paper-based records at the end of 2022, and OMB has issued M-19-21, *Transition to Electronic Records* to help agencies meet this deadline.

The memo states, “The Federal Government spends hundreds of millions of taxpayer dollars and thousands of hours annually to create, use, and store Federal records in analog (paper and other non-electronic) formats. Maintaining large volumes of analog records requires dedicated resources, management attention, and security investments that should be applied to more effectively managing electronic records.”

OMB is directing agencies, to “ensure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata,” and develop plans to close Agency-operated



## **Office of Inspector General Federal Labor Relations Authority**

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storage facilities for paper and other, analog records, and transfer those records to Federal Records Centers operated by NARA or commercial storage facilities.”

The OMB guidelines require that all agencies “manage all permanent electronic records in an electronic format” by December 31, 2019. By December 31, 2022 this requirement extends to all permanent records as well as temporary records,” to the fullest extent possible.” December 31, 2022 is also the deadline for agencies to close their Agency-operated record centers, and transition all records to Federal or commercial centers.

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

FLRA has made progress to comply with the records management directive by developing an electronic case-management system (CMS) to properly handle Agency case files and records. This is an excellent step forward using technology to enhance operational efficiencies. However, system automation is only one part of a comprehensive approach to address the challenge of managing permanent records. Industry practices dictate that along with implementing new technology, it is imperative that a complete oversight or governance process be established to include documenting Agency policies, procedures and processes that address all hard copy and electronic records proper handling. Although new automated systems offer increased capabilities, they also present new internal (management) control challenges. The FLRA needs to ensure various roles (e.g., system administrator); related authorities and capabilities are properly assigned, documented, managed and monitored. Such written documentation should be maintained as this need becomes increasingly critical as additional functionality and enhancements are added to the system. Further, although, certain types of records do not have legal retention requirements; the policies, processes and procedures should, clearly and specifically, instruct staff on the proper handling. Further, management should periodically verify that such policies are being followed.

### **Progress in Addressing the Challenge**

FLRA provided the following management challenge update:

“During FY 2019, the FLRA continued its efforts to use technology to automate current paper-based manually intensive processes. This included the continued development of the electronic CMS and that will further the Agency’s efforts to transition to paperless case files and records.

The FLRA recognizes in addition to an electronic case management system , it must also update or develop policies, processes, and procedures to provide staff with clear guidance for handling



## Office of Inspector General Federal Labor Relations Authority

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records and ensuring all current OMB and NARA requirements are reviewed and in compliance with Agency requirements. The FLRA was able to fill the Records Manager (RM) role this past year, providing a dedicated RM to ensure that appropriate oversight and governance processes are established, including reviewing/updating Agency policies, procedures, and processes that address the proper handling and storage of all hard-copy and electronic records.”

### What Needs to Be Done

FLRA has worked diligently to transition from maintaining hard copy records to capturing them electronically. This transformation isn’t easy. FLRA needs to continue making an effort to comply with upcoming records management standards to successfully achieve compliance with the OMB deadlines.

### Key OIG Resources

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

**FEDERAL LABOR RELATIONS AUTHORITY**

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## **U.S. FEDERAL LABOR RELATIONS AUTHORITY PERFORMANCE AND ACCOUNTABILITY REPORT**

Decisions of the  
FEDERAL  
LABOR  
RELATIONS  
AUTHORITY

20  
18

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**UNITED STATES  
FEDERAL LABOR RELATIONS AUTHORITY**



**Performance and Accountability Report  
Fiscal Year 2018**



# **TABLE OF CONTENTS**

<b>MESSAGE FROM THE CHAIRMAN .....</b>	<b>1</b>
<b>MANAGEMENT’S DISCUSSION AND ANALYSIS .....</b>	<b>3</b>
Background and Mission .....	3
Organizational Structure .....	4
Strategic and Performance-Planning Framework .....	7
Performance Summary.....	21
Financial Analysis.....	31
Management Assurances .....	34
<b>PERFORMANCE GOALS AND RESULTS .....</b>	<b>35</b>
Goal 1.1.1: Produce Timely Review and Disposition of Unfair-Labor-Practice Cases .....	35
Goal 1.2.1: Resolve Overage Unfair-Labor-Practice Cases in a Timely Fashion .....	38
Goal 1.1.2: Produce Timely Review and Disposition of Representation Cases .....	39
Goal 1.2.2: Resolve Overage Representation Cases in a Timely Fashion.....	40
Goal 1.1.3: Produce Timely Review and Disposition of Arbitration Cases .....	41
Goal 1.2.3: Resolve Overage Arbitration Cases in a Timely Fashion .....	42
Goal 1.1.4: Produce Timely Review and Disposition of Negotiability Cases.....	42
Goal 1.2.4: Resolve Overage Negotiability Cases in a Timely Fashion.....	43
Goal 1.1.5: Produce Timely Review and Disposition of Bargaining-Impasse Cases.....	44
Goal 2.1.1: Provide Targeted Access to Training, Outreach, and Facilitation Activities within the Labor-Management Community.....	45
Goal 2.2.1: Successfully Resolve a Significant Portion of FLRA Cases through ADR.....	46
Goal 3.1.1: Recruit, Retain, and Develop a Highly Talented, Motivated, and Diverse Workforce to Accomplish the FLRA’s Mission.....	50
Goal 3.2.0: Improve Use of Existing Technology and Deploy New IT Systems to Streamline and Enhance Organizational Operations.....	57
Verification and Validation of Performance Data .....	59
<b>PRINCIPAL FINANCIAL STATEMENTS .....</b>	<b>60</b>
Message from the Chief Executive Officer .....	60
Balance Sheet.....	61
Statement of Net Cost .....	62
Statement of Changes in Net Position .....	63
Statement of Budgetary Resources .....	64
Notes to the Financial Statements.....	65
Report of Independent Auditors.....	77

**OTHER ACCOMPANYING INFORMATION.....82**

Summary of Financial Statement Audit.....82

Summary of Management Assurances.....82

Improper Payments Elimination and Recovery .....83

Memorandum on Inspector General Identified Management Challenges .....84

## MESSAGE FROM THE CHAIRMAN



I am pleased to submit the FY 2018 Performance and Accountability Report for the Federal Labor Relations Authority (FLRA). Although this has been a challenging year with vacancies in key leadership positions, it was also another successful and productive year. The employees in this Agency are fully committed to the mission of this Agency and, despite changes and transitions, have been remarkably present and hard working.

For the first three months of FY 2018, there were only two Members of the Authority. The Members' staffs continued to prepare draft decisions; however when the two Members were unable to reach consensus on the disposition of a case, no decision could issue. On December 11, 2017, the FLRA welcomed two new Members (one of whom was designated Chairman) and swore in an existing Member for a new term. This restored the Authority to a full complement of three Members to tackle the backlog of "overage" cases that had accrued. From December 2017 (when the Authority was restored to a full complement of Members) through September 2018, the Authority issued a total of 115 merits decisions (an average of almost 12 decisions per month) as compared to issuing only 52 merits decisions during the same time period in FY 2017 (an average of 5 decisions per month). Of the cases pending in the Member offices' inventory when the Authority regained a full complement of Members, only five currently remain.

The Office of Administrative Law Judges (OALJ) – also part of the Authority – met or substantially met all of its performance goals in FY 2018. Absent a General percent Counsel or Acting General Counsel, the OALJ has received no new cases since November 2017. All of the cases that were on the OALJ docket were issued by the end of FY 2018. In the meantime, the Administrative Law Judges (ALJs) are performing work for other agencies through the ALJ Loan Program on a reimbursable basis. Additionally, the ALJs – consistent with governing regulations – are drafting decisions for the Authority in matters other than ULP cases.

In FY 2018, the Federal Service Impasses Panel exceeded all of its performance measures for assisting parties in resolving their negotiation impasses. For the first three quarters of FY 2018, the Panel received 92 filings (an average of 7 new filings each month). Case filings increased to 9 cases filed in the month of September.

The FLRA has been without a presidentially-nominated, Senate-confirmed General Counsel since January 20, 2017. Despite the challenges this vacancy created, the Office of General Counsel (OGC) continued delivering strong results in FY 2018. The OGC exceeded its strategic performance goals for the timely resolution of ULP cases, resolving 88 percent (2,682 of 3,060) of ULP cases by issuance of a complaint (during the period that it had an Acting General Counsel), or by the withdrawal, dismissal or settlement of the ULP charge, within 120 days of the charge's filing date. It also exceeded its performance goals for timely resolution of representation cases, resolving 82 percent (195 of 239) of representation petitions by withdrawal, election or issuance of a Decision and Order within 120 days of filing.

The OGC also focused on implementing aspects of the FLRA Agency Reform Plan – specifically, to consolidate the OGC’s Regional Offices from seven to five by closing the Dallas and Boston Regional Offices. As part of this consolidation, all 16 affected OGC employees were offered reassignment and paid relocation to another region, or to the FLRA headquarters. Seven of those employees elected to relocate. The Dallas Regional Office closed on September 30, 2018 and the Boston Regional Office is on track for closure by November 30, 2018.

In order to implement the new jurisdictional boundaries resulting from the regional office consolidation, the FLRA issued procedural regulations to reflect the Dallas Regional Office closure on September 30, 2018. It also issued web-based guidance, press releases and responses to “frequently asked questions” to ensure that the parties were aware of these changes and of the appropriate geographical region in which to file cases. It will issue similar regulations and guidance materials to reflect the Boston Regional Office closure on November 30, 2018.

The agency continues to make tremendous strides toward advancing our new and improved case management system to allow for integration with our Document Management System and our new eFiling 3.0.

As Chairman of the FLRA, I certify that no material weaknesses were found in the design or operation of our internal controls and financial systems, as discussed in more detail in this report. I have also made every effort to verify the accuracy and completeness of the performance data presented in this report.



Colleen Duffy Kiko, Chairman  
Federal Labor Relations Authority  
November 15, 2018

# MANAGEMENT'S DISCUSSION AND ANALYSIS

## BACKGROUND AND MISSION

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The FLRA is an independent administrative Federal Agency created by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135. The purpose of the Statute is to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures that are designed to meet the special requirements and needs of the Government. *Id.* § 7101(b). The provisions of the Statute are to be interpreted in a manner consistent with the requirement of an effective and efficient Government. *Id.*

Consistent with its statutory mandate, the FLRA's 2015-2018 mission was: *Protecting rights and facilitating stable relationships among Federal agencies, labor organizations, and employees while advancing an effective and efficient Government through the administration of the Statute.*

The FLRA applied its Federal-sector expertise to execute its mission primarily by carrying out the following statutory responsibilities:

1. Conduct hearings and resolve complaints of unfair labor practices (ULPs) under § 7118 of the Statute. *Id.* § 7105(a)(2)(G). The FLRA is responsible for investigating, prosecuting, and adjudicating claims that an Agency or a labor organization has failed to uphold its legal obligations under the Statute.
2. Determine the appropriateness of units for labor-organization representation under the Statute, and supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees in an appropriate unit. *Id.* § 7105(a)(2)(A). The FLRA also resolves disputes about which employees may be included in bargaining units under the Statute. *Id.* § 7105(a)(2)(B).
3. Resolve exceptions to grievance-arbitration awards under § 7122 of the Statute. *Id.* § 7105(a)(2)(H). The FLRA adjudicates appeals – known as exceptions – to arbitration awards that result from grievances filed by employees, labor organizations, or agencies under parties' negotiated grievance procedures. The FLRA reviews those awards to assess whether they are contrary to any law, rule, or regulation, or are deficient on other grounds similar to those applied by Federal courts in private-sector labor-management disputes.
4. Resolve issues relating to the duty to bargain in good faith under § 7117(c) of the Statute. *Id.* § 7105(a)(2)(E). The FLRA resolves negotiability disputes that arise during bargaining under two circumstances – when an Agency claims that a contract proposal is outside the duty to bargain and when an Agency head disapproves a negotiated agreement claiming that it contains provisions that are contrary to law, rule, or regulation.
5. Provide assistance in resolving negotiation impasses between Federal agencies and exclusive representatives. *Id.* § 7119.

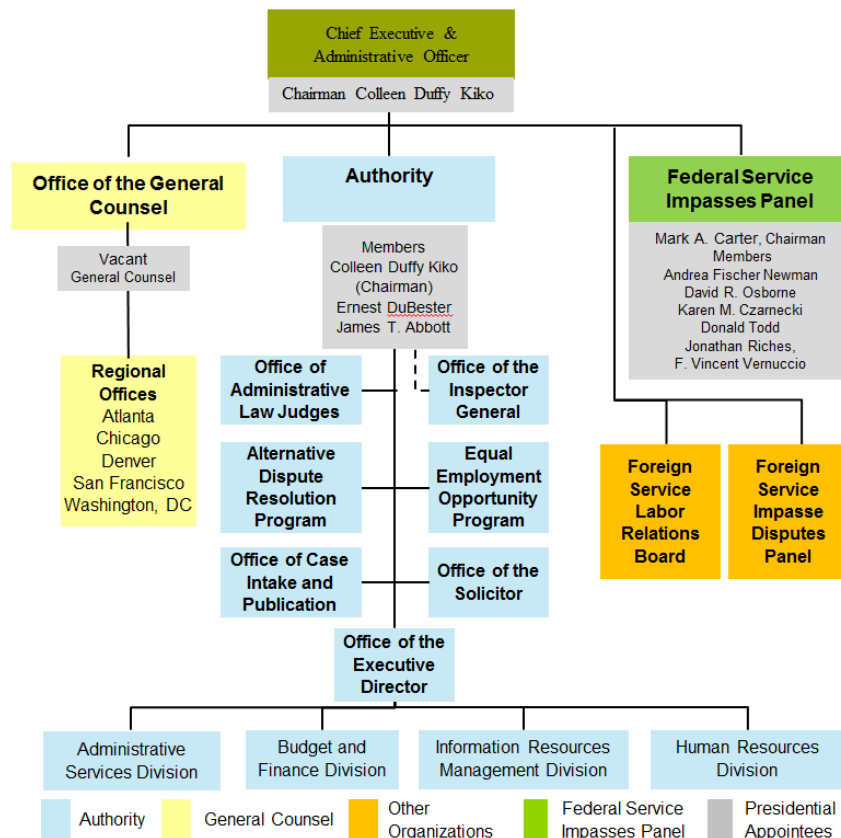


In addition, Congress directed the FLRA to prescribe criteria and resolve issues relating to the granting of national consultation rights under § 7113 of the Statute; prescribe criteria and resolve issues relating to determining compelling need for Agency rules or regulations under § 7117(b) of the Statute; prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under § 7117(d) of the Statute; and take such other actions as are necessary and appropriate to effectively administer the provisions of the Statute.

Moreover, the FLRA is to “provide leadership in establishing policies and guidance” related to matters under the Statute. *Id.* § 7105(a)(1). The FLRA satisfies this directive primarily through its written determinations, but also by offering training and other services.

## ORGANIZATIONAL STRUCTURE

Headquartered in Washington, D.C., the FLRA has three statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (the FSIP or the Panel) – each with unique adjudicative or prosecutorial roles. The Agency also provides full program and staff support to two other organizations – the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel, pursuant to the Foreign Service Act of 1980, 22 U.S.C. §§ 4101-4118.



## **Chief Executive and Administrative Officer**

The President of the United States designates one Member as Chairman who serves as the FLRA's chief executive and administrative officer. 5 U.S.C. §§ 7104(b).

## **The Authority**

The Authority – the FLRA's adjudicatory body – is led by three full-time, presidentially nominated and Senate-confirmed Members who are appointed to fixed, staggered five-year terms.

The Authority is responsible for adjudicating ULP complaints, ruling on exceptions to arbitrators' awards, resolving disputes over the negotiability of collective-bargaining proposals and provisions, and deciding applications for review of Regional Directors' decisions in representation disputes. The Authority Members appoint Administrative Law Judges (ALJs) to hear and prepare recommended decisions that may be appealed to the Authority in cases involving ULP complaints.

Other offices and programs under the jurisdiction of the Authority include the Office of the Solicitor, the Office of Administrative Law Judges (OALJ), the Office of Case Intake and Publication (CIP), the Alternative Dispute Resolution Program, and the Equal Employment Opportunity Program. Standing as an independent entity within the Authority is the Office of Inspector General.

## **The Office of the General Counsel**

The Office of the General Counsel (OGC) is led by a presidentially nominated and Senate-confirmed General Counsel who has direct authority over, and responsibility for, all employees in the OGC, including those in the FLRA's Regional Offices.

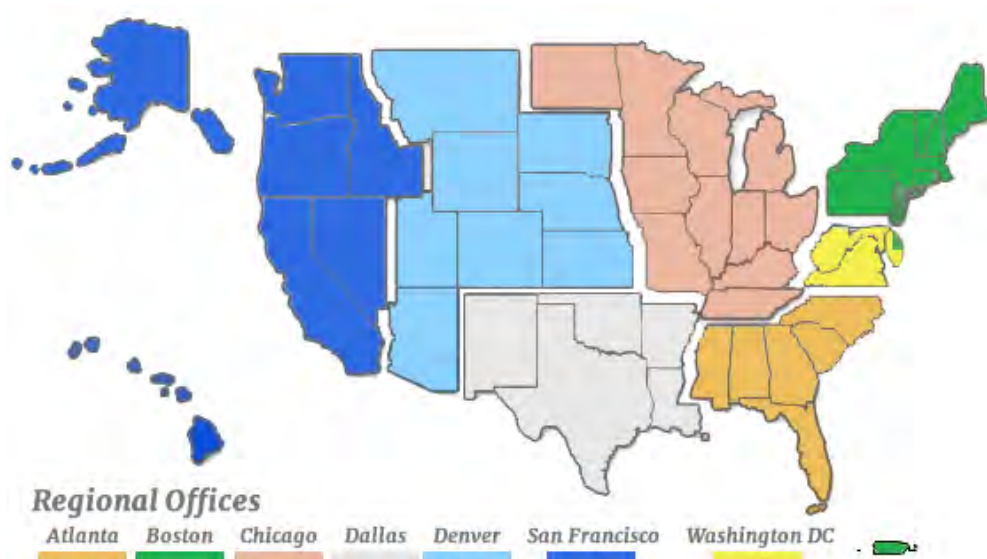
Under the Statute, the General Counsel has sole responsibility – independent of the Authority – over the investigation and prosecution of ULP cases. The General Counsel's determinations in these matters are final and unreviewable. The OGC investigates and resolves ULP charges, files and prosecutes ULP complaints, and provides training, as appropriate. In addition, through delegation by the Authority, the Regional Offices investigate and resolve representation (REP) cases and conduct secret-ballot elections.

The General Counsel has a small staff at FLRA Headquarters, located in Washington, D.C. Headquarters management provides administrative oversight; develops policies, guidance, procedures, and manuals that provide programmatic direction for the Regional Offices and training and education for the parties; and processes appeals from the Regional Offices' dismissals of ULP charges. Each Regional Office is headed by a Regional Director who

provides leadership and management expertise for the respective region. Collectively, the Regional Directors work with senior management throughout the FLRA to develop and implement policy and strategic initiatives to accomplish the FLRA mission.

Consolidation of the Agency's regional offices involved closure of the Dallas Regional Office at the very end of FY 2018 and the planned closure of the Boston Regional Office in the first two months of FY 2019. On November 30, 2018, the FLRA will have five Regional Offices: Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C.

#### **Map of the Regional Offices throughout FY 2018:**



#### **The Federal Service Impasses Panel**

The FSIP is composed of seven part-time Presidential appointees – a Chairman and at least six other Members – who are appointed to fixed, staggered five-year terms. The FSIP provides assistance in resolving negotiation impasses between Federal agencies and labor organizations representing Federal employees that arise from collective-bargaining negotiations under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act.

## STRATEGIC AND PERFORMANCE-PLANNING FRAMEWORK

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The FLRA established strategies and goals designed to maximize the delivery of Agency services throughout the Federal Government through a comprehensive review – by leadership at all levels throughout the Agency – of its operations, staffing, work processes, resource allocations, and performance. Throughout FY 2018, the FLRA engaged in a continuous assessment of performance and other data to ensure that it accomplished its mission, effectively and efficiently, and that it promoted innovation throughout the Agency.

The FLRA's FY 2018 performance-planning framework was based on the Agency's FY 2015 - 2018 Strategic Plan, and supported by the Agency's Annual Performance Plan, which established the Agency's annual performance goals and measures. The Annual Performance Plan reflected the Agency's commitment to meaningful metrics to assist in assessing performance outcomes, aligning resources, and effectively identifying staffing and training needs. The Annual Performance Plan also demonstrated the FLRA's ongoing commitment to organizational excellence.

Consistent with the government-wide initiative to leverage existing data to facilitate agencies' programmatic work and enhance the value of data set forth in Office of Management and Budget (OMB) Memorandum No. 14-06, *Guidance for Providing and Using Administrative Data for Statistical Purposes*, the FLRA continually and strategically monitored its progress in accomplishing the goals and measures set forth in the Annual Performance Plan. This ongoing, Agency-wide review was conducted on a monthly basis with distribution of the Monthly Analysis of Performance and Status (MAPS) Report, which contained statistical case and performance data derived from the FLRA's Case Management System (CMS) and Agency management. The Agency examined the data contained in the MAPS Report in a variety of forums. At the component and office levels, there were also daily performance assessments using a variety of reports, including: case-filing reports, which tracked the number and age of cases; case-status reports, which tracked the status of all assigned *pending* cases within the Authority, the OGC, and the FSIP; and monthly disposition reports, which tracked the number, age, and resolution type of every *closed* case within the Authority and the OGC.

The analysis and assessment of these reports drove, among other things: adjustments in workload through case transfers at the national, regional, and office levels; decisions to target services (including training, facilitations, and on-site investigations) to certain parties or geographical locations; and reallocation of resources, including use of details and contract support.

### **FY 2018 Performance Goals**

**1.1.1:** Produce timely review and disposition of unfair-labor-practice cases.

**1.2.1:** Resolve overage unfair-labor-practice cases in a timely fashion.

**1.1.2:** Produce timely review and disposition of representation cases.

**1.2.2:** Resolve overage representation cases in a timely fashion.

**1.1.3:** Produce timely review and disposition of arbitration cases.

**1.2.3:** Resolve overage arbitration cases in a timely fashion.

**1.1.4:** Produce timely review and disposition of negotiability cases.

**1.2.4:** Resolve overage negotiability cases in a timely fashion.

**1.1.5:** Produce timely review and disposition of bargaining-impasse cases.

**2.1.1:** Provide targeted access to training, outreach, and facilitation activities within the labor-management community.

**2.2.1:** Successfully resolve a significant portion of FLRA cases through ADR.

**3.1.1:** Recruit, retain, and develop a highly talented, motivated, and diverse workforce to accomplish the FLRA's mission.

**3.1.2:** Improve use of existing technology and deploy new IT systems to streamline and enhance organizational operations.

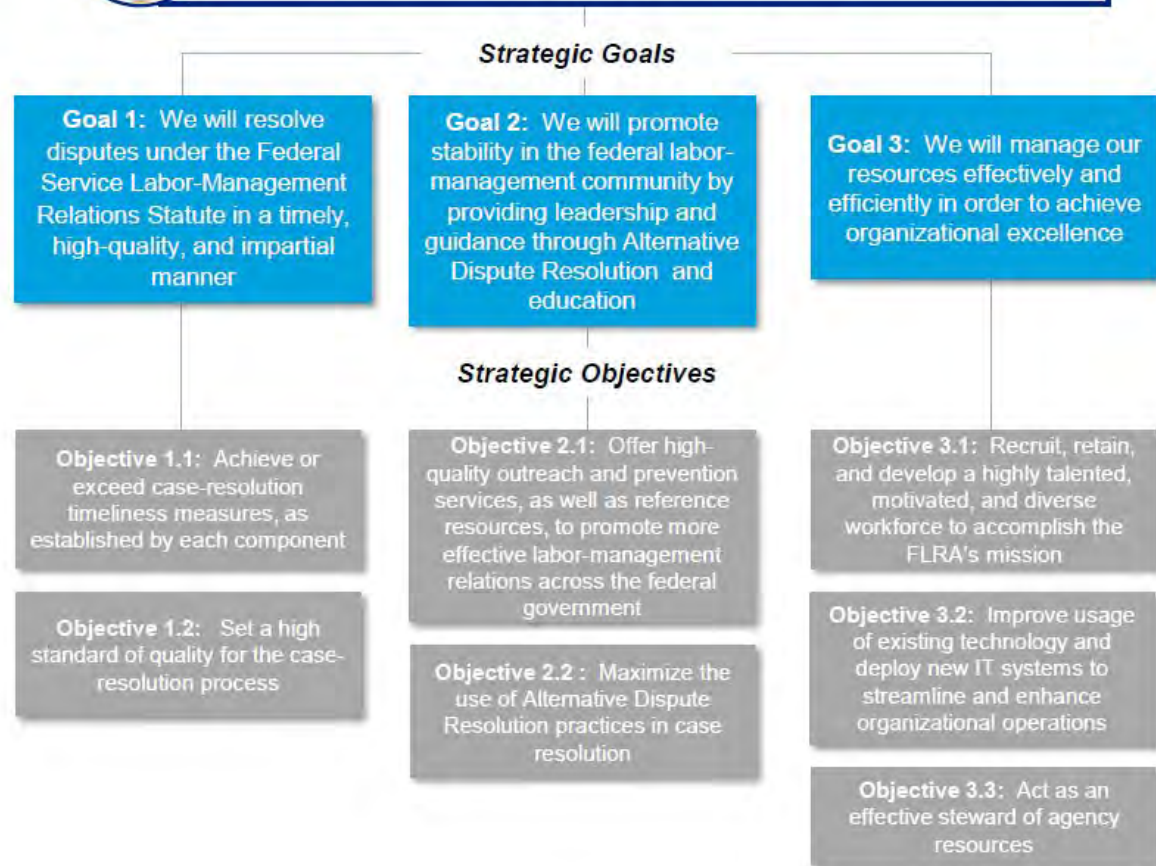
### ***2015-2018 Strategic Plan***

The 2015-2018 Strategic Plan established strategies and goals designed to maximize the delivery of Agency services throughout the Federal government. In addition, the FLRA identified performance goals that allowed the Agency to both monitor progress towards achieving its strategic goals and to recalibrate strategies, as necessary, for maximum mission performance. This continued the FLRA's increased focus on targeted data collection and data-driven leadership and decision-making. In developing the strategic plan, the FLRA referenced evidence-based performance and resource trends. Data collected was intended to measure progress against this strategic plan and overall mission performance and effectiveness.

The FLRA sought to achieve its strategic goals primarily through the timely, high-quality, and impartial review and disposition of cases. The Agency supplemented these efforts with a focus on reducing litigation and its attendant costs by helping parties to resolve their own disputes through collaboration, ADR, education, and labor-management-cooperation activities. Further supporting these efforts in FY 2018 was the FLRA's focus on more effective and efficient use of human capital and internal improvements in information technology (IT).



**Mission:** The FLRA promotes stable, constructive labor-management relations through the resolution and prevention of labor disputes in a manner that gives full effect to the collective-bargaining rights of employees, unions, and agencies.



## Timeliness and Quality

Continued improvements in the timeliness of case disposition further the FLRA's critical role in facilitating orderly, effective, and efficient change within the Federal Government. In large part, the FLRA exists to promote effective labor-management relations that, in turn, permit improved employee performance and Government operations. Timely resolution of FLRA cases is critical to this endeavor. Effective case resolution includes quality issues: effective process execution; clear communication with the parties around case processes; and the issuance of well-written and understandable decisions that provide deliberate, impartial, and legally sound analyses and consideration of the issues in dispute.

## Alternative Dispute Resolution and Education

Throughout the years, the FLRA has recognized the many benefits associated with using ADR to assist the parties to reach agreement on the issues prior to reaching a full written decision on the

issues. In addition, the FLRA's training initiatives are intended to better serve the FLRA's customers by providing meaningful and clear guidance on statutory rights and responsibilities. The FLRA delivers its educational materials through a variety of means, such as: in-person training sessions; comprehensive, web-based training modules; and case outlines, manuals, and subject-matter guides that are easily accessible on [www.FLRA.gov](http://www.FLRA.gov). All of these materials were developed to assist customers from the Federal labor-management-relations community.

### **Information Technology (IT)**

Consistent with the President's Management Agenda (PMA) Cross-Agency Priority (CAP) Goal 1, *Modernize IT to Increase Productivity and Security*, and the Agency's strategic plan, the FLRA continued its ongoing efforts to expand its IT capabilities to enhance mission performance by improving the quality and effectiveness of its internal- and external-customer-facing services – including increased use of cloud-based solutions, such as email, Case Management, and Document Management. By adopting cloud-based solutions that are FEDRAMP certified – such as Microsoft Office 365 and Amazon Web Services – the Agency improved its IT security by leveraging those vendors' extensive resources to protect and segregate Government data with the best information security practices.

The Agency also continued to improve its overall efficiency, as well as the customer-service experience, by engaging in new and innovative ways to conduct business, such as through our improved electronic case filing (eFiling 3.0). In addition, the Agency strategically emphasized IT modernization by implementing realistic and attainable equipment lifecycles.

During FY 2018, the FLRA continued to make improvements through smaller-scale projects, such as ongoing efforts to enhance the VTC System, which will reduce necessary travel expenditures and provide more opportunities to offer training to Agency employees and its customers.

#### **IT Action and Planning in FY 2018:**

In FY 2018, using agile methodology, the FLRA continued to execute its multi-year, four-phase plan to achieve its long-term goal of implementing end-to-end electronic case files throughout the Agency and complying with OMB mandates to do so by the end of calendar year 2019.

1. Phase 1 was the successful redesign and launch of eFiling 3.0 in FY 2018 using agile development and state-of-the art, cloud-based technology. Addressing customer feedback, and after refining its approach, the Agency launched a more user-friendly and intuitive user interface that is built on a new, cloud-based technical platform that will better support the Agency's long-term needs.
2. Phase 2 is to provide a similar, more user-friendly and intuitive user interface for the Agency's internal electronic Case Management System (CMS). Phase 2 also includes implementation of an Agency-wide Document Management System (DMS) – an electronic, cloud-based “filing cabinet” that provides a framework for organizing digital and paper documents. The DMS also provides the necessary storage capacity and IT



platform for the eventual integration of eFiling, CMS, and DMS. The Agency has already implemented the DMS in FY 2017. Work on the new CMS has begun, using the same technology and building on the lessons learned during development, testing, and implementation of eFiling 3.0. Phase 2 is underway, and it will run through FY 2019. This is the most time-consuming and expensive phase of the project, and the Agency diverted funds from this effort in FY 2018 in order to make as much progress as possible on the regional-office consolidation. The FLRA goal is to implement the new CMS across all offices by the end of calendar-year 2019; however, this schedule is greatly dependent on funding.

3. Phase 3 is the integration of the automated connection between eFiling, CMS, and DMS. In FY 2018 the Agency began work on this Phase which will redevelop our CMS on a different platform. Although not originally contemplated, redeveloping the CMS makes sound technical sense because it avoids reengineering down the road, and ultimately saves the Agency money in the long run. Work will continue through the end of FY 2020.
4. Phase 4 is the transition to 100 percent electronic case files throughout the Agency, with a goal of September 30, 2020, for completion. In FY 2018 work continued on all phases which ultimately contributed to the planning for this final phase.

Despite that timelines associated with the electronic case file, four-phase implementation plan have shifted over time, the Agency remains within target to complete this initiative on time, and its overall costs are well *below* industry standards for similar undertakings. Further, despite the evolving nature of the approach, the goal and the results have remained the same: implementation of fully electronic case files throughout the Agency to enable the FLRA to increase its overall efficiency and effectiveness.

Successful achievement of this goal will enable implementation of additional external and internal case-processing improvements that further maximize the use of technology and eliminate many of the labor-intensive, manual case processes. The greatest benefit will be the ability to redirect staff hours currently used to perform manual administrative tasks to perform other mission-critical functions. These case-processing improvements include: reducing the time and expense that FLRA staff spends copying, scanning, mailing, and entering data; eliminating outdated facsimile service; reducing U.S. Mail costs by implementing electronic service of case-related documents by the FLRA on the parties; reducing – or eliminating – Fed Ex costs for transferring paper case files between FLRA offices; implementing a pilot program that would mandate FLRA parties to file all case-related documents electronically, and eventually mandating eFiling for all FLRA case filings.

In addition, the FLRA embraced its “cloud-first” approach by migrating the Agency’s email system to the cloud in FY 2018. All of the Agency’s major technical components – email, Document Management System, Case Management System, and eFiling – are now in the cloud, offering better redundancy and backups that can be leveraged to improve the Agency’s Continuity of Operations Plan (COOP). This is a major achievement and another example of the Agency’s sustained commitment to continually modernizing IT.



## Human Capital

In FY 2018, FLRA employees continue to be engaged by responding to the Federal Employee Viewpoint Survey (FEVS). The overall response rate was 75 percent. This is well above the 41 percent Government-wide rate as well as the 67 percent response rate among small agencies (100-999 employees). The FLRA will continue to use the FEVS as a tool to assist it in providing strategic direction and vision for the Agency.

The FLRA is in the final stages of implementation of the Agency's FY 2018 reform effort. This was designed to be consistent with Executive Order No. 13781, *Comprehensive Plan for Reorganization the Executive Branch* and OMB Memorandum, M-17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*. The FLRA therefore established a cross-component working group responsible for obtaining internal and external input to develop the overall implementation plan. One of the major initiatives of the reform effort was the development of a Regional Office consolidation plan, consistent with the FLRA's ongoing efforts and OMB mandates since 2010 to reduce or eliminate physical footprint and rent costs. This resulted in reorganization and reduced the Agency's regional office presence from seven to five offices, physically closing the FLRA's Dallas Office in FY 2018 and planning for the closure of the Boston Office in early FY 2019. The Agency reorganized the workload across the remaining five Regional Offices and offered all affected employees positions in either another Region or the Washington, DC Headquarters through reassignment.

Also in FY 2018, the FLRA completed a comprehensive, Agency-wide position classification review to confirm that all position descriptions properly reflected the actual duties of the position and that the accompanying cover sheets were accurate. This review has been critical in conducting "need-to-fill" evaluations and the requisite job analysis associated with the recruitment efforts for these positions.

The FLRA is currently developing strategy for the implementation of OPM's performance-management system: USA Performance, a software solution provided to assist Federal agencies in implementing their Senior Executive Service (SES) and Non-SES performance management programs and systems. USA Performance is designed by Federal performance management experts and maintained by OPM. It offers a core suite of functionalities that will meet a variety of performance management processes while ensuring compliance with Federal regulations and consistency with OPM recommendations. USA Performance is compliant with Federal performance management regulations and meets Federal IT security requirements. The implementation of USA Performance is also a significant component of the Agency plan developed for maximizing employee performance in response to OMB's M-17-22 memorandum *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*.

All Federal employees are required to undergo a security background check when they enter Federal service. Most investigations should be reviewed and updated every 5, 7, or 10 years, depending on the sensitivity of the employee's position. Although the FLRA had been conducting the required security background checks for new FLRA hires in recent years, most FLRA employees who had been on board for more than 5 years did not have a current

investigation/re-investigation in their files. As a result of these findings FLRA completed security background checks and worked with FLRA leadership to determine the circumstances in which a new background check needed to be conducted.

In August 2004, President George W. Bush issued Homeland Security Presidential Directive 12 (HSPD-12) which mandated new standards for secure and reliable personal identification for all Federal employees and contractors. These standards are based on sound criteria for verifying an employee's identity; strongly resistant to identify fraud, tampering, counterfeiting, and terrorist exploration; and includes rapid electronic authentication. To ensure the FLRA's compliance with HSPD-12, in FY 2018 the Human Resources Division (HRD) and the Administrative Services Division (ASD) worked cross-departmentally to make certain that all FLRA employees received an HSPD-12 Personal Identity Verification (PIV) card. This included both divisions facilitating the security adjudication process for all employees so that they were properly cleared to receive an HSPD-12 badge.

The FLRA continued to be committed to fostering a workplace where employees from all backgrounds are recruited, retained, and developed for successful performance and career progression. In FY 2018, the Agency used Schedule A hiring authorities for persons with disabilities as well as Veterans' Appointing Authorities in recruitment. This was to ensure a diverse workforce, including the hiring of people with disabilities and veterans, as part of the overall recruitment strategy for each recruitment effort.

The Agency continues to actively engage employees at all levels in Agency processes and to seek their opinions. For example, the Agency's efforts in FY 2018 to develop its 2018-2022 Strategic Plan resulted in an employee-driven, employee-developed, and employee-drafted document. Forty FLRA employees from every level, every Agency component, and every region of the country – more than one-third of the Agency's workforce – actively participated in developing all substantive elements of the new Strategic Plan.

All Agency employees were invited to participate in an initial survey regarding the Agency's new mission statement and a follow-up survey asking for their views on the new Strategic Plan's goals and objectives. In the first survey, 90 percent of respondents indicated that the work they do on a daily basis helps to achieve the new mission statement. In the second survey, between 86 and 91 percent of respondents indicated that each of the three new strategic goals were on target and important.

To support the Agency's efforts in implementing the PMA (specifically by enhancing mission effectiveness and building a modern, technologically sound workforce), in FY 2018 employees at all levels across the Agency were actively involved in the efforts to develop the new and improved eFiling system, the DMS, and overall efforts to help the Agency achieve its goal of implementing fully electronic case files across the Agency. Employee involvement in these efforts included serving as a component or office representative on a work group to develop the structure of electronic case files; actively participating in facilitated, "user-centered design" information-gathering sessions where employees were encouraged to share their work processes, their needs, and their ideas for improvement; and respond to ad hoc questions about these systems as they arose.

## PERFORMANCE SUMMARY

The FLRA's 2015-2018 mission was to promote stable, constructive labor-management relations through the timely and effective resolution and prevention of labor disputes in a manner giving full effect to the collective-bargaining rights of employees, unions, and agencies. It carried out its mission in a manner that met the special obligations and needs of the Federal Government and was consistent with the requirement of an effective and efficient Government.

### *Mission – Case Processing & ADR*

With respect to mission accomplishment, the FLRA as a whole has shown tremendous ability to provide its customers with timely and quality adjudication, while adapting to fluctuations in the number of case filings that it receives. In FY 2018, the FLRA met or exceeded nearly every mission-related performance goal, as it did in FY 2017.

- *Authority*

Consistent with the FLRA's 2015-2018 Strategic Plan, the Authority changed its performance measures beginning in FY 2017 to shorten case-processing times – from 180 days to 150 days in 75 percent of non-representation cases. In FY 2017 and continuing into FY 2018, the Authority also implemented measures for ensuring that the cases not “captured” by those 75 percent targets do not go significantly “overage.” The goal is to issue at least 95 percent of all cases within 365 days.

However, in FY 2018, the Agency faced external challenges beyond its control. For example, for most of FY 2017, the Authority had only two of the three presidentially nominated, Senate-confirmed Members in place. The Members' staffs continued to prepare draft decisions; however when the two Members were unable to reach consensus on the disposition of a case, no decision could issue. On December 11, 2017, the FLRA welcomed two new Members (one of whom was designated Chairman) and swore in an existing Member for a new term. This restored the Authority to a full complement of three Members to tackle the backlog of approximately 50 “overage” cases that had accrued since January 3, 2017.

As the Authority worked to clear that backlog, many of the decisions the Agency issued in FY 2018 were already “overage.” As a result, in FY 2018 the Authority failed to meet two of its targets. In FY 2018, the Authority met its case-processing target of 150 days in only 38 percent (36 out of 94) of arbitration cases and 50 percent (4 out of 8) of ULP cases. However, the Authority met or exceeded its six other targets in FY 2018. It issued 83 percent (5 out of 6) of negotiability cases within 150 days, thereby exceeding its 75 percent target. And it met its 365-day target in 98 percent (92 out of 94) of arbitration cases, and 100 percent of all other case types (6 out of 6 negotiability cases; 8 out of 8 ULP cases; and 7 out of 7 representation cases). Further, as in previous years, the Authority continued to meet the statutory requirement of issuing 100 percent (7 out of 7) of representation cases within 60 days of an application for review from a Regional Director's determination.

Moreover, the issuance rate of Authority decisions increased dramatically over the course of the year. From December 2017 (when the Authority was restored to a full complement of Members)

through September 2018, the Authority issued a total of 115 merits decisions (an average of almost 12 decisions per month) as compared to only 52 merits decisions issued during the same time period in FY 2017 (an average of 5 decisions per month).

The Authority began FY 2017 with only one “overage” case, which enabled it to meet or nearly meet all of the more aggressive, reduced case-processing time targets that it implemented that year. In contrast, as noted above, the Authority began FY 2018 with a significant backlog of cases due to vacancies in political leadership, making it difficult to achieve the same level of performance in FY 2018 as it did in FY 2017 and FY 2016. By the end of FY 2018, however, the Authority cleared a huge majority of its backlog of overage cases. Of the cases pending in the Member offices’ inventory when the Authority regained a full complement of Members, only four currently remain.

- ***Authority – OALJ***

The absence of a General Counsel (GC) for ten months of the fiscal year adversely affected the OALJ’s performance. This extended vacancy resulted in a substantial reduction in the number of new complaints received which had a negative impact upon the OALJ’s age based disposition goals. By receiving only 44 new cases, rather than the typical 200, the pool of new cases ripe for early resolution via settlement was drastically reduced, which in turn, led to the older, more difficult cases carried over from the prior fiscal year having a disproportionate effect upon case age percentages. The OALJ encourages parties to utilize the Settlement Judge Program, which historically has been successful in resolving cases within 180 days without the need for costly and time consuming hearings and written decisions. In FY 2018, the Settlement Judge Program was offered in one hundred percent (100 percent -- 93 of 93) of ULP complaints and eighty-three percent (83 percent -- 10 of 12) of those using the program achieved resolution within 180 days. However, the small number of new cases received precluded that success from having a substantial impact on the OALJ’s case-processing times. As a result, the most difficult and complex cases requiring full litigation and written decisions accounted for twenty-seven (27) of the ninety three (93) dispositions completed in the fiscal year. This disproportionate representation of older, more difficult cases resulted in seventy-seven percent (77 percent -- 72 of 93) of the ULP complaints issued by the GC being resolved within 180 days and ninety percent (90 percent -- 84 of 93) were resolved within 365 days of the receipt of the complaint from the GC.

- ***Authority – CADR (formerly CADRO)***

The Director of the Authority’s Collaboration and Alternative Dispute Resolution (CADR) served as the Settlement Official for the OALJ. Almost all of the cases that the program resolved would otherwise have required decisions by the Authority.

During portions of FY 2018 this program was known as CADR, and in FY 2017 as CADRO. The primary focus of the program in FY 2018 was to assist Federal agencies, and the unions that represent Federal employees, in resolving negotiability disputes. Once again in FY 2018, 100 percent of such negotiability cases resulted in full or partial resolution of the underlying dispute

and closure of the pending case – exceeding the goal of 90 percent in that category. This program helped parties in more than 12 cases resolve negotiability disputes.

- *OGC*

The FLRA has been without a presidentially-nominated, Senate-confirmed General Counsel since January 20, 2017. Because the General Counsel's position is subject to the Federal Vacancies Reform Act (Vacancies Act), the career Deputy General Counsel served as Acting General Counsel from that date until November 16, 2017, the statutory maximum under the Vacancies Act absent a General Counsel nominee. In the absence of a General Counsel, the OGC's Regional Directors may investigate ULP charges and dismiss those found to lack merit, but they cannot issue ULP complaints in meritorious cases, which is a power reserved by the Statute exclusively to the General Counsel. In addition, only the General Counsel can decide appeals of a Regional Director's dismissal of a ULP charge.

The OGC also focused on implementing aspects of the FLRA Agency Reform Plan within our responsibility – specifically, to consolidate the OGC's Regional Offices from seven to five by closing the Dallas and Boston Regional Offices. As part of this consolidation, the Agency offered all 16 affected OGC employees reassignment and paid relocation to another region, or FLRA headquarters. Seven of those employees elected to relocate. The FLRA carefully planned and monitored its FY 2018 expenditures to ensure that the consolidation was executed on schedule and within the Agency's existing budget. The Dallas Regional Office closed on September 30, 2018. The Boston Regional Office is on track for closure by November 30, 2018. The Regional Director and employees of the Dallas Region diligently performed the activities necessary to close that Region and to minimize disruptions in the OGC's case processing efforts.

Despite these challenges, the OGC continued delivering strong results in FY 2018. The OGC exceeded its strategic performance goals for the timely resolution of ULP cases, resolving 88 percent (or 2,682 of 3,060) of ULP cases by issuance of a complaint (during the period that it had an Acting General Counsel), or by the withdrawal, dismissal or settlement of the ULP charge, within 120 days of the charge's filing date. It also exceeded its performance goals for timely resolution of representation cases, resolving 82 percent (or 195 of 239) of representation petitions by withdrawal, election or issuance of a Decision and Order within 120 days of filing.

The OGC has also continued to resolve cases through voluntary settlement during the investigative process. The OGC has the largest case intake among all of the FLRA components, and is the FLRA component with which the parties have the most direct contact. The beneficial effects of voluntary resolutions are obvious, and they advance the effective and efficient utilization of Government resources.

In FY 2018, the OGC resolved over 600 ULP cases by voluntary settlement during the investigative process. The OGC also used its resources to facilitate resolution of complex representation petitions. For example, in response to a representation petition seeking clarification of 125 positions, an OGC attorney met with the parties telephonically, pursuant to section 2422.13(b) of the Authority's regulations, and resolved the status of 54 positions. The

following week, pursuant to the same regulatory authority, the parties met in person to narrow the issues for hearing. Due to the OGC attorney's efforts, an additional 68 positions were resolved. The attorney assisted the parties in drafting stipulations to reflect these agreements, resulting in only 3 positions remaining in dispute. By working cooperatively with the parties, the OGC was able to narrow the issues in dispute quickly and effectively.

In order to implement the new jurisdictional boundaries resulting from the FLRA's regional office consolidation, the FLRA issued procedural regulations on September 13, 2018 to reflect the Dallas Regional Office closure on September 30, 2018. It also issued web-based guidance, press releases and FAQ's (frequently asked questions) to ensure that the parties were aware of these changes and of the appropriate geographical region in which to file cases. It will issue similar regulations and guidance materials to reflect the Boston Regional Office closure on November 30, 2018.

- ***FSIP***

Due to the prioritization efforts of the new 7-Member Panel (July 2017) and the decrease in filings, FSIP began FY 2018 with no backlog of cases. In FY 2018, the FSIP exceeded all of its timeliness measures for assisting parties in resolving their negotiation impasses. Specifically, it issued its decision to decline jurisdiction on cases not appropriately before the Panel within 140 days of the date that the parties filed their request for assistance in 100 percent (11/11) of cases. It assisted the parties in achieving voluntary settlement within 160 days of the date that the parties filed their requests for assistance in 86 percent (6/7) of cases. And it issued its final order within 200 days of the date that the parties filed their request for assistance in 100 percent (21/21) of cases.

For the first 3 quarters of FY 2018, the Panel received 92 filings (an average of 7 new filings each month). However, that trend is changing. As a result of the Administration's May 2018 issuance of Executive Orders 13836, 13837, and 13839, and the related OPM guidance to agencies regarding collective bargaining, the FSIP has begun to receive an increase in requests for assistance. Case filings increased to 9 cases filed in the month of September. The subject of the impasses has also begun to change, with a trend towards impasses over ground rules for successor collective-bargaining agreements and successor collective-bargaining agreements.



**FEDERAL LABOR RELATIONS AUTHORITY**  
**2018 Federal Employee Viewpoint Survey**  
**Interpretation of Results**

**Organizational Response Rate:**

The Office of Personnel Management's (OPM's) Federal Employee Viewpoint Survey (FEVS) provides employees an opportunity to influence change by submitting feedback about their work environment, agency leadership, and other important aspects.

The 2018 FLRA response rate of 75% – 34 points above the Government-wide average of 41% – is a 9 point increase from the 66% of eligible employees who identified strengths and concerns to Agency leadership and managers in 2017. There was increased interest among the Office of General Counsel (OGC/Regions) work unit in answering the 2018 survey: 54% of the FLRA respondents in FY 2018 were from OGC/Regions, compared to 49% in FY 2017.

**Institutional Changes in FY 2018:**

- **May 2017:** Work began on the Agency Reform Plan (through February 2018).
- **November 2017:** A new Executive Director was hired.
- **December 2017:** Chairman Colleen Duffy Kiko replaced Acting Chairman Patrick Pizzella. The Authority, operating for the first quarter of FY 2018 with a bare quorum, added Member James Abbott and Chairman Kiko to join Member Ernest DuBester for a full complement of three Members.
- **January 2018:** There is no leadership in the Office of the General Counsel (OGC). The Deputy General Counsel (DGC), who leads the Regional offices when there is no General Counsel, was Acting General Counsel until November 2017 (the maximum time he could serve in that position absent a nomination under the Vacancies Act), and reverted to DGC until retirement in January 2018.
- **February 2018:** Announcement of the Agency Reform Plan results including, among other things, the closure of two of the seven FLRA Regional offices (Dallas and Boston).
- **May 2018:** Final closure notices went out to the Dallas and Boston employees.
- **May-June 2018:** Responses to the FEVS questions were collected.
- **August 2018:** Work on the Strategic Plan 2018-2022 concluded (began February 2018).
- **August 2018:** The April 2018 plan to install an Acting DGC for FY 2019 was postponed when the candidate withdrew from consideration.
- **September 2018:** Dallas Regional Office closed.
- **November 30, 2018:** Boston Regional Office will close (FY 2019).



#### *Agency Strengths:*

The FLRA has 31 strengths (65%+ positive responses). The top five strengths are:

- 93% – When needed, I am willing to put in the extra effort to get a job done.
- 92% – My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.
- 89% – How would you rate the overall quality of work done by your work unit?
- 88% – Employees in my work unit share job knowledge with each other.
- 86% – I am constantly looking for ways to do my job better.

#### *Higher than the Government-wide average:*

Agency results exceeded the Government-wide average in 31 of the 78 questions; and 11 of those questions were 10+ points higher than that average. 62% of FLRA respondents agreed that “In my work unit, steps are taken to deal with a poor performer who cannot or will not perform” – 30 points above the Government-wide average of 32%.

Questions where respondents found FLRA a better place to work than the Government-wide average:

- Promotions in my unit are based on merit (55% FLRA vs 38% Government-wide; 17 points above)
- Physical conditions (for example, noise level, temperature, lighting, cleanliness in the workplace) allow employees to perform their jobs well (82% vs 66%; 16 points)
- How satisfied are you with the following Work/Life programs in your agency: Telework (77% vs 62%; 15 points)
- Pay raises depend on how well employees perform their jobs (41% vs 27%; 14 points)
- Awards in my work unit depend on how well employees perform their jobs (59% vs 46%; 13 points)
- Employees in my work unit share job knowledge with each other (88% vs 76%; 12 points)

#### *Areas for Improvement:*

The 2018 FEVS is a snapshot in time that captures employees’ perceptions of the Agency’s work environment. FLRA employees identified areas for improvement involving training, the mission of the Agency, communication, innovation, management, and leadership. On key questions, there is a substantial difference in negative scores reported by FLRA HQ and the OGC/Regions staff.

Questions with the highest percentage of negative scores (broken down by FLRA HQ and the OGC/Regions):

- 68% – In my organization, senior leaders generate high levels of motivation and commitment in the workforce. (46% negative HQ, 83% OGC/Regions)
- 64% – How satisfied are you with the policies and practices of your senior leaders? (49%, 76%)
- 64% – I have a high level of respect for my organization’s senior leaders. (49%, 76%)
- 55% – I believe the results of this survey will be used to make my agency a better place to work. (39%, 66%)
- 53% – How satisfied are you with the information you receive from management on what’s going on in your organization? (43%, 61%)

The new staff-driven FLRA Strategic Plan 2018-2022, developed at the same time that employees were voicing specific concerns through the FEVS, reflects those concerns. Along with its other duties, the Strategic Plan Implementation Team (with representation from each Region and component of the FLRA) will address each challenge raised by the results of the FEVS and work to improve every one.



### ***Mission Accomplishment – Providing Training and Education across the Federal Government***

Consistent with its strategic goals, in FY 2018 the FLRA continued to promote stability in the Federal labor-management community by providing leadership and guidance through education and reference resources.

The FLRA continued to provide web-based and in-person training nationwide to members of the Federal-sector labor-management community – union representatives, Agency representatives, and neutrals – in all aspects of its case law and processes. In FY 2018, the FLRA provided 124 training, outreach, and facilitation sessions to 4,829 participants. The Authority, the OGC, and the FSIP provided training at several nationwide, annual conferences, including the Society of Federal Labor and Employee Relations Professionals (SFLERP) symposium and the Federal Dispute Resolution (FDR) conference. These sessions included presentations of newly prepared materials of current relevance, as well as updated materials for more standard sessions.

In addition, the Authority delivered its own training programs to approximately 1,500 Federal-sector union representatives, Agency representatives, neutrals, and new Authority attorneys in FY 2018. This included several sessions highlighting notable developments in the Authority’s case law. Further, the Authority delivered three training sessions at the SFLERP symposium. These sessions included: “Filing with the FLRA – Common Grounds for Dismissals and a New eFiling System,” “Management Rights in Bargaining and Arbitration,” and an “FLRA Case Law Update.” The feedback received from SFLERP participants in these sessions was overwhelmingly positive. Moreover, the Authority’s Members personally conducted various training sessions on arbitration cases and other topics of interest to the Federal-sector labor-management community, at events hosted by the American Bar Association, the Federal Aviation Administration, FDR, and the Chicago-Kent College of Law.

The OGC continued to focus its training efforts on the front lines, where the work is done and where its efforts can have immediate and lasting effect. By bringing its training services directly to the parties, the OGC educates management and labor representatives on their rights and responsibilities under the Statute, thereby empowering them to more effectively and efficiently avoid – and, if necessary, resolve – workplace disputes at the lowest level.

In FY 2018, the OGC scaled back its provision of training that required FLRA-funded travel due to budget uncertainty, but it still conducted 75 training sessions reaching over 2,600 union representatives and labor-relations representatives. The OGC also continued providing the parties with up-to-date and topical web-based resources, including its *Representation Case Law Outline*, *ULP Case Law Outline*, and *Guidance on Meetings*, which are the “go-to” resources for the Federal-sector labor-management relations community and have elicited much favorable feedback.

In FY 2018, the Authority’s Office of the Solicitor delivered numerous internal trainings to FLRA employees, on topics such as current developments in labor and employment law, Federal ethics obligations, the Freedom of Information Act, and Federal privacy law. These trainings ensured that FLRA staff provided expert service to its stakeholders, in concert with their responsibilities as Federal employees.

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
<b>Strategic Goal 1:</b> We will resolve disputes under the Statute in a timely, high-quality, and impartial manner.			
<b>Performance Goal 1.1:</b> Produce timely review and disposition of <i>unfair-labor-practice</i> cases.			
<b>Measure 1.1:</b> The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 120 days of filing of the charge.	70%	88%	Exceeded
<b>Measure 1.2:</b> The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued within 60 days of the date filed, and in no case more than 120 days.	95%/100%	100%/100%	Exceeded/Met
<b>Measure 1.3:</b> The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 180 days of the complaint being issued.	80%	77%	Substantially Met
<b>Measure 1.4:</b> The percentage of ULP cases decided within 150 days of assignment to an Authority Member.	75%	50%	Not Met
<b>Performance Goal 2.1:</b> Resolve overage <i>unfair-labor-practice</i> cases in a timely fashion.			
<b>Measure 2.1:</b> The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 240 days of filing of the charge.	95%	99%	Exceeded
<b>Measure 2.2:</b> The	98%	90%	Not Met

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
percentage of ULP complaints issued by the General Counsel decided in the OALJ within 365 days of the complaint being issued.			
<b>Measure 2.3:</b> The percentage of ULP cases decided within 365 days of assignment to an Authority Member.	95%	100%	Exceeded
<b>Performance Goal 1.2:</b> Produce timely review and disposition of <i>representation cases</i> .			
<b>Measure 1.5:</b> The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 120 days of the filing of a petition.	70%	82%	Exceeded
<b>Measure 1.6:</b> The percentage of representation cases in which the Authority issued a decision whether to grant review within 60 days of the filing of an application for review.	100%	100%	Met

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
<b>Performance Goal 2.2:</b> Resolve overage <i>representation cases</i> in a timely fashion.			
<b>Measure 2.3:</b> The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 365 days of the filing of a petition.	95%	99%	Exceeded
<b>Measure 2.4:</b> The percentage of representation cases in which the Authority grants review, where the Authority will issue a decision on review, or reach other final resolution of the case, within 365 days of the filing of an application for review.	95%	100%	Exceeded
<b>Performance Goal 1.3:</b> Produce timely review and disposition of <i>arbitration cases</i> .			
<b>Measure 1.7:</b> The percentage of arbitration cases decided within 150 days of assignment to an Authority Member.	75%	38%	Not Met
<b>Performance Goal 2.3:</b> Resolve overage <i>arbitration cases</i> in a timely fashion.			
<b>Measure 2.5:</b> The percentage of arbitration cases decided within 365 days of assignment to an Authority Member.	95%	98%	Exceeded
<b>Performance Goal 1.4:</b> Produce timely review and disposition of <i>negotiability cases</i> .			
<b>Measure 1.8:</b> The percentage of negotiability cases decided within 150 days of assignment to an Authority Member.	75%	83%	Exceeded

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
<b>Performance Goal 2.4:</b> Resolve overage <i>negotiability</i> cases in a timely fashion.			
<b>Measure 2.6:</b> The percentage of negotiability cases decided within 365 days of assignment to an Authority Member.	95%	100%	Exceeded
<b>Performance Goal 1.5:</b> Produce timely review and disposition of <i>bargaining-impasse</i> cases.			
<b>Measure 1.9:</b> The percentage of bargaining-impasse cases, in which jurisdiction is declined, closed within 140 days of the date filed.	80%	100%	Exceeded
<b>Measure 1.10:</b> The percentage of bargaining-impasse cases voluntarily settled after jurisdiction has been asserted within 160 days of the date filed.	70%	86%	Exceeded
<b>Measure 1.11:</b> The percentage of bargaining-impasse cases resolved through a final action closed within 200 days of the date filed.	70%	100%	Exceeded
<b>Strategic Goal 2:</b> We will promote stability in the Federal labor-management community by providing leadership and guidance through <i>ADR and Education</i> .			
<b>Performance Goal 1.1:</b> Provide targeted access to training, outreach, and facilitation activities within the labor-management community.			
<b>Measure 1.1:</b> The number of training, outreach, and facilitation activities conducted.	275	124	Not Met
<b>Measure 1.2:</b> The number of participants involved in training, outreach, and facilitation activities.	7000	4829	Not Met

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
<b>Performance Goal 2.1:</b> Successfully resolve a significant portion of FLRA cases through ADR.			
<b>Measure 2.1:</b> The percentage of ULP cases in the OGC in which ADR services are offered.	95%	100%	Exceeded
<b>Measure 2.2:</b> The percentage of ULP cases in the OGC in which an offer of ADR services is accepted by the parties that are partially or totally resolved.	95%	100%	Exceeded
<b>Measure 2.3:</b> The percentage of appropriate ULP cases in the OALJ in which Settlement-Judge services are offered.	90%	100%	Exceeded
<b>Measure 2.4:</b> The percentage of ULP cases in the OALJ in which an offer of Settlement-Judge services is accepted by the parties that are partially or totally resolved.	85%	83%	Substantially Met
<b>Measure 2.5:</b> The percentage of representation cases in the OGC in which an offer of ADR services is accepted by the parties that are partially or totally resolved.	95%	100%	Exceeded

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
<b>Measure 2.6:</b> The percentage of appropriate arbitration cases in the Authority in which ADR services are offered.	100%	100%	Met
<b>Measure 2.7:</b> The percentage of arbitration cases in the Authority in which an offer of ADR services is accepted by the parties that are partially or totally resolved.	50%	100%	Exceeded
<b>Measure 2.8:</b> The percentage of appropriate negotiability cases in the Authority in which ADR services are offered.	100%	100%	Met
<b>Measure 2.9:</b> The percentage of negotiability cases in the Authority in which ADR services are provided that are partially or totally resolved.	90%	100%	Exceeded
<b>Measure 2.10:</b> The percentage of bargaining-impasse cases in which parties' disputes are totally resolved voluntarily.	30%	17%	Not Met

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
<b>Strategic Goal 3:</b> We will manage our resources effectively and efficiently in order to achieve organizational excellence.			
<b>Performance Goal 1:</b> Recruit, retain, and develop a highly talented, motivated, and diverse workforce to accomplish the FLRA's mission.			
<b>Measure 1.1:</b> Demonstrate strong recruitment and retention practices.	<p>Complete implementation of all necessary changes/corrections identified during the Agency-wide eOPF and PD reviews.</p> <p>Develop/revise and implement standard operating procedures that will help to maintain accurate personnel records going forward.</p> <p>Continue to conduct "need-to-fill" evaluations before filling any vacant positions.</p> <p>Implement workforce reshaping, consistent with Executive Order 13781 and M-17-22.</p> <p>Continue to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that the FLRA needs.</p>	<p>Completed implementation of all necessary changes/corrections identified during the Agency-wide eOPF and PD reviews.</p> <p>Implemented standard operating procedures for maintaining accurate eOPFs for all FLRA staff in order to support the provision of excellent customer service.</p> <p>Continued to conduct "need-to-fill" evaluations before filling any vacant positions, consistent with Executive Order 13781 and M-17-22.</p> <p>Continued to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that the FLRA needs.</p> <p>Completed all</p>	Met



Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
		<p>required security-background investigations for new hires and investigations/re-investigations for existing employees.</p> <p>Clarified the circumstances under which a new background check should be conducted. Ensured that all employees were HSPD-12 compliant.</p> <p>Began a comprehensive review and revision, as appropriate, of all internal Agency policies in order to ensure that they are up to date, necessary, and consistent with law and regulation.</p>	
<b>Measure 1.2:</b> Maintain and grow Agency expertise through employee development.	Building on the Agency's evolving succession plan – which is designed to lessen the impact of institutional-knowledge loss as employees retire or leave and to maximize current talent utilization by closing leadership staffing and competency gaps/deficiencies – develop a formal Agency developmental-detail program, establishing	Offered cross-component details to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency's mission and operations.	Substantially Met

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
	<p>cross-component detail opportunities to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency's mission and operations across program lines, as well as the relevance of their work to the mission and programs of the FLRA.</p> <p>Managers will assess annually 100% of employees on their developmental needs and provide at least one targeted developmental opportunity to each of their staff members per year.</p> <p>Maintain sustained growth of positive responses to the OPM FEVS question "supervisors in my work unit support employee development."</p>	Managers assessed annually employees on their developmental needs and provided appropriate training and developmental opportunities.	
<b>Performance Goal 2:</b> Improve use of existing technology and deploy new IT systems to streamline and enhance organizational operations.			
<b>Measure 2.1:</b> Expand the use of eFiling.	75% of cases eFiled.	35% of cases eFiled.	Not Met
<b>Measure 2.2:</b> Electronic end-to-end case processing.	Integrate the CMS and eFiling systems with the Agency Document	Developed and launched eFiling 3.0, which both	Met

Performance Outcome Measures	FY 2018 Target	FY 2018 Actual	Result
	Management System, enabling end-to-end electronic case processing throughout the Agency.	internal and external users report is significantly more user-friendly and intuitive. Began development of a new and improved CMS that, over time, will provide significant cost savings (\$100,000 annually) and allow for more efficient integration of the CMS and eFiling systems with the DMS, enabling end-to-end electronic case processing throughout the Agency. Identified the basic structure of electronic case files for each component/office in the DMS. Completed transition of all major IT functions – CMS, DMS, eMail – to the cloud, which improves both IT security, consistent with the PMA, and Agency continuity of operations plans.	

## FINANCIAL ANALYSIS

The FLRA's principal financial statements have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. § 3515(b). While the statements have been prepared from the books and records of the FLRA in accordance with U.S. Generally Accepted Accounting Principles for Federal entities and the formats prescribed by the OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records. The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

### Balance Sheet

The Balance Sheet presents the FLRA's financial position through the identification of Agency assets, liabilities, and net position. The FLRA's fund balance with the Department of the Treasury (the Treasury) is nearly 90% of the total assets in both FY 2017 and FY 2018. The FLRA does not maintain any cash in commercial bank accounts or foreign currency balances, nor does it have any revolving or trust funds. The Agency's second largest asset is its furniture, equipment, and IT hardware and software, which is recorded at original acquisition cost, and then depreciated using the straight-line method over the estimated useful life of the asset.

Total assets decreased to \$4.6 million at the end of FY 2018 from \$5.2 million at the end of FY 2017. The Agency did not make any new fixed-asset purchases in FY 2018, while the net book value of property and equipment already owned experienced further depreciation.

Assets as of September 30,	2018	2017
Fund balance with the Treasury	\$4,474,299	\$4,981,469
General property and equipment	78,734	187,819
Prepaid expenses	18,141	5,429
Accounts receivable	10,114	10,389
<b>Total</b>	<b>\$4,581,288</b>	<b>\$5,185,106</b>

Totals may not add due to rounding.

Funds held with the Treasury are available to pay Agency liabilities, which represent the amount of monies or other resources likely to be paid by the FLRA as a result of transactions or events that have already occurred. Accrued employee leave, payroll, and benefits costs, along with accrued workers' compensation under the Federal Employees Compensation Act (FECA), accounted for 85 percent of total liabilities at the end of FY 2018. The remaining 15 percent reflects the amount owed by the FLRA to vendors and other Federal agencies for purchased goods and services. Agency liabilities totaled \$4.4 million in FY 2017, and \$4.2 million in FY 2018.

Liabilities as of September 30,	2018	2017
Unfunded leave	\$1,102,800	\$1,239,740
FECA liability	1,471,575	1,496,960
Accrued payroll and benefits	980,575	738,689
Accounts payable	654,739	924,780
Other liabilities	261	
<b>Total</b>	<b>\$4,209,950</b>	<b>4,400,169</b>

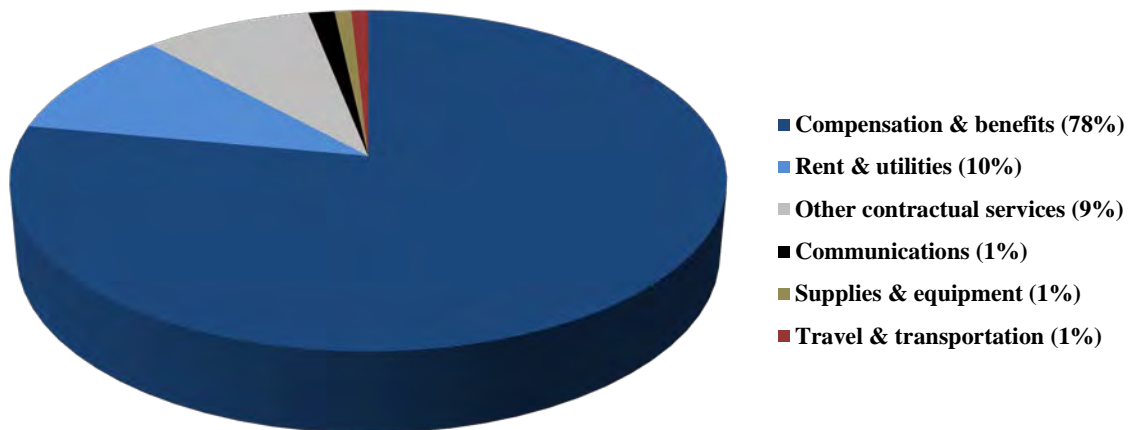
Totals may not add due to rounding; 2018 FECA liability includes \$261K (Other liability)

The FLRA's total net position at the end of FY 2018 was \$371 thousand, a \$413 thousand decrease from the previous year.

### Statement of Net Cost

The Statement of Net Cost presents the gross cost of operating the FLRA's three major programs, less any reimbursable revenue earned from those activities. The net cost of operations in FY 2018 was \$27.2 million, which is \$680 thousand above FY 2017. In FY 2018, 55 percent of the Agency's direct resources were dedicated to the Authority, which includes central administrative services provided to the entire Agency; 42 percent were dedicated to the OGC; and the remaining 3 percent were devoted to the FSIP.

### FY 2018 Financial Obligations by Budget Object Class



## **Statement of Changes in Net Position**

The Statement of Changes in Net Position reflects the changes that occurred within the cumulative results of operations and any unexpended appropriations. The cumulative results of operations represent the net results of operations since inception, the cumulative amount of prior-period adjustments, the remaining book value of capitalized assets, and future funding requirements. Cumulative results from FY 2017 to FY 2018 reflect a \$54 thousand decrease totaling \$2.4 million.

Unexpended appropriations include undelivered orders and unobligated balances. Undelivered orders reflect the amount of goods and services ordered that have yet to be received. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The FLRA had a decrease of \$468 thousand in total, unexpended Agency appropriations in FY 2018.

## **Statement on Budgetary Resources**

The Statement on Budgetary Resources reports the budgetary resources available to the FLRA during FY 2017 and FY 2018 to carry out the activities of the Agency, as well as the status of those resources at the end of each year. The primary source of FLRA funding is its annual Salaries and Expenses appropriation from the Congress. The Agency also receives reimbursements, pursuant to the Economy Act, for travel expenses associated with training provided by Agency employees on the Statute and FLRA mission.

The FLRA had \$27.1 million in total budgetary resources available to it in FY 2018. The Agency incurred obligations of \$26.4 million in FY 2018, with recording outlays of \$26.1 million. Total budgetary resources decreased by \$327 thousand in FY 2018, due primarily to the timing of unpaid obligations.

## MANAGEMENT ASSURANCES

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The Federal Managers Financial Improvement Act (FMFIA) of 1982 requires agencies to establish internal-control and financial systems that provide reasonable assurance that the integrity of Federal programs and operations are protected. The FMFIA also requires the Chairman to annually assess and report on the effectiveness of internal controls and to provide an annual Statement of Assurance on whether the Agency has met this requirement.

### **Annual FMFIA Statement of Assurance**

In accordance with the requirements of OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, the FLRA conducted an assessment of the effectiveness of the organization's internal controls to support effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations, and to determine whether the financial management system conforms to applicable financial requirements.

Based on the results of this assessment, the FLRA provides reasonable assurance that its internal controls over the effectiveness and efficiency of operations, reliable financial reporting, and compliance with applicable laws and regulations as of September 30, 2018, were operating effectively and that no material weaknesses were found in the design or operation of our internal controls.

Further, based on our assessment, we determined that the FLRA financial-management system conforms to applicable financial-systems requirements.



Colleen Duffy Kiko  
Chairman  
November 15, 2018

# PERFORMANCE GOALS AND RESULTS

## *STRATEGIC GOAL 1: WE WILL RESOLVE DISPUTES UNDER THE STATUTE IN A TIMELY, HIGH-QUALITY, AND IMPARTIAL MANNER*

### **PERFORMANCE GOAL 1.1: PRODUCE TIMELY REVIEW AND DISPOSITION OF UNFAIR-LABOR-PRACTICE CASES.**

The General Counsel has independent responsibility for the investigation, settlement, and prosecution of ULP charges. ULP cases originate with the filing of a charge in a Regional Office by an employee, a labor organization, or an Agency. Once a charge has been filed, the Regional Office will investigate the charge to determine whether it has merit. If the Regional Director determines that the charge has merit, then he or she will, absent settlement, issue and prosecute a complaint before an ALJ. If the Regional Director determines that the charge lacks merit, then the charging party is entitled to a written explanation, and, if not satisfied, may appeal that decision to the General Counsel in Washington, D.C. If the General Counsel upholds the dismissal, then the case is closed. The Authority has appointed ALJs to hear ULP cases prosecuted by the General Counsel. The OALJ transmits recommended decisions of the ALJs to the Authority, which may affirm, modify, or reverse them in whole or in part on exceptions. If no exceptions are filed to an ALJ's decision, then the Authority adopts the decision without precedential significance.

OGC	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	1,570	1,425	1,178	1,333	882
Charges filed	<u>4,696</u>	<u>4,418</u>	<u>4,345</u>	<u>3,655</u>	<u>2,860</u>
<b>Total caseload</b>	<b>6,266</b>	<b>5,843</b>	<b>5,523</b>	<b>4,988</b>	<b>3,742</b>
Charges withdrawn/settled	3,779	3,662	3,268	3,130	2,343
Charges dismissed	809	800	749	786	674
Complaints issued	<u>253</u>	<u>203</u>	<u>173</u>	<u>190</u>	<u>43</u>
<b>Total cases closed</b>	<b>4,841</b>	<b>4,665</b>	<b>4,190</b>	<b>4,106</b>	<b>3,060</b>
<b>Cases pending, end of year</b>	<b>1,425</b>	<b>1,178</b>	<b>1,333</b>	<b>882</b>	<b>682</b>
OALJ	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	121	104	60	52	49
Cases received from the OGC	<u>260</u>	<u>222</u>	<u>179</u>	<u>197</u>	<u>44</u>
<b>Total caseload</b>	<b>381</b>	<b>326</b>	<b>239</b>	<b>249</b>	<b>93</b>
Settlements before decision	247	188	136	176	66
Cases closed by decision	<u>30</u>	<u>78</u>	<u>51</u>	<u>24</u>	<u>27</u>
<b>Total cases closed</b>	<b>277</b>	<b>266</b>	<b>187</b>	<b>200</b>	<b>93</b>
<b>Cases pending, end of year</b>	<b>104</b>	<b>60</b>	<b>52</b>	<b>49</b>	<b>0</b>



Authority	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	12	13	24	9	8
Exceptions filed	<u>27</u>	<u>62</u>	<u>45</u>	<u>23</u>	<u>19</u>
<b>Total caseload</b>	<b>39</b>	<b>75</b>	<b>69</b>	<b>32</b>	<b>27</b>
Cases closed procedurally	18	37	51	22	9
Cases closed based on merits	<u>8</u>	<u>14</u>	<u>9</u>	<u>2</u>	<u>8</u>
<b>Total cases closed</b>	<b>26</b>	<b>51</b>	<b>60</b>	<b>24</b>	<b>17</b>
<b>Cases pending, end of year</b>	<b>13</b>	<b>24</b>	<b>9</b>	<b>8</b>	<b>10</b>

**Measure 1.1:** The percentage of ULP charges resolved by the Office of the General Counsel (OGC) by complaint, withdrawal, dismissal, or settlement within 120 days of filing of the charge.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
67%	72%	71%	73%	70%	88%

Data Source: Case Management System (CMS)

**Target: Exceeded.**

**Measure 1.2:** The percentage of decisions on an appeal of a Regional Director's dismissal of a ULP charge issued within 60 days of the date filed, and in no case more than 120 days.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
98%/100%	98%/100%	100%/100%	96%/100%	95%/100%	100%/100%

Data Source: CMS

**Target: Exceeded.**

**Measure 1.3:** The percentage of ULP complaints issued by the General Counsel resolved or decided in the OALJ within 180 days of the complaint being issued.

FY 2014	FY 2015
Actual	Actual
91%	77%

**Measure 1.3:** The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 180 days of the complaint being issued.\*

FY 2016	FY 2017	FY 2018	*Clarified measure beginning in FY 2016
Actual	Actual	Target	Actual
80%	93%	80%	77%

Data Source: CMS

**Target: Substantially Met.**

**Measure 1.4:** The percentage of ULP cases decided within 180 days of assignment to an Authority Member.

FY 2014	FY 2015	FY 2016
Actual	Actual	Actual
50%	57%	89%

**Measure 1.4:** The percentage of ULP cases decided within 150 days of assignment to an Authority Member.\*

FY 2017	FY 2018	*New measure beginning in FY 2017
Actual	Target	Actual
50%	75%	50%

Data Source: CMS

**Target: Not Met.** The low inventory of ULP cases contributed to the Authority's inability to meet this goal in FY 2018. The Authority issued only eight ULP decisions total in FY 2018 – four timely and four untimely. The backlog that resulted from the lack of a full complement of Members was also a factor: all four of the untimely ULP cases were awaiting a decision when the Authority attained a full complement of Members, and two of those four had already gone overage while the Authority lacked a third Member. Thus, the Authority was not able to improve upon its 50% performance in this measure from the previous FY.

## PERFORMANCE GOAL 2.1: RESOLVE OVERAGE UNFAIR-LABOR-PRACTICE CASES IN A TIMELY FASHION.

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.1:** The percentage of ULP charges resolved by the OGC by complaint, withdrawal, dismissal, or settlement within 240 days of filing of the charge.\*

FY 2016	FY 2017	FY 2018		*New measure beginning in FY 2016
Actual	Actual	Target	Actual	
95%	95%	95%	99%	
Data Source: CMS				
Target: Exceeded.				

**Measure 2.2:** The percentage of ULP complaints issued by the General Counsel decided in the OALJ within 365 days of the complaint being issued.\*

FY 2016	FY 2017	FY 2018		*New measure beginning in FY 2016
Actual	Actual	Target	Actual	
89%	98%	98%	90%	
Data Source: CMS				
<b>Target: Not Met.</b> The 90% success rate (84 of 93) was driven by the General Counsel vacancy, which eliminated receipt of new cases ripe for early resolution and resulted in older, more complicated cases requiring a hearing having a disproportionate impact upon the percentage of cases resolved within 365 days. The goal of 98% was difficult to achieve when the oldest, most difficult cases carried over from the prior fiscal year become a disproportionate number of the total dispositions issued. Such complicated cases are typically the subject of multiple delays requested by the parties due to counsel and witness availability (necessary for due process). Had it been known that 27 of the cases requiring a fully litigated hearing and written decision would represent almost one-third (29%) of the dispositions issued in FY18, a less ambitious goal would have been requested.				

**Measure 2.3:** The percentage of ULP cases decided within 365 days of assignment to an Authority Member.\*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
100%	95%	100%	
Data Source: CMS			
Target: Exceeded.			

## PERFORMANCE GOAL 1.2: PRODUCE TIMELY REVIEW AND DISPOSITION OF *REPRESENTATION* CASES.

The Statute sets out a specific procedure for employees to petition to be represented by a labor union and to determine which employees will be included in a “bargaining unit” that a union represents. Implementing this procedure, the FLRA conducts secret-ballot elections for union representation and resolves a variety of issues related to questions of union representation of employees. These issues include, for example, whether particular employees are managers or “confidential” employees excluded from union representation, whether there has been election misconduct on the part of agencies or unions, and whether changes in union and Agency organizations affect existing bargaining units. Representation cases are initiated when an individual, a labor organization, or an Agency files a petition with a Regional Office. After a petition is filed, the Regional Director conducts an investigation to determine the appropriateness of a unit or other matter related to the petition. After concluding such investigation, the Regional Director may conduct a secret-ballot election or hold a hearing to resolve disputed factual matters. After a hearing, the Regional Director issues a Decision and Order, which is final unless an application for review is filed with the Authority.

OGC	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	89	65	70	112	58
Petitions filed	<u>235</u>	<u>225</u>	<u>265</u>	<u>208</u>	<u>245</u>
<b>Total caseload</b>	<b>324</b>	<b>290</b>	<b>335</b>	<b>320</b>	<b>303</b>
Petitions withdrawn	118	95	112	130	110
Cases closed based on merits	<u>141</u>	<u>125</u>	<u>111</u>	<u>132</u>	<u>129</u>
<b>Total cases closed</b>	<b>259</b>	<b>220</b>	<b>223</b>	<b>262</b>	<b>239</b>
<b>Cases pending, end of year</b>	<b>65</b>	<b>70</b>	<b>112</b>	<b>58</b>	<b>64</b>
Authority	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	9	7	2	0	6
Applications for review	<u>13</u>	<u>16</u>	<u>6</u>	<u>12</u>	<u>6</u>
<b>Total caseload</b>	<b>22</b>	<b>23</b>	<b>8</b>	<b>12</b>	<b>12</b>
Cases closed procedurally	2	2	0	1	0
Cases closed based on merits	<u>13</u>	<u>19</u>	<u>8</u>	<u>5</u>	<u>7</u>
<b>Total cases closed</b>	<b>15</b>	<b>21</b>	<b>8</b>	<b>6</b>	<b>7</b>
<b>Cases pending, end of year</b>	<b>7</b>	<b>2</b>	<b>0</b>	<b>6</b>	<b>5</b>

**Measure 1.5:** The percentage of representation cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 120 days of the filing of a petition.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
66%	72%	73%	68%	70%	82%
Data Source: CMS					
<b>Target: Exceeded.</b>					

**Measure 1.6:** The percentage of representation cases in which the Authority issued a decision whether to grant review within 60 days of the filing of an application for review.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
100%	100%	100%	100%	100%	100%
Data Source: CMS					
<b>Target: Met.</b>					

## **PERFORMANCE GOAL 2.2: RESOLVE OVERAGE REPRESENTATION CASES IN A TIMELY FASHION.**

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.3:** The percentage of cases resolved by the OGC through withdrawal, election, or issuance of a Decision and Order within 365 days of the filing of a petition.\*

FY 2016	FY 2017	FY 2018		*New measure beginning in FY 2016
Actual	Actual	Target	Actual	
98%	95%	95%	99%	
Data Source: CMS				
<b>Target: Exceeded.</b>				

**Measure 2.4:** The percentage of representation cases in which the Authority grants review, where the Authority will issue a decision on review, or reach other final resolution of the case, within 365 days of the filing of the application for review.\*

<b>FY 2017</b>	<b>FY 2018</b>		<b>*New measure beginning in FY 2017</b>
<b>Actual</b>	<b>Target</b>	<b>Actual</b>	
100%	95%	100%	
Data Source: CMS			
<b>Target: Exceeded.</b>			

### **PERFORMANCE GOAL 1.3: PRODUCE TIMELY REVIEW AND DISPOSITION OF *ARBITRATION CASES*.**

Either party to grievance arbitration may file with the Authority an exception (appeal) to an arbitrator's award. The Authority will review an arbitrator's award to which an exception has been filed to determine whether the award is deficient because it is contrary to any law, rule, or regulation, or on grounds similar to those applied by Federal courts in private-sector, labor-management relations.

<b>Authority</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
Cases pending, start of year	123	90	50	42	73
Exceptions filed	<u>89</u>	<u>99</u>	<u>87</u>	<u>103</u>	<u>105</u>
<b>Total caseload</b>	<b>212</b>	<b>189</b>	<b>137</b>	<b>145</b>	<b>178</b>
Cases closed procedurally	16	15	20	16	11
Cases closed based on merits	<u>106</u>	<u>124</u>	<u>75</u>	<u>56</u>	<u>94</u>
<b>Total cases closed</b>	<b>122</b>	<b>139</b>	<b>95</b>	<b>72</b>	<b>105</b>
<b>Cases pending, end of year</b>	<b>90</b>	<b>50</b>	<b>42</b>	<b>73</b>	<b>73</b>

**Measure 1.7:** The percentage of arbitration cases decided within 180 days of assignment to an Authority Member.

FY 2014	FY 2015	FY 2016
Actual	Actual	Actual
34%	40%	79%

**Measure 1.7:** The percentage of arbitration cases decided within 150 days of assignment to an Authority Member.\*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
78%	75%	38%	

Data Source: CMS

**Target: Not Met.** The backlog that resulted from the lack of full complement of Members contributed to the Authority's inability to meet this goal in FY 2018. Because the Authority made a strategic decision to focus on issuing its oldest cases in order to clear the backlog, only 36 of the 94 arbitration decisions it issued were timely.

## PERFORMANCE GOAL 2.3: RESOLVE OVERAGE *ARBITRATION* CASES IN A TIMELY FASHION.

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.5:** The percentage of arbitration cases decided within 365 days of assignment to an Authority Member \*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
100%	95%	98%	

Data Source: CMS

**Target: Exceeded.**

## PERFORMANCE GOAL 1.4: PRODUCE TIMELY REVIEW AND DISPOSITION OF *NEGOTIABILITY* CASES.

A Federal Agency bargaining with a union may claim that a particular union proposal cannot be bargained because it conflicts with Federal law, a government-wide rule or regulation, or an Agency regulation for which there is a compelling need. In both of these situations, a union may

petition the Authority to resolve the negotiability dispute. In addition, Agency heads may disapprove collective-bargaining agreements if those agreements are contrary to law, and a union may petition the Authority to resolve the negotiability dispute.

Authority	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	9	17	23	27	11
Petitions filed	<u>43</u>	<u>54</u>	<u>55</u>	<u>40</u>	<u>43</u>
<b>Total caseload</b>	<b>52</b>	<b>71</b>	<b>78</b>	<b>67</b>	<b>54</b>
Cases closed procedurally	29	40	47	52	25
Cases closed based on merits	<u>6</u>	<u>8</u>	<u>4</u>	<u>4</u>	<u>6</u>
<b>Total cases closed</b>	<b>35</b>	<b>48</b>	<b>51</b>	<b>56</b>	<b>31</b>
<b>Cases pending, end of year</b>	<b>17</b>	<b>23</b>	<b>27</b>	<b>11</b>	<b>23</b>

**Measure 1.8:** The percentage of negotiability cases decided within 180 days of assignment to an Authority Member.

Results		
FY 2014	FY 2015	FY 2016
60%	50%	75%

**Measure 1.8:** The percentage of negotiability cases decided within 150 days of assignment to an Authority Member.\*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
75%	75%	83%	

Data Source: CMS

**Target: Met.**

## PERFORMANCE GOAL 2.4: RESOLVE OVERAGE *NEGOTIABILITY* CASES IN A TIMELY FASHION.

As part of its 2015-2018 Strategic Plan, the FLRA developed new performance measures for FY 2016 and FY 2017 to ensure that cases in which the primary timeliness goal is not met are sufficiently targeted and do not go significantly overage.

**Measure 2.6:** The percentage of *negotiability* cases decided within 365 days of assignment to an Authority Member \*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
100%	95%	100%	



Data Source: CMS

**Target: Exceeded.**

## **PERFORMANCE GOAL 1.5: PRODUCE TIMELY REVIEW AND DISPOSITION OF *BARGAINING-IMPASSE CASES*.**

In carrying out the right to bargain collectively, it is not uncommon for a union representative and a Federal Agency to simply not agree on certain issues, and for the bargaining to reach an impasse. Several options are available by which the parties may attempt to resolve the impasse. The parties may: decide, on their own, to use certain techniques to resolve the impasse, but may proceed to private, binding arbitration only after the FSIP approves the procedure; seek the services and assistance of the FMCS; or seek the assistance of the FSIP in resolving the negotiation impasse, but only after the previous options have failed.

FSIP	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Cases pending, start of year	40	28	33	42	17
Impasses filed	<u>134</u>	<u>139</u>	<u>143</u>	<u>97</u>	<u>92</u>
<b>Total caseload</b>	<b>174</b>	<b>167</b>	<b>176</b>	<b>139</b>	<b>109</b>
<b>Cases closed</b>	<b><u>146</u></b>	<b><u>134</u></b>	<b><u>134</u></b>	<b><u>122</u></b>	<b><u>86</u></b>
<b>Cases pending, end of year</b>	<b>28</b>	<b>33</b>	<b>42</b>	<b>17</b>	<b>23</b>

**Measure 1.9:** The percentage of bargaining-impasse cases, in which jurisdiction is declined, closed within 140 days of the date filed.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
89%	100%	80%	93%	80%	100%

Data Source: CMS

**Target: Exceeded**

**Measure 1.10:** The percentage of bargaining-impasse cases voluntarily settled after jurisdiction has been asserted within 160 days of the date filed.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
68%	100%	100%	93%	70%	86%

Data Source: CMS

**Target: Exceeded**

**Measure 1.11:** The percentage of bargaining-impasse cases resolved through a final action closed within 200 days of the date filed.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
61%	100%	100%	77%	70%	100%
Data Source: CMS					
<b>Target: Exceeded</b>					

***STRATEGIC GOAL 2: WE WILL PROMOTE STABILITY IN THE  
FEDERAL LABOR-MANAGEMENT COMMUNITY BY PROVIDING  
LEADERSHIP AND GUIDANCE THROUGH ADR AND EDUCATION***

Key to the FLRA's ADR objectives is to offer high-quality outreach and preventive services, as well as resources, to promote more effective labor-management relations across the Federal government. ADR is an informal process that allows parties to discuss and develop their interests in order to resolve the underlying issues and problems in their relationships. This includes interest-based conflict resolution and intervention services in pending cases. The Agency also provides facilitation and training to help labor and management develop collaborative relationships. Many of the FLRA's training programs are available as web-based training modules, bringing educational tools and resources directly to Agency customers at their desks to further assist them in resolving labor-management disputes. The FLRA's goals include delivering outreach, training, and facilitation services that significantly contribute to the mission of the FLRA, and ensuring that training participants evaluate FLRA training as highly effective.

**PERFORMANCE GOAL 1.1: PROVIDE TARGETED ACCESS TO TRAINING, OUTREACH, AND FACILITATION ACTIVITIES WITHIN THE LABOR-MANAGEMENT COMMUNITY.**

**Measure 1.1:** The number of training, outreach, and facilitation activities conducted.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
225	306	280	273	275	124

Data Source: CMS

**Target: Not Met.** The Authority scaled back its external training efforts in FY 2018 to ensure that all available staff was working to eliminate the backlog of overage cases and this contributed to the Agency's inability to meet this goal. However, the Authority educated the parties through its issued decisions, particularly those on previously unaddressed legal issues. To that end, many of the trainings that it provided in FY 2018 were "Case Law Updates." The OGC consistently provided statutory training efforts across the country. Due to budget uncertainty, the OGC scaled back its provision of training that required FLRA-

funded travel, and this also contributed to the Agency's inability to meet this goal.

**Measure 1.2:** The number of participants involved in training, outreach, and facilitation activities.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
5,114	8,294	8,440	8,122	7000	4829

Data Source: CMS

**Target: Not Met.** The Authority scaled back its external training efforts in FY 2018 to ensure that all available staff was working to eliminate the backlog of overage cases and this contributed to the Agency's inability to meet this goal. However, the Authority educated the parties through its issued decisions, particularly those on previously unaddressed legal issues. To that end, many of the trainings that it provided in FY 2018 were "Case Law Updates." The OGC consistently provided statutory training efforts across the country. Due to budget uncertainty, the OGC scaled back its provision of training that required FLRA-funded travel, and this also contributed to the Agency's inability to meet this goal.

## PERFORMANCE GOAL 2.1: SUCCESSFULLY RESOLVE A SIGNIFICANT PORTION OF FLRA CASES THROUGH ADR.

ADR is an informal process that allows parties to discuss and develop their interests in order to resolve the underlying issues and problems in their relationships. This includes interest-based conflict resolution and intervention services in pending cases.

**Measure 2.1:** The percentage of appropriate ULP cases in the OGC in which ADR services are offered.\*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
100%	95%	100%	

Data Source: CMS

**Target: Exceeded.**

**Measure 2.2:** The percentage of ULP cases in the OGC in which an offer of ADR services is accepted by the parties that are partially or totally resolved.\*\*

**\*\*Renumbered measure beginning in FY 2017; previously Measure 2.1**

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
98%	96%	97%	100%	95%	100%

Data Source: CMS

**Target: Exceeded.**

**Measure 2.3:** The percentage of appropriate ULP cases in the OALJ in which Settlement-Judge Services are offered.\*

FY 2017	FY 2018		*New measure beginning in FY 2017
Actual	Target	Actual	
100%	90%	100%	

Data Source: CMS

**Target: Exceeded.**

**Measure 2.4:** The percentage of ULP cases in the OALJ in which an offer of Settlement-Judge services is accepted by the parties that are partially or totally resolved.\*\*

**\*\*Renumbered measure beginning in FY 2017; previously Measure 2.2**

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
96%	87%	74%	93%	85%	83%

Data Source: CMS

**Target: Substantially Met.**

**Measure 2.5:** The percentage of representation cases in the OGC in which an offer of ADR services is accepted by the parties that are partially or totally resolved.\*\*

**\*\*Renumbered measure beginning in FY 2017; previously Measure 2.3**

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
100%	100%	96%	100%	95%	100%

Data Source: CMS

**Target: Exceeded.**

**Measure 2.6:** The percentage of appropriate arbitration cases in the Authority in which ADR services are offered.\*

FY 2016	FY 2017	FY 2018		*New measure beginning in FY 2016
Actual	Actual	Target	Actual	
100%	100%	100%	100%	
Data Source: CMS				
Target: Met.				

**Measure 2.7:** The percentage of arbitration cases in the Authority in which an offer of ADR services is accepted by the parties that are partially or totally resolved.

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	
Actual	Actual	Actual	Actual	Target	Actual
80%	43%	79%	80%	50%	100%
Data Source: CMS					
Target: Exceeded.					

**Measure 2.8:** The percentage of appropriate negotiability cases in the Authority in which ADR services are offered.\*

FY 2016	FY 2017	FY 2018		*New measure beginning in FY 2016
Target	Actual	Target	Actual	
100%	100%	100%	100%	
Data Source: CMS				
Target: Met.				

**Measure 2.9:** The percentage of proposals or provisions – in negotiability cases in which an offer of ADR services is accepted by the parties – that are partially or totally resolved.

FY 2014	FY 2015
Actual	Actual
100%	100%

**Measure 2.9:** The percentage of negotiability cases in which ADR services are provided that are partially or totally resolved.\*

FY 2016	FY 2017	FY 2018		*New measure beginning in FY 2016
Actual	Actual	Target	Actual	
100%	100%	90%	100%	
Data Source: CMS				
Target: Exceeded.				

**Measure 2.10:** The percentage of bargaining-impasse cases in which an offer of ADR services is accepted by the parties that are partially or totally resolved.

FY 2014	FY 2015
Actual	Actual
27%	39%

**Measure 2.10:** The percentage of bargaining-impasse cases in which parties' disputes are totally resolved voluntarily.\*

FY 2016	FY 2017	FY 2018	*New measure beginning in FY 2016
Actual	Actual	Target	Actual
27%	30%	30%	17%

Data Source: CMS

**Target: Not Met.** The Panel and its staff work directly with each party in every filing of request for assistance to help the parties find a voluntary settlement of some or all of the remaining issues at impasse. While we strive to reach the goal of helping the parties to achieve voluntary resolution of at least 30% of the filings, at times, the Panel must exercise the option of ordering resolution of the final remaining issues in the impasse to bring the matter to closure.

### ***STRATEGIC GOAL 3: WE WILL MANAGE OUR RESOURCES EFFECTIVELY AND EFFICIENTLY IN ORDER TO ACHIEVE ORGANIZATIONAL EXCELLENCE***

The FLRA's ability to fulfill its core mission under the Statute depends on excellent management of the organization and its resources. The organizational-excellence goal emphasizes how the Agency's employees, IT infrastructure, and allocation of resources are central to achieving all of the strategic goals and objectives outlined in the strategic plan.

The landscape of the Federal workplace and workforce continues to evolve, as do the needs of the parties that the FLRA serves. Approximately 29 percent of the FLRA's workforce has been with the Agency for five years or less. Many of the Agency's most experienced employees are currently eligible to retire, and 23 percent of the workforce is eligible to retire in the next 5 years. In light of these facts, it is crucial for the FLRA to simultaneously focus on developing the workforce of the future, while retaining valuable institutional knowledge.

The Agency is prepared to meet ever-changing business demands through the innovative use of IT to best manage the workload and interact with parties. The FLRA continues to be an effective steward of taxpayer dollars, with a renewed focus on maximizing the use of data to inform decision making. The Agency's future operational approaches are designed to foster nimble and seamless deployment of resources coupled with cost-avoidance strategies to support productive labor-management relations across the Federal government. And, consistent with the PMA, the FLRA has a comprehensive, forward-looking plan to increase quality and value in its administrative functions, continue efforts to enhance productivity and achieve cost savings,

unlock the full potential of its workforce, and build the FLRA's workplace and workforce for the future.

## **PERFORMANCE GOAL 1: RECRUIT, RETAIN, AND DEVELOP A HIGHLY TALENTED, MOTIVATED, AND DIVERSE WORKFORCE TO ACCOMPLISH THE FLRA'S MISSION.**

In FY 2018, the FLRA provided high quality performance and service delivery. The Agency continued a commitment to empowering and developing a highly engaged and effective workforce. The success of FLRA employees is instrumental to its success as an Agency. The staff-driven Strategic Plan 2018-2022 created in FY 2018 demonstrates the spirit that the FLRA actively manages in its human-capital programs.

### **Measure 1.1: Program managers ensure that the right employees are in the right place to achieve results.**

<b>FY 2014</b>	<b>Actual</b>	Focused on succession planning by increasing targeted attorney recruitment. Renewed agreement with the University of Maryland for discounted tuition for Agency employees. Increased Agency resources through recruitment, staffing, and placement. Utilized the Student Pathways and Summer Externship programs to increase resources for casework and administrative initiatives throughout the Agency. Realigned functions within the Agency's Office of the Executive Director to allow for improved efficiencies and customer service to Agency employees. Worked extensively with managers to hold employees accountable for performance and development. Updated Attorney Recruitment Policy in order to allow managers greater hiring flexibility of the Agency's mission-critical occupation and to streamline the recruitment process. In collaboration with the Partnership for Public Service's Excellence in Government Fellows program, developed and piloted an Employee Onboarding Handbook to improve the onboarding process and increase employee engagement.
<b>FY 2015</b>	<b>Actual</b>	Implemented a fully automated and integrated electronic system for personnel actions. Developed a more robust onboarding process through increased use of technology and piloted implementation of an Employee Onboarding Handbook. Updated certain human-resources policies and procedures. Continued to build internal capacity for handling the major human-resources functional areas. Position descriptions continued to be updated and now allow for greater growth and advancement opportunities within the Agency, and employees readily volunteered for collateral-duty assignments, new initiatives, and projects. The Agency also renewed its agreement with a local university to offer discounted tuition to FLRA employees for self-directed study. Improved office customer service by improving the quality of

		advice provided to managers and employees. Worked with managers to educate them about and increase diversity and inclusion when seeking new Agency talent. The Agency achieved greater diversity in its workforce in FY 2015 by increasing strategic and targeted recruitment and posting job opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. With respect to succession planning, the FLRA continued to offer cross-component developmental details and its training initiative designed to assist higher-graded employees identify and strengthen critical leadership skills in preparation for eventually transitioning to formal leadership positions. To strengthen and support the FLRA's new cadre of first-time managers and supervisors, the Agency identified a series of trainings geared towards developing strategic thinking and other critical skills in preparation for executive leadership at the FLRA. These training initiatives crossed components, bringing together future Agency leaders from all offices to enhance their skills and encourage collaboration among peers.
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**Measure 1.1: Demonstrate strong recruitment and retention practices.\***

**\*New measure beginning in FY 2016**

<b>FY 2016</b>	<b>Actual</b>	<p>Strengthened diversity and inclusion recruitment efforts by, among other things, establishing and implementing a process for sharing job announcements with relevant affinity groups. Continued to enhance strategic and targeted recruitment by posting job opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. Used data to help identify and eliminate barriers to recruiting and hiring the diverse talent that it needs.</p> <p>Worked to strengthen operational offices by seeking feedback through semi-annual and point-of-service surveys. Continued efforts to revise and implement a robust Agency-wide onboarding program, which will include briefings and continuing educational opportunities for employees to strengthen their FLRA knowledge. Strengthened recognition and promotion of cultural-based celebrations, establishing an employee-driven initiative to develop and promote events and activities. Targeted efforts to educate managers about, and increase diversity and inclusion when, seeking new Agency talent, and continued efforts to train Agency staff at all levels on key diversity and inclusion issues. Revised manager performance plans to include diversity-and- inclusion-focused metrics. Recognized with #1 small-Agency ranking in terms of the "New IQ" Index, which provides insights into</p>
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		<p>employee perceptions of the inclusiveness of the Agency by looking at twenty questions that measure the five “Habits of Inclusion” – Fair, Open, Cooperative, Supportive, and Empowering. The FLRA was the top-ranking small-Agency for <i>each</i> of the five habits of inclusion, with scores averaging 15 percent – and as much as 21 percent – higher than the average scores for all small agencies. And in the 2015 Best Places to Work in the Federal Government rankings, the FLRA was ranked #2 out of 28 small agencies in its support for diversity.</p>
<b>FY 2017</b>	<b>Actual</b>	<p>Continued to develop capacity for shared administrative staff across several offices by utilizing administrative staff within the Authority Component – particularly those who are in “confidential” positions to Agency leadership – to provide administrative assistance to the HR, Budget &amp; Finance, and Equal Employment Opportunity (EEO) Offices, which perform sensitive work. Not only does this provide administrative staff with a developmental opportunity, but it also allows for greater flexibility, relieves high-graded managerial staff from having to perform lower-graded administrative tasks, and avoids the need to hire additional FTEs when workloads increase within the component.</p> <p>Aligned the Agency-wide Performance Year (previously July 1 - June 30) with the Fiscal Year. This alignment directly links every employee’s individual performance to the FLRA’s overall strategic and performance goals, as well as to the Agency’s annual budget and funding requests. It will provide a more accurate measurement of each employee’s contribution towards achievement of Agency-wide performance goals, greater accountability, and better data regarding resource needs.</p> <p>Conducted an Agency-wide review of all Agency electronic Official Personnel Folders (eOPFs) to: ensure proper retirement coverage (CSRS or FERS); verify the accuracy of service computation dates (SCDs) for both leave and retirement purposes; and examine all folders for missing or undocumented prior service.</p> <p>Conducted an Agency-wide review of every Agency position description (PD) to ensure that all PDs reflect actual duties and that accompanying cover sheets are accurate, and revised PDs that needed revision or that were very dated, which has been particularly critical in conducting “need-to-fill” evaluations and drafting recent vacancy announcements.</p>
<b>FY 2018</b>	<b>Target</b>	<p>Complete implementation of all necessary changes/corrections identified during the Agency-wide eOPF and PD reviews.</p>

		<p>Develop/revise and implement standard operating procedures that will help to maintain accurate personnel records going forward.</p> <p>Continue to conduct “need-to-fill” evaluations before filling any vacant positions.</p> <p>Implement workforce reshaping, consistent with Executive Order 13781 and M-17-22.</p> <p>Continue to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that the FLRA needs.</p>
	<b>Actual</b>	<p>Completed implementation of all necessary changes/corrections identified during the Agency-wide eOPF and PD reviews.</p> <p>Implemented standard operating procedures for maintaining accurate eOPFs for all FLRA staff in order to support the provision of excellent customer service.</p> <p>Continued to conduct “need-to-fill” evaluations before filling any vacant positions, consistent with Executive Order 13781 and M-17-22.</p> <p>Continued to use data to identify and eliminate barriers to recruiting and hiring the diverse talent that the FLRA needs.</p> <p>Completed all required security-background investigations for new hires and investigations/re-investigations for existing employees. Clarified the circumstances under which a new background check should be conducted. Ensured that all employees were HSPD-12 compliant.</p> <p>Began a comprehensive review and revision, as appropriate, of all internal Agency policies in order to ensure that they are up to date, necessary, and consistent with law and regulation.</p>
Data Source: FLRA Human Resources Division		
<b>Target: Met.</b>		

**Measure 1.2: Maintain and grow Agency expertise through employee development.\***

**\*New measure beginning in FY 2016**

<b>FY 2016</b>	<b>Actual</b>	Successfully implemented numerous cross-component developmental opportunities for employees, including workgroups to encourage innovation, the development and delivery of
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		<p>training, and more than ten detail opportunities at all levels and offices within the Agency.</p> <p>Continued a robust training initiative focusing on leadership and skills development. Addressed temporary mission needs, maximized Student Pathways and student-internship programs, and utilized developmental details within the existing workforce. Provided all new managers and supervisors with leadership-training opportunities, and implemented ongoing executive-training plans aimed at developing executive-level talent among the FLRA's existing workforce.</p> <p>Continued its overall success and improvement as measured by the FEVS, leaving no doubt that the FLRA continues to have a highly engaged workforce that is dedicated to the accomplishment of its mission. The results of the survey reflected the Agency's continuous growth in overall employee satisfaction, as demonstrated by the FLRA ranking as the #1 small Agency in two important indices – Employee Engagement and New IQ – and the increase in 2016 positive ratings in 19 items from 2015. In addition, the FLRA had 66 identified strengths (items with 65% or higher positive ratings) and no identified challenges (items with 35% or higher negative ratings). And the Agency's scores were above the government-wide average in 69 out of 71 questions. Of particular note was that: 97% of FLRA respondents reported that they were held accountable for achieving results; 96% positively rated the overall quality of the work done by their work unit; 96% indicated that they are willing to put in extra effort to get a job done; 94% knew how their work related to the Agency's goals and priorities; 94% thought that the people they worked with cooperated to get the job done; 94% believed that the Agency was successful at accomplishing its mission; 93% found that the workforce had the job-relevant knowledge and skills necessary to accomplish organizational goals; 92% indicated that their supervisors regularly communicated with them about their performance; and 91% stated that employees in their work unit shared job knowledge with each other. Moreover, the Agency maintained its sustained growth of positive responses to the question "supervisors in my work unit support employee development" – increasing by nearly 9.5% over 2015.</p>
<b>FY 2017</b>	<b>Actual</b>	<p>Continued to develop capacity for shared administrative staff across several offices by utilizing administrative staff within the Authority Component – particularly those who are in "confidential" positions to Agency leadership – to provide administrative assistance to the HR, Budget &amp; Finance, and Equal Employment Opportunity (EEO) Offices, which perform sensitive</p>

		<p>work. Not only does this provide administrative staff with a developmental opportunity, but it also allows for greater flexibility, relieves high-graded managerial staff from having to perform lower-graded administrative tasks, and avoids the need to hire additional FTEs when workloads increase within the component.</p> <p>Most managers assessed all of their employees on their developmental needs and provided at least one targeted developmental opportunity to each. Training budgets for every office were reduced by 25% in FY 2017, so there was a reduced ability to procure outside training. This resulted in managers finding in-house opportunities to help develop their employees through details (e.g., Acting Chief Information Officer), work groups (e.g., eFiling), and special projects (e.g., revising FLRA policies).</p> <p>In the 2017 FEVS, 78% of FLRA employees responded positively to the OPM FEVS question “supervisors in my work unit support employee development” (Q. 47). Although this represents a 6% decrease from 2016, it is nonetheless 5% above the small-Agency score of 73%, and 10% above the Government-wide score of 68%.</p> <p>In FY 2017, the FLRA continued its overall success as measured by the FEVS, leaving no doubt that the FLRA’s investments in the recruitment, retention, and skills and leadership development of its employees continues to produce a highly engaged workforce that is dedicated to the accomplishment of its mission. The results of the 2017 survey reflect that the FLRA has 55 identified strengths (items with 65% or higher positive ratings) and no identified challenges (items with 35% or higher negative ratings). Compared to 2016, the FLRA increased its positive ratings for 15 questions, experienced no change in its positive ratings for 4 questions, and decreased its positive ratings for 52 questions. The Agency outperformed the Government-wide average in 70 out of 71 questions. And the FLRA continues to rank in the top ten among small agencies (those with 100-999 employees) in two important indices – Employee Engagement and New IQ – with #6 and #5 rankings, respectively. With an Employee Engagement Index score of 77% and a New IQ Index score of 71%, the FLRA exceeds the Government-wide average for each index, as well as for every sub-category of each index. In addition, the FLRA’s Global Satisfaction index score of 72% – well above the Government-wide average of 64% – is a positive indicator of employees’ overall workplace satisfaction.</p>
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		<p>As to the Agency's 55 identified strengths, of particular note is that: 99% of FLRA respondents indicate that they are willing to put in extra effort to get a job done; 98% positively rate the overall quality of work done by their work unit; 97% report that they are held accountable for achieving results; 95% know how their work relates to the Agency's goals and priorities; and 92% say that they are constantly looking for ways to do their jobs better. These results show that employees understand the FLRA's mission, understand their role in achieving it, and see themselves as an integral part of achieving Agency-wide success.</p> <p>In addition to its top-ten rankings in the Employee Engagement and New IQ Indexes and increased ratings in 15 questions, FLRA employees also identified areas for improvement. These areas include opportunities for advancement, meaningful recognition of differences in performance, encouragement of creativity and innovation, availability of resources to get their jobs done, and communication from management about what's going on in the Agency.</p>
<b>FY 2018</b>	<b>Target</b>	<p>Building on the Agency's evolving succession plan – which is designed to lessen the impact of institutional-knowledge loss as employees retire or leave and to maximize current talent utilization by closing leadership staffing and competency gaps/deficiencies – develop a formal Agency developmental-detail program, establishing cross-component detail opportunities to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency's mission and operations across program lines, as well as the relevance of their work to the mission and programs of the FLRA.</p> <p>Managers will assess annually 100% of employees on their developmental needs and provide at least one targeted developmental opportunity to each of their staff members per year.</p> <p>Maintain sustained growth of positive responses to the OPM FEVS question “supervisors in my work unit support employee development.”</p>
	<b>Actual</b>	<p>Offered cross-component details to provide employees with training and developmental experiences that will enhance their skills and increase their understanding of the Agency's mission and operations.</p> <p>Managers assessed annually employees on their developmental</p>

		needs and provided appropriate training and developmental opportunities.
		Maintained sustained status of higher positive responses than the Government-wide average to the OPM FEVS question “Supervisors in my work unit support employee development”
Data Source: FLRA Human Resources Division		
<b>Target: Met.</b>		

## PERFORMANCE GOAL 2: IMPROVE USE OF EXISTING TECHNOLOGY AND DEPLOY NEW IT SYSTEMS TO STREAMLINE AND ENHANCE ORGANIZATIONAL OPERATIONS.

The FLRA began accepting eFilings in FY 2013, and, as of FY 2015, eFiling is available for all FLRA offices that receive case filings. The FLRA is continuing to work towards implementing the Agency’s long-term goal of sharing end-to-end electronic case files throughout the FLRA, as well as the OMB-mandated target of having fully electronic files by 2019. Increasing eFiling is critical to achieving this goal. In this regard, the more case-related information that the FLRA receives electronically – rather than in hard copy – from the outset, the easier it is to convert that information into an electronic case file, without the need for FLRA staff to manually scan documents. The Agency has a four-year plan to accomplish the transition to fully electronic case files in agile phases.

Measure 2.1: Expand the use of eFiling.		
<b>FY 2014</b>	<b>Actual</b>	12% of cases eFiled.
<b>FY 2015</b>	<b>Actual</b>	17% of cases eFiled.
<b>FY 2016</b>	<b>Actual</b>	22% of cases eFiled.
<b>FY 2017</b>	<b>Actual</b>	35% of cases eFiled.
<b>FY 2018</b>	<b>Target</b>	75% of cases eFiled
	<b>Actual</b>	35% of cases eFiled
Data Source: CMS		
<b>Target: Not Met.</b> Although the Agency did not meet its target goal, the improvements the Agency made to its eFiling system during FY 2018 are intended to encourage increased eFiling by its customers. It is expected that the improvements will increase the Agency’s ability to meet this goal in FY 19. We continue to explore new strategies for increasing use of its improved eFiling system.		

**Measure 2.2: Electronic end-to-end case processing.**

<b>FY 2014</b>	<b>Actual</b>	Migrated the CADR to an end-to-end electronic case file.
<b>FY 2015</b>	<b>Actual</b>	Made eFiling available for OALJ cases, resulting in eFiling being available for all offices that accept case filings. As a result, completed full integration of the CMS and eFiling systems, enabling end-to-end electronic case processing throughout the Agency.
<b>FY 2016</b>	<b>Actual</b>	With the full completion of the eFiling objective, the CMS has the structure in place to receive and store electronically filed cases. The applications have been merged, creating bridges between the two systems, to support end-to-end electronic case-processing capability. The FLRA neared completion of improving the eFiling user interface, which builds upon the existing system, making the eFiling system more user-friendly and intuitive. And efforts are underway to implement a Document Management System (DMS). This effort will span into FY 2017, and it is a critical step in accomplishing the FLRA's multi-year electronic-case-file plan.
<b>FY 2017</b>	<b>Actual</b>	<p>Incorporating internal and external customer feedback, adopting "agile" development efforts, and utilizing open-source code, completed development of a brand new, user-friendly eFiling application with a Ruby on Rails user interface and a Postgres backend database that is housed in Amazon Web Services – a cloud-based solution. Final testing and additional enhancements that were not anticipated until later in FY 2018 are currently being completed, and eFiling 3.0 will launch to the public in the 1st quarter of FY 2018. It is anticipated to dramatically increase the number of FLRA cases filed electronically.</p> <p>Laid the foundation for modernizing the infrastructure for the Agency's electronic CMS and eFiling by transitioning to a new backend product – Postgres database housed in Amazon Web Services – that will allow for a more user friendly and complete integration of the CMS, the eFiling system, and the DMS.</p> <p>Deployed an Agency-wide, cloud-based DMS, which replaced the existing network shares with an integrated document and email communications system that will facilitate document sharing and electronic case-processing initiatives.</p>
<b>FY 2018</b>	<b>Target</b>	Integrate the CMS and eFiling systems with the Agency Document Management System, enabling end-to-end electronic case processing throughout the Agency.
	<b>Actual</b>	Developed and launched eFiling 3.0, which both internal and external users report is significantly more user-friendly and intuitive. Began development of a new and improved CMS that, over time, will provide significant cost savings (\$100,000 annually) and allow for more efficient integration of the CMS and eFiling systems with the DMS, enabling end-to-end electronic case processing throughout the



		Agency. Identified the basic structure of electronic case files for each component/office in the DMS. Completed transition of all major IT functions – CMS, DMS, eMail – to the cloud, which improves both IT security, consistent with the PMA, and Agency continuity of operations plans.
Data Source: FLRA Information Resources Management Division		
<b>Target: Met.</b>		

## VERIFICATION AND VALIDATION OF PERFORMANCE DATA

The CMS is used by FLRA offices to track and manage caseload. Each office enters information on case filings into the CMS, and is accountable for quality control of the data entered into the system. Case-performance data verification and validation was performed using information from the CMS. *NOTE: In November 2018, the FLRA audited the case-numbers for the past five years and found some errors from prior years. This PAR contains the most accurate numbers, and should be used instead of data from PARs of prior years.*



# PRINCIPAL FINANCIAL STATEMENTS

## MESSAGE FROM THE CHIEF EXECUTIVE OFFICER

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The FLRA's FY 2018 Performance and Accountability Report reflects the correlation between the financial and programmatic aspects of the Agency's work. The report bridges these two areas by presenting FLRA performance with the financial results of Agency operations. The principal financial statements and notes that follow explain the FLRA's financial position as of September 30, 2018, and how the Agency's financial resources were expended to achieve performance results. For the thirteenth consecutive year, the FLRA has received an unqualified audit opinion on its financial statements. Along with the unqualified opinion, the report of independent auditors found no material weaknesses in the design and operation of the Agency system of internal controls over financial reporting.

With FY 2019 expected to be another challenging year (since we are currently funded through a Continuing Resolution), we will continue to focus on identifying solutions to maintain our financial stability, ensure transparency and accountability, and maintain our high levels of mission performance and employee satisfaction and morale. We will also continue to work with the Administration and the Congress in seeking ways to strengthen and improve the Agency's system for the administrative control of funds. We are confident that the FLRA's financial and performance data are complete, accurate, and reliable.



Colleen Duffy Kiko  
Chairman and Chief Executive Officer  
November 15, 2018

Federal Labor Relations Authority		
BALANCE SHEET		
(in dollars)		
As of September 30, 2018 and 2017		
	2018	2017
<b>Assets:</b>		
Intragovernmental		
Fund Balance With Treasury (Note 2)	\$4,474,299	\$4,981,468
Accounts Receivable (Note 3)	10,114	9,966
Prepaid Expenses	<u>18,141</u>	<u>5,429</u>
Total Intragovernmental	4,502,554	4,996,863
Accounts Receivable, Net (Note 3)	0	424
Property, Equipment, and Software, Net (Note 4)	<u>78,734</u>	<u>187,819</u>
<b>Total Assets</b>	<b><u>\$4,581,288</u></b>	<b><u>\$5,185,106</u></b>
<b>Liabilities:</b>		
Intragovernmental		
Accounts Payable (Note 5)	\$328,155	\$298,123
Accrued Payroll and Benefits (Note 5)	187,829	150,021
FECA Unfunded (Note 5)	<u>222,358</u>	<u>242,229</u>
Total Intragovernmental	738,342	690,373
Accounts Payable (Note 5)	326,584	626,657
Unfunded Leave (Note 5)	1,102,800	1,239,740
FECA Actuarial Liability (Note 5)	1,249,217	1,254,731
Accrued Payroll and Benefits (Note 5)	<u>792,746</u>	<u>588,668</u>
Other Liabilities (Note 6)	261	0
<b>Total Liabilities</b>	<b><u>\$4,209,950</u></b>	<b><u>\$4,400,169</u></b>
<b>Net Position:</b>		
Unexpended Appropriations - Other Funds	\$2,864,908	\$3,333,393
Cumulative Results of Operations - Other Funds	<u>(2,493,570)</u>	<u>(2,548,456)</u>
<b>Total Net Position</b>	<b><u>371,338</u></b>	<b><u>784,937</u></b>
<b>Total Liabilities and Net Position</b>	<b><u>\$4,581,288</u></b>	<b><u>\$5,185,106</u></b>

The accompanying notes are an integral part of these statements.  
Totals may not add due to rounding.

Federal Labor Relations Authority STATEMENT OF NET COST (in dollars)		
For the Years Ended September 30, 2018 and 2017		
	2018	2017
<b>Gross Program Costs:</b>		
Authority:		
Intragovernmental Costs	\$6,039,210	\$5,802,070
Public Costs	<u>9,121,750</u>	<u>8,801,998</u>
Total Program Costs	15,160,960	14,604,068
Less: Earned Revenue	<u>(1,239)</u>	<u>(12,806)</u>
<b>Net Program Costs</b>	<b><u>\$15,159,721</u></b>	<b><u>\$14,591,262</u></b>
Federal Services Impasse Panel:		
Intragovernmental Costs	\$189,605	\$187,956
Public Costs	<u>669,093</u>	<u>676,661</u>
Total Program Costs	858,698	864,617
Less: Earned Revenue	0	0
<b>Net Program Costs</b>	<b><u>\$858,698</u></b>	<b><u>\$864,617</u></b>
Office of General Counsel:		
Intragovernmental Costs	\$2,757,467	\$2,552,444
Public Costs	<u>8,531,298</u>	<u>8,625,612</u>
Total Program Costs	11,288,765	11,178,056
Less: Earned Revenue	<u>(7,199)</u>	<u>(14,562)</u>
<b>Net Program Costs</b>	<b><u>\$11,281,566</u></b>	<b><u>\$11,163,494</u></b>
Total Gross Program Costs	\$27,308,423	\$26,646,741
Less: Total Earned Revenue	<u>(8,438)</u>	<u>(27,368)</u>
<b>Net Cost of Operations</b>	<b><u>\$27,299,985</u></b>	<b><u>\$26,619,373</u></b>

The accompanying notes are an integral part of these statements.  
Totals may not add due to rounding.

<b>Federal Labor Relations Authority</b> <b>STATEMENT OF CHANGES IN NET POSITION</b> (in dollars)		
For the Years Ended September 30, 2018 and 2017		
	2018	2017
<b>Unexpended Appropriations:</b>		
Beginning Balances	<u>\$3,333,393</u>	<u>\$2,906,771</u>
<b>Budgetary Financing Sources:</b>		
Appropriations Received	26,200,000	26,200,000
Other Adjustments	(519,592)	(207,127)
Appropriations Used	<u>(26,148,893)</u>	<u>(25,566,251)</u>
Total Budgetary Financing Sources	<u>(468,485)</u>	<u>426,622</u>
Total Unexpended Appropriations	<u><b>\$2,864,908</b></u>	<u><b>\$3,333,393</b></u>
<b>Cumulative Results of Operations:</b>		
Beginning Balances	<u>(\$2,548,456)</u>	<u>(\$2,356,665)</u>
<b>Budgetary Financing Sources:</b>		
Appropriations Used	26,148,893	25,566,251
<b>Other Financing Sources (Non-Exchange):</b>		
Imputed Financing Sources	<u>1,205,978</u>	<u>861,331</u>
Total Financing Sources	27,354,871	26,427,582
Net Cost of Operations	<u>(27,299,985)</u>	<u>(26,619,373)</u>
Net Change	<u>54,886</u>	<u>(191,791)</u>
Cumulative Results of Operations	<u>(\$2,493,570)</u>	<u>(\$2,548,456)</u>
Net Position	<u><b>\$371,338</b></u>	<u><b>\$784,937</b></u>

The accompanying notes are an integral part of these statements.  
Totals may not add due to rounding.

**Federal Labor Relations Authority**  
**STATEMENT OF BUDGETARY RESOURCES**  
(in dollars)

**For the Years Ended September 30, 2018 and 2017**

	<b>2018</b>	<b>2017</b>
<b>Budgetary Resources:</b>		
Unobligated balance from prior year budget authority, net	\$932,190	\$1,245,096
Appropriations	26,200,000	26,200,000
Spending authority from offsetting collections	<u>12,323</u>	<u>27,313</u>
Total Budgetary Resources	<b><u>\$27,144,513</u></b>	<b><u>\$27,472,409</u></b>
<b>Memorandum (non-add) Entries:</b>		
Net adjustments to unobligated balance brought forward, Oct. 1	(\$4,251,250)	(\$3,193,427)
<b>Status of Budgetary Resources:</b>		
New obligations and upward adjustments (Note 10)	\$26,408,865	\$26,218,588
Unobligated balance, end of year:		
Apportioned, unexpired account	9,108	66,825
Expired unobligated balance, end of year	<u>726,540</u>	<u>1,186,996</u>
Unobligated balance, end of year (total)	<u>735,648</u>	<u>1,253,821</u>
Total Budgetary Resources	<b><u>\$27,144,513</u></b>	<b><u>\$27,472,409</u></b>
<b>Outlays, net:</b>		
Outlays, net, (total)	<u>26,187,577</u>	<u>25,458,707</u>
Agency outlays, net	<b><u>\$26,187,577</u></b>	<b><u>\$25,458,707</u></b>

The accompanying notes are an integral part of these statements.  
Totals may not add due to rounding.

## **NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### ***A. Reporting Entity***

The FLRA is an independent, administrative Federal agency created by Title VII of the Civil Service Reform Act of 1978, with a mission to carry out five statutory responsibilities: (1) determining the appropriateness of units for labor organization representation; (2) resolving ULP complaints; (3) adjudicating exceptions to arbitrators' awards; (4) adjudicating legal issues relating to duty to bargain; and (5) resolving impasses during negotiations. The agency consists of three components: the Authority, the OGC, and the FSIP; and is led by a Chairman, who serves as the FLRA's chief executive and administrative officer. 5 U.S.C. §§ 7104(b)

### ***B. Basis of Accounting and Presentation***

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, and budgetary resources of the FLRA in accordance with the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, and the Accountability of Tax Dollars Act of 2002. The statements have been prepared from agency financial records in accordance with U.S. Generally Accepted Accounting Principles (GAAP), in accordance with guidance issued by the Federal Accounting Standards Advisory Board (FASAB) and the OMB, as prescribed in OMB Circular A-136, Financial Reporting Requirements, and pursuant to the requirements of 31 U.S.C. § 3515(b). These financial statements include all funds and accounts under the control of the FLRA.

The accounting structure of Federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when incurred, without regard to the receipt or payment of cash. The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases occur before an accrual-based transaction takes place. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of Federal funds. The accompanying financial statements are prepared on the accrual basis of accounting.

### ***C. Budget Authority***

The Congress passes appropriations annually that provide the FLRA with authority to obligate funds for necessary salaries and expenses to carry out mandated program activities. These funds are available until expended, subject to OMB apportionment and to Congressional restrictions on the expenditure of funds. Also, the FLRA places internal restrictions on fund expenditures to ensure the efficient and proper use of all funds.

### ***D. Fund Balance with Treasury***

FLRA receipts and disbursements are processed by the Department of the Treasury. Fund balances with the Treasury consist of appropriated funds that are available to pay current liabilities and to finance authorized purchase commitments. No cash is held in commercial bank accounts.

### ***E. Accounts Receivable***

Accounts receivable consists of amounts owed to FLRA by other federal agencies and the public. Amounts due from federal agencies are considered fully collectible and consist of interagency agreements. An allowance for uncollectible accounts receivable from the public is established when either (1) management determines that collection is unlikely to occur after a review of outstanding accounts and the failure of all collection efforts, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 120 days delinquent. Based on historical experience, all receivables are considered collectible and no allowance is provided.

#### ***F. General Property and Equipment (P&E)***

This category consists of equipment and internal use software. The basis for recording purchased P&E is full cost, including all costs incurred to bring FLRA P&E to and from a location suitable for its intended use. P&E is depreciated using the straight-line method over the estimated useful life of the asset. Statement of Federal Financial Accounting Standards (SFFAS) No. 10, Accounting for Internal Use Software, provides accounting standards for internal use software used by each agency. The standards provide for capitalized property to continue to be reported on the Balance Sheet. P&E that are not capitalized because they are under the capitalization threshold are expensed in the year of acquisition.

The FLRA's capitalization threshold for individual purchases is \$25,000. Bulk purchases of similar items that individually are worth less than \$25,000, but collectively are worth more than \$100,000 are also capitalized using the same general P&E categories and useful lives as capital acquisitions. Major building alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred.

General P&E Category	Service Life
Software	3 Years
Computer Equipment	5 Years
Office Equipment	7 Years
Office Furniture	15 Years
Leasehold Improvements	Life of lease

#### ***G. Liabilities***

Liabilities represent the amount of monies or other resources likely to be paid by the FLRA as a result of transactions or events that have already occurred. Liabilities are recognized when they are incurred, regardless of whether they are covered by available budgetary resources. The FLRA reports its liabilities under two categories, Intragovernmental and With the Public. Intragovernmental liabilities represent funds owed to another government agency. Liabilities with the Public represent funds owed to any entity or person that is not a federal agency, including private sector firms and federal employees. Each of these categories may include liabilities that are covered by budgetary resources and liabilities not covered by budgetary resources. No liability can be paid, however, absent an appropriation. Liabilities for which an appropriation has not been enacted are, therefore, classified as not covered by budgetary resources, since there is no certainty that the appropriation will be enacted. Liabilities that are covered by budgetary resources consist of intragovernmental and public accounts payable and accrued funded payroll.

Liabilities not covered by budgetary resources in FY 2017 and FY 2018 consist of accrued and actuarial Federal Employees Compensation Act (FECA) compensation and unfunded employee leave. The Federal Government, acting in its sovereign capacity, can abrogate liabilities other than contracts.

#### ***H. FECA Liabilities***

An accrued FECA liability is recorded for actual and estimated future payments to be made for workers' compensation pursuant to the FECA. The actual costs incurred are reflected as a liability because agencies will reimburse the Department of Labor (DOL) two years after the actual payment of expenses. Future revenues will be used for their reimbursement to the DOL. The liability consists of: (1) the unreimbursed cost paid by the DOL for compensation to recipients under the FECA; and (2) the net present value of estimated future payments calculated by the DOL.

An estimated actuarial liability for future workers' compensation benefits is included. The liability estimate is based on the DOL's FECA actuarial model that takes the amount of benefit payments over the last twelve quarters and calculates the annual average of payments for medical expenses and compensation. This average is then multiplied by the liabilities-to-benefits paid ratios for the whole FECA program. The ratios may vary from year to year as a result of economic assumptions and other factors, but the model calculates a liability approximately twelve times the annual payments.

#### ***I. Annual, Sick and Other Leave***

Amounts associated with the payment of annual leave are accrued while leave is being earned by employees, and this accrual is reduced as leave is taken. Each year the balance in the accrued annual leave account is adjusted to reflect current pay rates. To the extent that current or prior-year appropriations are not available to finance annual leave, future financing sources will be used. Sick leave and other types of non-vested leave are expensed as taken.

Any liability for sick leave that is accrued but not taken by a Civil Service Retirement System (CSRS) or a Civil Service Retirement System Offset (CSRS offset)-covered employee is transferred to the Office of Personnel Management (OPM) upon the retirement of that individual. Federal Employees Retirement System (FERS)-covered employees were not entitled to use unused sick leave for additional service credit until October 28, 2009. For retirements effective between October 28, 2009 and December 31, 2013, 50 percent of unused sick leave can be used for additional service credit. For retirements effective after December 31, 2013, 100 percent of unused sick leave can be credited.

#### ***J. Net Position***

The components of net position are unexpended appropriations and cumulative results of operations. Unexpended appropriations include undelivered orders and unobligated balances. Undelivered orders reflect the amount of goods and services ordered that have yet to be actively or constructively received. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations represent the net results of operations since inception, the cumulative amount of prior-period adjustments, the remaining book value of capitalized assets, and future funding requirements.



### ***K. Retirement Plans***

The FLRA's employees participate in the CSRS, CSRS offset or the FERS. For CSRS employees, hired prior to January 1, 1984, the FLRA withholds seven percent of each employee's salary and contributes seven percent of the employee's basic salary to the CSRS Retirement and Disability Fund. These employees may also contribute, on a tax-deferred basis, to a defined contribution plan – the Thrift Savings Plan (TSP). The regular Internal Revenue Service limit in FY 2017 and FY 2018 was \$18,000 and \$18,500, respectively. The FLRA is not required to and does not contribute any matching amounts for CSRS employees.

The FERS was established by enactment of Public Law 99-335. Pursuant to this law, the FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired before January 1, 1984 elected either to join the FERS and Social Security or to remain in the CSRS. For FERS employees, the FLRA withholds 6.2 percent in old age survivors and disability insurance up to a specified wage ceiling and 0.8 percent of an employee's gross earnings for retirement. In FY 2018, the FLRA matched the retirement withholdings with a contribution equal to 13.7 percent of the employee's taxable salary. Due to enactment of the FERS Revised Annuity Employee and Further Revised Annuity Employee programs, the agency matched with a contribution equal to 11.9 percent for employees hired during and after calendar year 2013.

All employees are eligible to contribute to the TSP. For employees under the FERS, a TSP account is automatically established. The FLRA is required to make a mandatory contribution of one percent of the base salary for each employee under the FERS. The agency is required to match the employee's contribution up to a maximum of five percent of his or her salary. Matching contributions are not made to the TSP accounts established by CSRS employees. The FLRA does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, are the responsibility of the OPM.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. CSRS employees who are 65 or older are eligible for Social Security payments (even if they have not retired). In these instances, the FLRA remits the employer's share of the required contribution.

### ***L. Imputed Financing from Costs Absorbed by Others***

The FASAB's SFFAS No. 5, Accounting for Liabilities of the Federal Government, requires that employer agencies recognize the full cost of pension, health, and life insurance benefits during their employees' active years of service. The OPM, as administrator of the CSRS, CSRS offset and FERS plans, the Federal Employees Health Benefits Program, and the Federal Employees Group Life Insurance Program, must provide the "cost factors" that adjust the agency contribution rate to the full cost for the applicable benefit programs. An imputed financing source and corresponding imputed personnel cost is reflected in the Statement of Changes in Net Position and the Statement of Net Cost.

### ***M. Revenue and Other Financing Sources***

The FLRA's revenues are derived from reimbursable work agreements, Freedom of Information Act collections, and a direct annual appropriation. The FLRA recognizes reimbursable work when earned, i.e., services have been provided. Each reimbursable work agreement specifies the dollar value of the agreement and is based on estimated resources needed to perform the specified services.

The agency receives an annual Salaries and Expenses appropriation from the Congress. Annual appropriations are used, within statutory limits, for salaries and administrative expenses and for operating and capital expenditures for essential P&E. Appropriations are recognized as non-exchange revenues at the time the related program expenses are incurred. Appropriations expended for capitalized P&E are recognized as expenses when an asset is consumed in operations. The FLRA's annual appropriation for FY 2017 and FY 2018 was \$26,200,000.

### ***N. Expired Accounts and Cancelled Authority***

Unless otherwise specified by law, annual budget authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account into which the annual authority is placed is called an expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period that were not previously reported. At the end of the fifth expired year, the account is cancelled and any remaining money is returned to the Treasury.

### ***O. Contingencies***

A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to the agency. The uncertainty will ultimately be resolved when one or more future events occur or fail to occur. With the exception of pending, threatened, or potential litigation, a contingent liability is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is more likely than not, and the related future outflow or sacrifice of resources is measurable. For pending, threatened, or potential litigation, a liability is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is likely, and the related future outflow or sacrifice of resources is measurable.

### ***P. Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses. Actual results could differ from those estimates.

### ***Q. Advances and Prepayments***

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable work agreements, subscriptions, and payments to contractors and employees. Payments made in advance

of the receipt of goods and services are recorded as advance payments and recognized as expenses when the related goods and services are received.

## **NOTE 2: FUND BALANCE WITH TREASURY**

U.S. government cash is accounted for on an overall consolidated basis by the Treasury. The amounts shown on the Balance Sheet represent the FLRA's right to draw on the Treasury for valid expenditures. The fund balance as shown on the FLRA records is reconciled monthly with records from the Treasury. Fund Balance with Treasury account balances as of September 30, 2018 and 2017 were as follows (In Dollars):

	2018	2017
<b>Status of Fund Balance with Treasury:</b>		
Unobligated Balance		
Available	\$ 9,108	\$ 66,825
Unavailable	726,540	1,186,996
Obligated Balance Not Yet Disbursed	3,738,651	3,727,647
<b>Total</b>	<b>\$ 4,474,299</b>	<b>\$ 4,981,468</b>

No discrepancies exist between the Fund Balance reflected on the Balance Sheet and the balances in the Treasury accounts.

The available unobligated fund balances represent the current-period amount available for obligation or commitment. At the start of the next fiscal year, this amount will become part of the unavailable balance as described in the following paragraph.

The unavailable unobligated fund balances represent the amount of appropriations for which the period of availability for obligation has expired. These balances are available for upward adjustments of obligations incurred only during the period for which the appropriation was available for obligation or for paying claims attributable to the appropriations.

The obligated balance not yet disbursed includes accounts payable, accrued expenses, unfilled orders, and undelivered orders that have reduced unexpended appropriations but have not yet decreased the fund balance on hand.

## **NOTE 3: ACCOUNTS RECEIVABLE**

The reported amount for accounts receivable consists of amounts owed to the FLRA by other Federal agencies (intragovernmental) and the public. There are no amounts that are deemed uncollectible as of September 30, 2018 and 2017. Accounts Receivable balances as of September 30, 2018 and 2017 were as follows (In Dollars):

	2018	2017
Intragovernmental		
Accounts Receivable	\$ 10,114	\$ 9,966
<b>Total Intragovernmental Accounts Receivable</b>	<b>\$ 10,114</b>	<b>\$ 9,966</b>
With the Public		
Accounts Receivable	\$ -	\$ 424
<b>Total Public Accounts Receivable</b>	<b>\$ -</b>	<b>\$ 424</b>
<b>Total Accounts Receivable</b>	<b>\$ 10,114</b>	<b>\$ 10,390</b>

#### NOTE 4: PROPERTY, EQUIPMENT, AND SOFTWARE, NET

Schedule of Property, Equipment, and Software as of September 30, 2018 (In Dollars):

Major Class	Acquisition Cost	Accumulated Amortization/Depreciation	Net Book Value
Computer Equipment	\$ 455,885	\$ 377,756	\$ 78,129
Office Equipment	202,231	202,231	-
Office Furniture	453,695	453,090	605
<b>Total</b>	<b>\$ 1,111,811</b>	<b>\$ 1,033,077</b>	<b>\$ 78,734</b>

Schedule of Property, Equipment, and Software as of September 30, 2017 (In Dollars):

Major Class	Acquisition Cost	Accumulated Amortization/Depreciation	Net Book Value
Computer Equipment	\$ 455,885	\$ 286,579	\$ 169,306
Office Equipment	202,231	202,231	-
Office Furniture	453,695	435,182	18,513
<b>Total</b>	<b>\$ 1,111,811</b>	<b>\$ 923,992</b>	<b>\$ 187,819</b>

#### NOTE 5: LIABILITIES COVERED AND NOT COVERED BY BUDGETARY RESOURCES

Unfunded FECA liabilities consist of workers' compensation claims payable to the DOL, which will be funded in a future year, and an unfunded estimated liability for future workers' compensation claims based on data provided from the DOL. The actuarial calculation is based on benefit payments made over twelve quarters, and calculates the annual average of payments. For medical expenses and compensation, this average is then multiplied by the liability-to-benefit paid ratio for the whole FECA program.

Unfunded leave represents a liability for earned leave and is reduced when leave is taken. At the end of each month the balance in the unfunded leave account is adjusted to reflect the liability at current pay rates and leave balances. Unfunded leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken. All other liabilities are considered to be covered by budgetary resources.

Liabilities Covered and Not Covered by Budgetary Resources as of September 30, 2018 consist of the following (In Dollars):

	Covered	Not Covered	Total
<b>Intragovernmental Liabilities</b>			
Accounts Payable	\$ 328,155	\$ -	\$ 328,155
Accrued Payroll and Benefits	187,829	-	187,829
Unfunded FECA	-	222,358	222,358
<b>Total Intragovernmental Liabilities</b>	<b>\$ 515,984</b>	<b>\$ 222,358</b>	<b>\$ 738,342</b>
<b>Public Liabilities</b>			
Accounts Payable	\$ 326,584	\$ -	\$ 326,584
Unfunded Leave	-	1,102,800	1,102,800
FECA Actuarial Liability	-	1,249,217	1,249,217
Accrued Payroll and Benefits	792,746	-	792,746
Other	261	-	261
<b>Total Public Liabilities</b>	<b>\$ 1,119,591</b>	<b>\$ 2,352,017</b>	<b>\$ 3,471,608</b>
<b>Total Liabilities</b>	<b>\$ 1,635,575</b>	<b>\$ 2,574,375</b>	<b>\$ 4,209,950</b>

Liabilities Covered and Not Covered by Budgetary Resources as of September 30, 2017 consist of the following (In Dollars):

	Covered	Not Covered	Total
<b>Intragovernmental Liabilities</b>			
Accounts Payable	\$ 298,123	\$ -	\$ 298,123
Accrued Payroll and Benefits	150,021	-	150,021
Unfunded FECA	-	242,229	242,229
<b>Total Intragovernmental Liabilities</b>	<b>\$ 448,144</b>	<b>\$ 242,229</b>	<b>\$ 690,373</b>
<b>Public Liabilities</b>			
Accounts Payable	\$ 626,657	\$ -	\$ 626,657
Unfunded Leave	-	1,239,740	1,239,740
FECA Actuarial Liability	-	1,254,731	1,254,731
Accrued Payroll and Benefits	588,668	-	588,668
Other	-	-	-
<b>Total Public Liabilities</b>	<b>\$ 1,215,325</b>	<b>\$ 2,494,471</b>	<b>\$ 3,709,796</b>
<b>Total Liabilities</b>	<b>\$ 1,663,469</b>	<b>\$ 2,736,700</b>	<b>\$ 4,400,169</b>

## NOTE 6: OTHER LIABILITIES

Other liabilities as of September 30, 2018 consisted of the following (In Dollars):

	Current	Non-Current	2018 Total
With the Public			
Advances and Prepayments	\$ 261	\$ -	\$ 261
Total Other Liabilities	\$ 261	\$ -	\$ 261

There were no other liabilities as of September 30, 2017.

## NOTE 7: LEASES

The FLRA has operating leases for rental of office space and equipment. As a Federal agency, the FLRA is not liable for any lease terms beyond one year. All leases are federal.

### Current Operating Leases

#### **233 Peachtree Street NE, Atlanta, GA**

The FLRA has an interagency agreement with the General Services Administration for office space at 233 Peachtree Street NE, Atlanta, GA. The term is for 120 months beginning on or about January 18, 2012. The FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

#### **10 Causeway Street, Boston, MA**

The FLRA has an interagency agreement with the General Services Administration for office space at 10 Causeway Street, Boston, MA. The term is for 48 months beginning on or about May 15, 2016. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy. Timely notice was provided and FLRA will terminate this lease effective November 30, 2018.

#### **224 S. Michigan Avenue, Suite 445, Chicago, IL**

The FLRA has an interagency agreement with the General Services Administration for office space at 224 S. Michigan Avenue, Suite 445, Chicago, IL. The term is for 120 months beginning on or about June 16, 2012. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

#### **525 Griffin Street, Dallas, TX**

The FLRA had an interagency agreement with the General Services Administration for office space at 525 Griffin Street, Dallas, TX. The term was for 120 months beginning on or about October 1, 2017. FLRA terminated this lease effective September 30, 2018.

#### **1244 Speer Boulevard, Denver, CO**

The FLRA has an interagency agreement with the General Services Administration for office space at 1244 Speer Boulevard, Denver, CO. The previous term of 57 months began on July 1, 2013 and expired on March 24, 2018. The term for the current agreement is for 120 months beginning on or about March 25, 2018. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**1400 K Street NW, Washington, DC**

The FLRA has an interagency agreement with the General Services Administration for office space at 1400 K Street NW, Washington, DC. The term is for 87 months beginning on or about June 1, 2014. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**901 Market Street, San Francisco, CA**

The FLRA has an interagency agreement with the General Services Administration for office space at 901 Market Street, San Francisco, CA. The term is for 120 months beginning on or about August 1, 2011. FLRA has the right to terminate the lease based on the availability of funds or with a four month notice at any point after the first twelve months of occupancy.

**NOTE 8: COMMITMENTS AND CONTINGENCIES**

The FLRA is, at times, a party in various administrative proceedings, legal actions, and claims brought by or against the agency. In the opinion of FLRA management, the ultimate resolution of any proceedings, actions, and claims will not materially affect financial position or results of operations of the FLRA. The agency examined its FY 2013 obligations prior to cancellation, and believes that it does not have any outstanding commitments or contingencies that will require future resources to liquidate.

**NOTE 9: INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE**

The classification of revenue or cost as “intragovernmental” or “with the public” is determined on a transaction by transaction basis. Preceding transactions in the lifecycle of a product will not have an impact on subsequent transactions. If the FLRA purchases goods or services from another Federal entity, capitalizes them into inventory, and later resells them to the public, the cost of the original purchase of resale assets from the other Federal entity will be classified as “intragovernmental” at the time of the purchase. At ultimate sale to the end user, the resulting cost of goods will be classified as “with the public.” The purpose of this classification is to enable the Federal Government to provide consolidated financial statements, and not to match public and intragovernmental revenue with costs that are incurred to produce public and intragovernmental revenue.

**NOTE 10: APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED**

All obligations incurred are characterized as Category A, quarterly apportioned, on the Statement of Budgetary Resources. Obligations incurred and reported in the Statement of Budgetary Resources in fiscal years 2018 and 2017 consisted of the following:

	2018	2017
Direct Obligations, Category A	\$ 26,395,924	\$ 26,191,275
Reimbursable Obligations, Category A	12,942	27,313
<b>Total Obligations Incurred</b>	<b>\$ 26,408,865</b>	<b>\$ 26,218,588</b>

#### **NOTE 11: UNDELIVERED ORDERS AT THE END OF THE PERIOD**

The amount of budgetary resources obligated for undelivered orders at the end of September 30, 2018 consisted of the following (In Dollars):

	Federal	Non-Federal	Total
Paid Undelivered Orders	\$ 18,141	\$ -	\$ 18,141
Unpaid Undelivered Orders	(299,939)	2,411,319	2,111,380
<b>Total Undelivered Orders</b>	<b>\$ (281,798)</b>	<b>\$ 2,411,319</b>	<b>\$ 2,129,521</b>

The amount of budgetary resources obligated for undelivered orders at the end of September 30, 2017 consisted of the following (In Dollars):

	Federal	Non-Federal	Total
Paid Undelivered Orders	\$ 5,429	\$ -	\$ 5,429
Unpaid Undelivered Orders	(252,563)	2,326,707	2,074,144
<b>Total Undelivered Orders</b>	<b>\$ (247,134)</b>	<b>\$ 2,326,707</b>	<b>\$ 2,079,573</b>

#### **NOTE 12: EXPLANATION OF DIFFERENCES BETWEEN THE SBR AND THE BUDGET OF THE U.S. GOVERNMENT**

SFFAS No. 7 Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting calls for explanation of material differences between amounts reported in the Statement of Budgetary Resources and the actual balances published in the Budget of the U.S. Government (the President's Budget). The FY 2019 President's Budget, with actual amounts for FY 2017, has been reconciled to the Statement of Budgetary Resources. The FY 2020 President's Budget, with actual amounts for FY 2018, will not be published until February 2019.

#### **NOTE 13: INCIDENTAL CUSTODIAL COLLECTIONS**

Custodial collections are reflected in Fund Balance with Treasury during the year. While these collections are considered custodial, they are neither primary to the mission of the agency nor material to the overall financial statements. The FLRA's custodial collections are \$ 1 for the year ended September 30, 2018, and \$ 1 for the year ended September 30, 2017. Custodial collections are transferred to the Treasury General Fund on September 30 and are not reflected in the financial statements of the Agency.

#### **NOTE 14: RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET**



Details of the relationship between budgetary resources obligated and the net costs of operations for the fiscal years ended September 30, 2018 are shown in the following table:

**FEDERAL LABOR RELATIONS AUTHORITY  
RECONCILIATION OF NET COST AND BUDGET OUTLAYS  
FOR THE YEAR ENDED SEPTEMBER 30, 2018  
(In Dollars)**

	Intra- governmental	With the Public	Total
<b>Net Operating Cost (SNC)</b>	<b>8,979,083</b>	<b>18,320,902</b>	<b>27,299,985</b>
<b>Components of Net Operating Cost Not Part of the Budgetary Outlays</b>			
Property, plant, and equipment depreciation		(109,085)	(109,085)
<b>Increase/(decrease) in assets:</b>			
Accounts receivable	148	(424)	(276)
Other assets	12,712	-	12,712
<b>(Increase)/decrease in liabilities not affecting Budget Outlays:</b>			
Accounts payable	(30,032)	299,811	269,779
Salaries and benefits	(37,808)	(204,077)	(241,885)
Other liabilities	19,871	142,454	162,325
<b>Other financing sources:</b>			
Federal employee retirement benefit costs	(1,205,978)		(1,205,978)
<b>Total Components of Net Operating Cost Not Part of the Budget Outlays</b>	<b>(1,241,087)</b>	<b>128,679</b>	<b>(1,112,408)</b>
<b>Components of the Budget Outlays That Are Not Part of Net Operating Cost</b>			
Other	1	(1)	-
<b>Total Components of the Budget Outlays That Are Not Part of Net Operating Cost</b>	<b>1</b>	<b>(1)</b>	<b>-</b>
<b>Net Outlays (Calculated Total)</b>	<b>7,737,997</b>	<b>18,449,580</b>	<b>26,187,577</b>
<b>Related Amounts on the Statement of Budgetary Resources</b>			
Outlays, net, (total) (SBR 4190)			26,187,577
Distributed offsetting receipts (SBR 4200)			-
<b>Outlays, Net (SBR 4210)</b>			<b>26,187,577</b>

# DEMBO JONES

CERTIFIED PUBLIC ACCOUNTANTS & ADVISORS

## Independent Auditor's Report

The Honorable Colleen Duffy Kiko  
Chairman  
Federal Labor Relations Authority

In our audits of the Fiscal Years 2018 and 2017 financial statements of Federal Labor Relations Authority (FLRA) we found:

- a) FLRA's financial statements as of and for the Fiscal Years ended September 30, 2018 and 2017, are presented fairly, in all material respects, in accordance with U.S. generally accepted accounting principles;
- b) no material weaknesses in internal control over financial reporting based on the limited procedures we performed; and
- c) no reportable noncompliance for Fiscal Year 2018 with provisions of applicable laws and regulations we tested.

The following sections discuss in more detail (1) our report on the financial statements, which includes required supplementary information (RSI), such as "Management's Discussion and Analysis"; (2) our report on internal control over financial reporting; (3) our report on compliance with laws and regulations; and (4) agency comments.

### Report on the Financial Statements

In accordance with U.S. generally accepted government auditing standards (GAGAS) and Office of Management and Budget (OMB) Bulletin No. 19-01, *Audit Requirements for Federal Financial Statements*, we have audited FLRA's financial statements. FLRA's financial statements comprise the balance sheets as of September 30, 2018 and 2017; the related statements of net cost, changes in net position, and budgetary resources for the Fiscal Years then ended; and the related notes to the financial statements.

We conducted our audits in accordance with GAGAS. We believe that the audit evidence we obtained is sufficient and appropriate to provide a basis for our audit opinions.

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

FLRA's management is responsible for (1) the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; (2) preparing, measuring, and presenting the RSI in accordance with U.S. generally accepted accounting principles; (3) preparing and presenting other information included in documents containing the audited financial statements and auditor's report, and ensuring the consistency of that information with the audited financial statements and the RSI; and (4) maintaining effective internal control over financial reporting, including the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. GAGAS require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. We are also responsible for applying certain limited procedures to RSI and other information included with the financial statements.

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

#### Opinion on Financial Statements

In our opinion, FLRA's financial statements present fairly, in all material respects, FLRA's financial position as of September 30, 2018 and 2017, and its net costs of operations, changes in net position, and budgetary resources for the Fiscal Years then ended in accordance with U.S. generally accepted accounting principles.

#### Other Matters

##### Required Supplementary Information

U.S. generally accepted accounting principles issued by the Federal Accounting Standards Advisory Board (FASAB) require that the RSI be presented to supplement the financial statements. Although the RSI is not a part of the financial statements, FASAB considers this information to be an essential part of financial reporting for placing the financial statements in appropriate operational, economic, or historical context. We have applied certain limited procedures to the RSI in accordance with GAGAS, which consisted of

Dembo Jones, P.C.



inquiries of management about the methods of preparing the RSI and comparing the information for consistency with management's responses to the auditor's inquiries, the financial statements, and other knowledge we obtained during the audit of the financial statements, in order to report omissions or material departures from FASAB guidelines, if any, identified by these limited procedures. We did not audit and we do not express an opinion or provide any assurance on the RSI because the limited procedures we applied do not provide sufficient evidence to express an opinion or provide any assurance.

#### Other Information

FLRA's other information contains a wide range of information, some of which is not directly related to the financial statements. This information is presented for purposes of additional analysis and is not a required part of the financial statements or the RSI. We read the other information included with the financial statements in order to identify material inconsistencies, if any, with the audited financial statements. Our audit was conducted for the purpose of forming an opinion on FLRA's financial statements. We did not audit and do not express an opinion or provide any assurance on the other information.

#### **Report on Internal Control over Financial Reporting**

In connection with our audits of the FLRA's financial statements, we considered the FLRA's internal control over financial reporting, consistent with our auditor's responsibility discussed below. We performed our procedures related to the FLRA's internal control over financial reporting in accordance with GAGAS.

#### Management's Responsibility

FLRA management is responsible for maintaining effective internal control over financial reporting, including the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### Auditor's Responsibility

In planning and performing our audit of FLRA's financial statements as of and for the year ended September 30, 2018, in accordance with GAGAS, we considered the FLRA's internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the FLRA's internal control over financial reporting. Accordingly, we do not express an opinion on the FLRA's internal control over financial reporting. We are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses. We did not consider all internal controls relevant to operating objectives, such as those controls relevant to preparing performance information and ensuring efficient operations.

Dembo Jones, P.C.

#### Definition and Inherent Limitations of Internal Control over Financial Reporting

An entity's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel, the objectives of which are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition, and (2) transactions are executed in accordance with provisions of applicable laws, including those governing the use of budget authority, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent, or detect and correct, misstatements due to fraud or error.

#### Results of Our Consideration of Internal Control over Financial Reporting

Our consideration of internal control was for the limited purpose described above, and was not designed to identify all deficiencies in internal control that might be material weaknesses and significant deficiencies or to express an opinion on the effectiveness of the FLRA's internal control over financial reporting. Given these limitations, during our audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

During our 2018 audit, we identified deficiencies in FLRA's internal control over financial reporting that we do not consider to be material weaknesses. Nonetheless, these deficiencies warrant FLRA management's attention. We have communicated these matters to FLRA management and, where appropriate, will report on them separately.

#### Intended Purpose of Report on Internal Control over Financial Reporting

The purpose of this report is solely to describe the scope of our consideration of the FLRA's internal control over financial reporting and the results of our procedures, and not to provide an opinion on the effectiveness of the FLRA's internal control over financial reporting. This report is an integral part of an audit performed in accordance with GAGAS in considering internal control over financial reporting. Accordingly, this report on internal control over financial reporting is not suitable for any other purpose.

#### Report on Compliance with Laws and Regulations

In connection with our audits of FLRA's financial statements, we tested compliance with selected provisions of applicable laws and regulations consistent with our auditor's responsibility discussed below. We caution that noncompliance may occur and not be detected by these tests. We performed our tests of compliance in accordance with GAGAS.

Dembo Jones, P.C.



Management's Responsibility

FLRA management is responsible for complying with laws and regulations applicable to FLRA.

Auditor's Responsibility

Our responsibility is to test compliance with selected provisions of applicable laws and regulations applicable to FLRA that have a direct effect on the determination of material amounts and disclosures in FLRA's financial statements, and perform certain other limited procedures. Accordingly, we did not test compliance with all laws and regulations applicable to FLRA.

Results of Our Tests for Compliance with Laws and regulations

Our tests for compliance with selected provisions of applicable laws and regulations disclosed no instances of noncompliance for Fiscal Year 2018 that would be reportable under GAGAS. However, the objective of our tests was not to provide an opinion on compliance with laws and regulations applicable to FLRA. Accordingly, we do not express such an opinion.

Intended Purpose of Report on Compliance with Laws and regulations

The purpose of this report is solely to describe the scope of our testing of compliance with selected provisions of applicable laws and regulations, and the results of that testing, and not to provide an opinion on compliance. This report is an integral part of an audit performed in accordance with GAGAS in considering compliance. Accordingly, this report on compliance with laws and regulations is not suitable for any other purpose.

*Dembo Jones, P.C.*

*Rockville, Maryland  
November 15, 2018*

Dembo Jones, P.C.

# OTHER ACCOMPANYING INFORMATION

## SUMMARY OF FINANCIAL STATEMENT AUDIT

<b>Audit Opinion:</b>	Unqualified				
<b>Restatement:</b>	No				
	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Ending Balance</b>
Material weaknesses	0	0	0	0	0

## SUMMARY OF MANAGEMENT ASSURANCES

Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)						
Statement of Assurance:		Unqualified				
	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Material weaknesses	0	0	0	0	0	0
Effectiveness of Internal Control over Operations (FMFIA § 2)						
Statement of Assurance:		Unqualified				
	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Material weaknesses	0	0	0	0	0	0
Conformance with Financial Management System Requirements (FMFIA § 4)						
Statement of Assurance:		Systems conform				
	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
Non-conformances	0	0	0	0	0	0

## **IMPROPER PAYMENTS ELIMINATION AND RECOVERY**

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The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), requires agencies to annually report information on improper payments. The FLRA has reviewed all of its programs and determined that none are susceptible to significant improper payment. The IPERA also requires agencies to conduct payment-recapture audits for each program that expends \$1 million or more annually, if conducting such audits would be cost-effective. Based on the criteria set forth in Appendix C of OMB Circular A-123, the agency has also determined that it would not be cost-effective to establish a recovery-audit program for its programs that expend more than \$1 million. Recoveries are not expected to be greater than the costs incurred to identify any overpayments.





INSPECTOR GENERAL

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


**MEMORANDUM**

DATE: September 17, 2018

TO: Colleen Duffy Kiko  
Chairman

Ernest DuBester  
Member

James Abbott  
Member

FROM: Dana Rooney   
Inspector General

SUBJECT: Top Management and Performance Challenges Facing the Federal Labor  
Relations Authority (MC-19-01)

In accordance with the *Reports Consolidation Act of 2000*,<sup>1</sup> the Office of Inspector General (OIG) is reporting what it has determined to be the most serious management and performance challenges facing the Federal Labor Relations Authority (FLRA). The attached document responds to this requirement and by statute is required to be included in the FLRA's Performance and Accountability Report.

The OIG retained all three management challenges from last year's list. The top management and performance challenges include: (1) Information Technology Security; (2) Records Management; and (3) Closure of Open Recommendations Outstanding for More Than 1 Year.

This memorandum is based on specific OIG reviews and other reports, as well as our general knowledge of the FLRA programs and operations. Our analysis considers the accomplishments the FLRA reported as of August 21, 2018. We provided our draft challenges report to the FLRA and considered all comments received. In closing, we would like to express appreciation to you and the Executive Director for continuing to support our work and your commitment to excellence. We look forward to working with the FLRA to continually improve the FLRA's efforts to address these important challenges.

Attachment

cc: William Tosick, Executive Director

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<sup>1</sup> Public Law 106-531



## **Office of Inspector General Federal Labor Relations Authority**

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### **Information Technology Security**

Safeguarding systems and data has been a challenge for all Federal agencies including the Federal Labor Relations Authority (FLRA). The Government Accountability Office has identified the security of cyber assets and the privacy of personally identifiable information on its High-Risk List.<sup>1</sup>

The FLRA depends on its systems and data to carry out its mission. These systems are always at risk and the FLRA must remain vigilant in establishing a control environment to continuously monitor potential Information Technology (IT) risks, threats, vulnerabilities, mitigation and implementation plans.

For the last several years, the Office of Inspector General's (OIG) annual Federal Information Security Modernization Act of 2014 (FISMA) review has identified a repeated weakness in IT. The FLRA has improved greatly over the past few years, providing corrective action plans in response to our recommendations. While the FLRA has had two consecutive clean audits and closed all but one open finding, IT security still remains a management challenge. In our Fiscal Year (FY) 2018 FISMA review, we plan to evaluate the IT deficiency and the actions taken to correct the system weakness.

### **Information Security**

Since the passage of the FISMA, the OIG has annually reviewed the FLRA's information security program. The FISMA requires the FLRA OIG to prepare a report summarizing the review findings and submit it to the Office of Management and Budget (OMB). The most recent FISMA evaluation found that management continues to make progress closing four out of the five prior year recommendations.<sup>2</sup> There were no new recommendations in the FY 2017 review and the remaining open FISMA recommendation was from FY 2015.

### **Progress in Addressing the Challenge**

The FLRA had no new IT security findings for FY 2017, for the second consecutive year. This is a significant accomplishment and a strong indicator of the FLRA's commitment to addressing IT security matters in a timely and comprehensive manner. The FLRA also closed four of its five open findings. The FLRA expects to fully mitigate the remaining open FISMA finding by the end of FY 2019. The impact of this effort will be assessed during the FY 2019 FISMA review.

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<sup>1</sup> See [http://www.gao.gov/highrisk/ensuring\\_the\\_security\\_federal\\_government\\_information\\_systems/why\\_did\\_study](http://www.gao.gov/highrisk/ensuring_the_security_federal_government_information_systems/why_did_study)

<sup>2</sup> This is based on the FY 2017 FISMA review; the FY 2018 FISMA review had not been completed at the time this document was drafted.



## Office of Inspector General Federal Labor Relations Authority

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### What Needs to Be Done

The FLRA should continue to address and resolve the remaining FISMA weakness identified by the OIG in 2015. Although the FLRA has closed four of its five open recommendations, the agency must be diligent in continuing to monitor and assess its information security to ensure proper IT security controls are in place.

### Key OIG Resources

- OIG Report, Evaluation of the Federal Labor Relations Authority Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2017 (MAR-18-01) October 2017
- OIG Report, Evaluation of the Federal Labor Relations Authority Compliance with the Federal Information Security Management Act Fiscal Year 2015 (ER-16-01), November 9, 2015

### **Records Management (hard copy and electronic)**

Managing Federal business records is an important responsibility of Federal agencies, which are required to institute records management programs. Presidential Memorandum, *Managing Government Records*, was signed on November 28, 2011. It announced an Executive Branch-wide effort to reform Government records. The U.S. National Archives and Records Administration (NARA) are authorized to promulgate regulations for Federal records.

On August 24, 2012, OMB and NARA jointly issued Memorandum M-12-18, *Managing Government Records Directive*. The new directive provides goals, requirements, and deadlines for implementing the Presidential Memorandum. The first goal of the Directive has two compliance deadlines:

- By December 2016, Federal agencies will manage both permanent and temporary email records in an accessible electronic format; and
- By December 2019, Federal agencies will manage all permanent records in an electronic format, and must develop plans to do so by December 2013.

In 2014, Congress amended the *Presidential Records Act and the Federal Records Act* regarding the preservation, storage, and management of Federal records. NARA also provided Federal agencies with specific guidance on July 29, 2015, on how to comply with the Federal law regarding the preservation of electronic messages in Bulletin 2015-02, *Guidance on Managing Electronic Records*.



## Office of Inspector General Federal Labor Relations Authority

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On March 15, 2017, NARA issued a memo<sup>3</sup> to Senior Agency Officials for Records Management. The memo reminds them of their Federal records and information management responsibilities and addresses three high visibility priorities for the coming year:

- electronic messaging and encrypted messages;
- managing web records; and
- ensuring that all staff, especially incoming political appointees, are properly trained on their responsibilities for records management.

FLRA has taken steps to strengthen its records management, such as by continuing its efforts to use technology to enhance operational efficiencies by automating, paper-based manually intensive processes. This includes developing a case management system infrastructure supporting electronic files that will properly handle agency case files and records. This is an excellent step forward using technology to enhance operational efficiencies. However, system automation is only one part of a comprehensive approach to address the challenge of managing permanent records. Industry practices dictate that along with implementing new technology, it is imperative that a complete oversight or governance process be established to include documenting agency policies, procedures and processes that address all hard copy and electronic records proper handling. Although new automated systems offer increased capabilities, they also present new internal (management) control challenges. The FLRA needs to ensure various roles (e.g., system administrator); related authorities and capabilities are properly assigned, documented, managed and monitored. Such written documentation should be maintained as this need becomes increasingly critical as additional functionality and enhancements are added to the system. Further, although, certain types of records do not have legal retention requirements; the policies, processes and procedures should, clearly and specifically, instruct staff on the proper handling. Further, management should periodically verify that such policies are being followed.

### **Progress in Addressing the Challenge**

The FLRA met the first requirement of OMB Directive M-12-18, managing both permanent and temporary email records in an accessible electronic format. The Agency is currently maintaining all email records in an electronic format. The FLRA provided the following management challenge update:

“Over the course of FY 2018, the FLRA has continued its efforts to use technology to enhance operational efficiencies by implementing systems to automate paper-based manually intensive processes. This includes the development of an electronic case-management system infrastructure that supports electronic case files and that will further the Agency’s efforts to properly handle Agency case files and records. The FLRA has

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<sup>3</sup> *Records Management Priorities for 2017, March 15, 2017*



## Office of Inspector General Federal Labor Relations Authority

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made steady progress in accomplishing its multi-year plan to implement fully electronic files – consistent with the OMB requirements – in 2019. Accomplishments include: development of eFiling 3.0 system, including enhancements for supporting electronic case files; the continued development of/refinements to the Agency’s Document Management System, which will provide the storage capability for fully electronic case files; and continued work to transition the case management system, with the first office scheduled to migrate in early FY 2019. All three accomplishments are essential components for implementing fully electronic case files.

The FLRA recognizes that a necessary component of the implementation of electronic case files is the development of policies, processes, and procedures to provide staff with clear guidance for handling records and ensuring compliance with Agency requirements. The Agency continues to make progress to ensure that appropriate oversight and governance processes are established, including reviewing/updating Agency policies, procedures, and processes that address the proper handling and storage of all hard-copy and electronic records. The Agency has reviewed and revised several Agency policies this year, and it will continue to do so, with a goal to review, revise, or reissue as appropriate, all Agency policies by the end of FY 2019. This effort will ensure that system administrators and related authorities and capabilities are properly assigned, documented, managed, and monitored, and that written documentation is kept up-to-date.”

### What Needs to Be Done

Since the Directive’s release, there has been a wealth of additional NARA bulletins and OMB memorandums. Although the FLRA has until 2019 to comply with the evolving requirements, FLRA management should continue working its multi-year agenda to integrate its E-filing and other automated systems. The FLRA needs to design its policies to ensure it complies with all records management requirements and effectively manages its records. Good records management will help the FLRA meet its mission responsibilities.

### Key OIG Resources

- President Memorandum, *Managing Government Records*, signed on November 28, 2011
- OMB Directive M-12-18, *Managing Government Records Directive*, issued August 24, 2012
- NARA Bulletin 2013-02, *Guidance on a New Approach to Managing Email Records*, issued August 29, 2013
- OMB/NARA Memorandum M-14-16, which included NARA Bulletin 2014-06, *Guidance on Managing Email* issued September 14, 2014



## Office of Inspector General Federal Labor Relations Authority

- NARA Memorandum, Records Management Priorities for 2017, issued March 15, 2017

### **Closure of Open Recommendations Outstanding for More Than 1 Year**

The Inspector General Act of 1978, as amended, requires explanations for all audit reports with recommendations open for more than one year. These outstanding recommendations are also reported to the FLRA and Congress in the OIG's Semiannual Reports to Congress. We first reported the closure of open recommendations outstanding for more than one year as a management challenge in 2016. In 2017, we reported that FLRA had eight open recommendations outstanding for more than 1 year. In our March 31, 2018 OIG Semiannual Report, the FLRA closed seven of the eight open recommendations outstanding for more than 1 year. However, one new recommendation met the 1 year aging period and was reported in our March 31 report.

The table below shows a summary of reports with corrective actions outstanding for more than 1 year and whether report recommendations are open or closed.

### **Reports with Corrective Actions Outstanding for more than 1 year<sup>4</sup>**

Report Title	Report Number	Issue Date	Number of Recommendations	Closed	Open
Evaluation of the Federal Labor Relations Authority Compliance with the Federal Information Security Management Act Fiscal Year 2015	ER-16-01	11/15	5	4	1
Management Letter for Fiscal Year 2016 Audit of the Federal Labor Relations Authority's Financial Statements	AR-17-02	11/16	1	0	1

At this time, FLRA has two recommendations outstanding for more than 1 year. Of the two recommendations, one was reported in the FY 2015 FISMA review and the other in the Management Letter for Fiscal Year 2016 Audit of the Federal Labor Relations Authority's Financial Statements. The FISMA recommendation has been outstanding for almost 3 years.

<sup>4</sup> Only the recommendations that have been open for 12 months are reflected in the accompanying list of open recommendations and were reported in our March 31, 2018 Semiannual Report to Congress.



## **Office of Inspector General Federal Labor Relations Authority**

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The FLRA obtained an unmodified (clean) opinion on all financial statements in FY 2017, and the independent auditor's FY 2017 Management Letter reported no new recommendations, while closing two of the three prior year recommendations. The remaining recommendation, outstanding for more than 1 year, was included in the FY 2016 Management Letter.

As the OIG continues to issue reports with recommendations, it is critical that the FLRA continue its progress in resolving open findings that are outstanding from prior audits, and design appropriate corrective action plans to implement procedures and address deficiencies, where appropriate. FLRA management should also continuously monitor these plans to ensure timely audit resolution.

### **Progress in Addressing the Challenge**

In response to our FY 2018 management challenges, the FLRA indicated having "made significant progress in closing all but one audit recommendation." FLRA stated it "has clear and comprehensive action plans in place to address all open recommendations." FLRA also noted having a plan in place to close the FISMA weakness by the end of FY 2019.

### **What Needs to Be Done**

We acknowledge that the FLRA continues to initiate actions to address outstanding open recommendations. However, our audit work from the past several years continues to highlight that the FLRA faces challenges in addressing outstanding weaknesses. The impact of FLRA action plans will be assessed during the FY 2018 Financial Statement audit and FY 2019 FISMA review.

### **Key OIG Resources**

- OIG Report, Semiannual Report to Congress for the period October 1, 2017 to March 31, 2018
- OIG Report, Top Management and Performance Challenges Facing the Federal Labor Relations Authority (MC-18-01), October 4, 2017
- OIG Report, Management Letter for Fiscal Year 2016 Audit of the Federal Labor Relations Authority Financial Statements (AR-17-02), November 16, 2016
- OIG Report, Evaluation of the Federal Labor Relations Authority Compliance with the Federal Information Security Management Act Fiscal Year 2015 (ER-16-01), November 9, 2015





**FEDERAL LABOR RELATIONS AUTHORITY**

**1400 K Street, N.W.  
Washington, DC 20424  
[www.flra.gov](http://www.flra.gov)**

**[WWW.FLRA.GOV](http://WWW.FLRA.GOV)**

# FLRA Leadership

<https://www.flra.gov/about/flra-leadership>

## Authority

- [Chairman Colleen Duffy Kiko](#)
- [Member Ernest DuBester](#)
- [Member James T. Abbott](#)

## Office of the General Counsel

- Vacant

## Federal Service Impasses Panel

- [Chairman Mark A. Carter](#)

## Colleen Duffy Kiko

<https://www.flra.gov/about/flra-leadership/colleen-duffy-kiko>



Colleen Duffy Kiko was nominated by President Donald J. Trump on September 5, 2017, to serve as a Member of the Authority, and, upon her confirmation to serve as FLRA Chairman. She was sworn in on December 11, 2017, after being unanimously confirmed by the U.S. Senate on November 16, 2017. Chairman Kiko has a long history with the FLRA. She worked in its predecessor agency, the Labor Management Services Administration of the Department of Labor (DOL), and, when the FLRA opened its doors on January 1, 1979, Chairman Kiko began work in the Washington Regional Office investigating unfair labor practices. She ultimately moved into positions within the headquarters of the FLRA. And from 2005 to 2008 she served as FLRA General Counsel, having been nominated by President George W. Bush and unanimously confirmed by the U.S. Senate.

Most recently, Chairman Kiko served as one of the three permanent Judges of the DOL's Employees' Compensation Appeals Board (ECAB), a position to which she was

appointed in March of 2008. She previously served as an ECAB Judge from 2002 through 2005. Chairman Kiko has also served in the Justice Department as an attorney advisor in the Civil Rights Division and as a Special Assistant to the U.S. Attorney, Eastern District of Virginia, in Alexandria, Virginia; as an associate counsel to the House Judiciary Committee, Subcommittee on Civil and Constitutional Rights; and in the private practice of law.

Chairman Kiko holds a J.D. from Antonin Scalia Law School and a B.S. degree from North Dakota State University. She was born and raised in North Dakota, and she lives in Virginia with her husband, Phil. They have four children and six grandchildren.

## **Ernest DuBester**

<https://www.flra.gov/about/flra-leadership/ernest-dubester>



Ernest DuBester began his third term as a Member of the Federal Labor Relations Authority (FLRA) on December 11, 2017. Initially appointed and renominated by President Barack Obama, renominated again by President Donald Trump, and unanimously confirmed by the U.S. Senate to all three terms, Member DuBester has served as an FLRA Member since August 2009. He also served as FLRA Chairman from January to November of 2013 and for a second time in January of 2017.

Member DuBester was previously nominated by President Clinton and served as Chairman and Member of the National Mediation Board (NMB) from 1993 to 2001. Subsequently, he served as a staff mediator with the NMB.

Member DuBester has over 40 years of experience in labor-management relations. He began his career at the National Labor Relations Board, serving as counsel to former Chairman and Member John Fanning. He also served as a Union attorney with the firm of Highsaw & Mahoney, and as legislative counsel to the AFL-CIO. He previously taught collective bargaining and arbitration at the Catholic University of America School of Law.

In addition, Member DuBester served as Professor and Director of the Dispute Resolution Program at George Mason University School of Law (now Antonin Scalia Law School). During his time at the Law School, he also worked as an arbitrator and mediator of labor and employment matters, including many federal-sector cases.

Member DuBester received his undergraduate degree from Boston College, his law degree from the Catholic University of America School of Law, where he was Recent Developments Editor of the Law Review, and his Masters of Law in Labor Law from the Georgetown University Law Center.

## **James T. Abbott**

<https://www.flra.gov/about/flra-leadership/james-t-abbott>



James Thomas Abbott was nominated to become a Member of the FLRA by President Trump on September 2, 2017, and his nomination was unanimously confirmed by the United States Senate on November 16, 2017. Prior to his nomination, Member Abbott served as the Senior Executive Service (SES) Chief Counsel to three Chairmen of the Authority – Patrick Pizzella, Thomas Beck, and Dale Cabaniss.

Before joining the FLRA, Member Abbott served as Deputy General Counsel for the Congressional Office of Compliance (2004 to 2007), where he led the investigation and prosecution of alleged violations of labor, employment, and safety and health laws within the Legislative Branch. Member Abbott earlier distinguished himself in various positions within the Department of Defense, where he served as the Senior Associate District Counsel for Personnel and Ethics, Defense Contract Management Agency, in Los Angeles, California; Chief Counsel, Corpus Christi Army Depot, U.S. Army Materiel Command, Corpus Christi, Texas; and Senior Labor Counsel, HQ Depot Systems Command, U.S. Army Materiel Command, Chambersburg, Pennsylvania.

A native of Pennsylvania, Member Abbott received his J.D. from Temple University's Beasley School of Law in Philadelphia, Pennsylvania and was a Magna Cum Laude graduate of Malone University in Canton, Ohio, where he earned degrees in History and Religion and Philosophy. Member Abbott lives in Oakton, Virginia with his husband of twenty-one years, Daniel Gri, and their two sons, Caleb and Alfred.

# Mark A. Carter

<https://www.flra.gov/about/flra-leadership/mark-carter>



Mr. Carter will serve the remainder of a five-year term expiring January 10, 2022. He previously served as a Member of the Panel from 2002 through 2009, upon three successive appointments by President George W. Bush.

He is currently a Partner at Dinsmore's Charleston, West Virginia office, where he is the firm's Labor Practice Group Chair. He has a national practice focused on advising employers on all aspects of relationships with labor unions.

Mr. Carter has advised and represented employers throughout the United States in corporate campaigns, collective bargaining, arbitrations, and federal litigation involving labor unions, as well as serving employers in employment litigation. He has litigated in Alaska, New Jersey, Idaho, Michigan, Alabama, and other states, and he has advised clients in Washington state, Puerto Rico, California, New York, Florida, the District of Columbia, and the majority of the states in the nation.

Mr. Carter has testified before the U.S. Senate and the U.S. House of Representatives. He is a former Management Chair of the Antitrust, RICO, and Labor Law Committees of the American Bar Association, and he has spoken at over 10 annual meetings of that organization. He has also spoken for the U.S. Chamber of Commerce, the Canadian Association of Counsel to Employers, the Labor Policy Association, and other national trade groups.

Mr. Carter has published numerous articles and portions of treatises on labor law. He received a B.A. with high distinction from the University of Michigan, where he was a Burnett Scholar, and a J.D. from West Virginia College of Law in 1986.



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

**TO:** Colleen Duffy Kiko, Chairman

**FROM:** Aloysius Hogan, Director  
Office of Legislative Affairs and Program Planning (OLAPP)

**LAST UPDATED:** September 15, 2020

**SUBJECT:** FLRA Political Appointees

**I. Introduction**

The Federal Labor Relations Authority (FLRA) came into existence on January 11, 1979, as an independent federal administrative agency created by Title VII of the Civil Service Reform Act of 1978, which was enacted on October 13, 1978. Title VII is designated the Federal Service Labor-Management Relations Statute, and it is codified at 5 U.S.C. §§ 7101-7135 (the [Statute](#)). The Statute allows certain non-postal federal employees to organize, to bargain collectively, and to participate through labor organizations of their choice in decisions affecting their conditions of employment.

The Statute lists and defines the rights of employees, labor organizations, and agencies so as to reflect the public's interest in, and demand for, the highest standards of employee performance and the efficient accomplishment of Government operations. [Id. § 7101\(a\)\(2\)](#). Specifically, the Statute requires that its provisions "be interpreted in a manner consistent with the requirement of an effective and efficient Government." [Id. § 7101\(b\)](#).

The FLRA is organized into three statutory components: (1) the [Authority](#); (2) the [Office of the General Counsel](#) (OGC); and (3) the [Federal Service Impasses Panel](#) (FSIP). The FLRA components exercise separate prosecutorial and adjudicative responsibilities, with different legal roles. Presidential appointees – the three Authority Members, the General Counsel, and the FSIP Chairman – lead each of these components, respectively.

The FLRA's presidential appointees are subject to different appointment procedures, term lengths, and vacancy procedures. The Authority Members and the General Counsel are presidentially appointed and Senate-confirmed (PAS). The FSIP Members are presidentially appointed (PA), but they are not subject to Senate confirmation.

The FLRA also supports two entities created under the [Foreign Service Act of 1980](#): the [Foreign Service Labor Relations Board](#) (FSLRB) and the [Foreign Service Impasse Disputes Panel](#) (FSIDP). The FLRA Chairman appoints the Members of both the FSLRB and the FSIDP.<sup>1</sup>

This memorandum describes the various roles, appointment processes, term lengths, pay schedules, vacancy procedures, and other relevant information pertaining to the FLRA's political appointees. In addition, based on currently available information, this memorandum contains a listing of the political appointees who are currently serving and who have previously served the FLRA since its foundation.

## **II. The Authority**

### **A. Role of the Authority**

The Authority is a quasi-judicial body with three full-time Members whom the President appoints for fixed, five-year terms, with the advice and consent of the Senate. [5 U.S.C. § 7104\(a\)-\(c\)](#). Not more than two Members may be adherents of the same political party. *Id.* [§ 7104\(a\)](#). The Authority resolves: (1) unfair-labor-practice disputes in which an FLRA Administrative Law Judge (ALJ) has issued a decision to which exceptions have been filed; (2) applications for review of decisions and orders issued in representation matters; (3) exceptions to grievance-arbitration awards; and (4) negotiability disputes arising during collective bargaining. *Id.* [§ 7105\(a\)\(2\)](#).

The Authority also assists federal agencies and unions that represent federal employees to understand their rights and responsibilities under the Statute.

As necessary for the proper performance of the FLRA's duties, the Authority<sup>2</sup> appoints an Executive Director, who provides operational support to all components of the FLRA; Regional Directors, who head the Regional Offices and provide leadership and management expertise for their respective region; and ALJs, who conduct hearings and issue recommended decisions on cases involving alleged unfair labor practices. *Id.* [§ 7105\(d\)](#).

### **B. Authority Leadership: Chairman and Members**

The President designates one Member to serve as the FLRA Chairman, who is the chief executive and administrative officer of the Agency.<sup>3</sup> [Id. \[§ 7104\\(b\\)\]\(#\). The FLRA Chairman therefore serves as the Agency head.](#)

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<sup>1</sup> The FLRA Chairman acts as Chairperson of the FSLRB when appointing the Members of the FSLRB and FSIDP. [22 U.S.C. §§ 4106\(a\), 4110\(a\)](#).

<sup>2</sup> As used in this section, "the Authority" means a majority of the three Authority Members.

<sup>3</sup> In March 1984, Congress amended § 7104(b) of the Statute to add the sentence: "The Chairman is the chief executive and administrative officer of the Authority." [Civil Service Miscellaneous Amendments Act of 1983](#), Pub. L. No. 98-224 (Mar. 2, 1984).



Authority Members are appointed to fixed, five-year terms. [\*Id.\* § 7104\(c\)](#).<sup>4</sup> That is, a Member's term continues to run regardless of whether there is an incumbent in the position. If a vacancy occurs, then the person who is chosen to fill the vacancy is appointed for the unexpired term of the Member whom he or she is replacing. [\*Id.\*](#) When the fixed term to which an Authority Member is appointed ends, if the incumbent is not re-nominated *and* confirmed, then the incumbent may continue to serve in the position for a "holdover" period. *Id.* Specifically, the incumbent may serve until either the Member's successor takes office, or the expiration of the *next Congress after* the end of the Member's fixed term, whichever comes earlier. [\*Id.\*](#)

For example, before the new, 115th Congress convened on January 3, 2017, the fixed terms to which then-Chairman Carol Waller Pope and then-Member Patrick Pizzella were confirmed had both ended, on July 1, 2014, and July 1, 2015, respectively. But both Members were able to continue to serve under the Statute's holdover provision. *See id.* Under that provision, absent a confirmed nominee, then-Chairman Pope's service concluded at the end of the 114th Congress,<sup>5</sup> because her fixed term ended during the 113th Congress; and then-Acting Chairman Pizzella's service would have ended at the end of the 115th Congress, because his fixed term ended during the 114th Congress. *Id.*

The FLRA Chairman is paid at the annual basic pay rate of Executive Schedule (EX) IV, [\*id.\* § 5315](#), subject to any applicable [Continued Pay Freeze for Senior Political Officials](#).<sup>6</sup> The other Authority Members are paid at the annual basic pay rate of EX V.<sup>7</sup> [\*Id.\* § 5316](#). The Chairman and Authority Members are full-time employees who are excluded from the annual and

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<sup>4</sup> Section 7104(c) originally read, in relevant part: "(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years." In March 1984, Congress amended 5 U.S.C. § 7104(c) to read:

- (c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of—
  - (1) the date on which the member's successor takes office, or
  - (2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

[Civil Service Miscellaneous Amendments Act of 1983](#), Pub. L. No. 98-224 (Mar. 2, 1984).

<sup>5</sup> Then-Chairman Pope had been re-nominated for the July 1, 2014 - July 1, 2019 term, and then-Member Pizzella had been re-nominated for the July 1, 2015 - July 1, 2020 term. Both nominees had been voted out of the Senate Homeland Security and Governmental Affairs Committee, and they were awaiting confirmation by the full Senate when the 114th Congress adjourned *sine die*. Their nominations were sent back to President Obama, and then-Chairman Pope's holdover service ended.

<sup>6</sup> Consistent with the Office of Personnel Management Compensation Policy Memorandum 2018-08, [Continued Pay Freeze for Certain Political Officials](#) (Apr. 6, 2018) – specifically, [Attachment 2 - Detailed Guidance on Application of Pay Freeze for Certain Senior Political Officials](#) – in the case of an Authority Member who receives a pay increase based upon appointment to a higher-level position (i.e., Chairman), that individual's salary nevertheless cannot exceed the 2013 frozen rate of pay for that higher-level position. For example, when Member DuBester became Chairman DuBester in January 2017, although he was eligible for a pay increase to EX IV, pay-freeze guidance restricted that EX IV salary to the 2013 frozen rate of \$155,000.

<sup>7</sup> These rates are lower than for comparable PAS positions at the FLRA's sister agencies, such as the National Labor Relations Board (NLRB), the Merit Systems Protection Board (MSPB), the National Mediation Board (NMB), the Federal Mediation and Conciliation Service (FMCS), and the Equal Employment Opportunity Commission (EEOC). *Compare* 5 U.S.C. § 5314 (NLRB Chairman, MSPB Chairman, NMB Chairman, FMCS Director, and EEOC Chairman paid at EX III), *and id.* § 5315 (NLRB Members, MSPB Members, NMB Members, and EEOC Members paid at EX IV), *with id.* (FLRA Chairman paid at EX IV), *and id.* § 5316 (FLRA Members paid at EX V).



sick leave provisions applicable to SES and GS employees. [\*Id.\* § 6301\(2\)\(x\)](#); [5 C.F.R. § 630.211\(a\)\(3\)](#). They are required to file new entrant, incumbent, or termination financial disclosure reports using Office of Government Ethics (OGE) Form 278e, as well as OGE Form 278-T periodic transaction reports, as appropriate, in accordance with [FLRA General and Administrative Policy Instruction 6410.4](#), *Procedures for Filing Financial Disclosure Reports*. See [5 C.F.R. § 2634.202](#). The Solicitor's Office provides specific guidance on the Chairman's and the Authority Members' financial disclosure obligations.

After confirmation by the Senate, a Member must be sworn in before he or she can be officially hired or paid by the Agency. [5 U.S.C. § 3331](#). A Member may be sworn in by a Judge (including an FLRA ALJ), a Notary Public, the Vice President, or the head of an agency. The Agency must document the swearing in by completing an Appointment Affidavit (Standard Form (SF)-61).

The President may remove a Member only upon notice and hearing, and only for inefficiency, neglect of duty, or malfeasance. [\*Id.\* § 7104\(b\)](#).

### **C. Authority Vacancies**

A full complement of Authority Members is three; a quorum of Authority Members is two. The Statute provides that, if there is a vacancy in the Authority, then the vacancy shall not impair the right of the remaining Members to exercise all the powers of the Authority. [\*Id.\* § 7104\(d\)](#). Consequently, the Authority can still issue decisions when it has only two Members because a quorum still exists. See U.S. Gov't Accountability Off., [GGD-86-29](#), *Federal Civilian Personnel: Effects of Unconfirmed Members at the Federal Labor Relations Authority*, at 3 (1985). Additionally, the Authority can carry on regular business if the Chairman position is vacant. See [5 U.S.C. § 7104\(d\)](#).

A single Authority Member cannot act on behalf of the Authority. See Memorandum from William E. Persina, Acting Solicitor, FLRA, to Jean McKee, Member, FLRA, at 6 (Nov. 3, 1988) (on file with the Solicitor's Office). So, if the Authority were to have only one Member, then that Member would be unable to issue final decisions in arbitration, negotiation, representation, and unfair-labor-practice cases. *Id.*

The Authority clarified in 2015 that when a representation appeal is filed with the Authority while it lacks a quorum, the 60-day statutory time period for Authority review of the case before the Regional Director's action becomes the Authority's action by operation of law –

under [5 U.S.C. § 7105\(f\)](#)<sup>8</sup> – will be tolled until the Authority regains a quorum. *See FDIC*, [68 FLRA 260](#), 262 (2015); *see also U.S. Dep’t of the Air Force, Fairchild Air Force Base*, [68 FLRA 268](#), 268 (2015); *USDA, U.S. Forest Serv.*, [68 FLRA 267](#), 267 (2015); *U.S. DOD, Pentagon Force Prot. Agency*, [68 FLRA 266](#), 266 (2015); Memorandum from Fred B. Jacob, Solicitor, FLRA, to the Authority (Jan. 12, 2015) (on file with the Solicitor’s Office). This situation occurred from January 3, 2013, to November 12, 2013, when the Authority lacked a quorum for ten months. During that time period, parties filed four representation appeals with the Authority in the four cases cited above. Upon regaining its quorum on November 12, 2013, the Authority had 60 days from November 12, 2013 – or until January 11, 2014 – to review the Regional Directors’ decisions and orders. Because it did not, the Authority ruled that the Regional Directors’ decisions and orders had each become the decisions and orders of the Authority – by operation of law – on January 11, 2014. *See id.*

The Authority’s lack of a quorum generally does not affect the operations of the OGC, the FSIP, or the Office of Administrative Law Judges (OALJ).

#### **D. Recess Appointments**

The President can temporarily fill an Authority Member position under the Constitution by recess appointment.<sup>9</sup> A recess appointee has the same legal power as a PAS Member. U.S. Const. art. II, § 2. But the recess appointee serves only until the end of the following session of Congress. *Id.* Past FLRA Members – including Carol Waller Pope and Wayne Cartwright Beyer – have received recess appointments.

The President can use a recess appointment to fill a Member position while a different nominee to the same position is going through the Senate confirmation process. *See Henry B. Hogue, Cong. Research Serv., Recess Appointments: Frequently Asked Questions*, [CRS RS21308](#) at 5 (2015). That is, the President does not have to nominate the individual who is serving as a recess appointee for the vacant Member position. *Id.* The U.S. Supreme Court has held that the President’s recess appointment power applies both to vacancies that first come into existence during a recess and to vacancies that initially occur before a recess but continue to exist

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<sup>8</sup> 5 U.S.C. § 7105(f) provides:

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of –

- (1) the date of the action; or
- (2) the date of the filing of any application under this subsection for review of the action; the action shall become the action of the Authority at the end of such 60-day period.

<sup>9</sup> Starting with the 110th Congress, it has become common for the Senate and the House to use scheduling practices as a means of precluding the President from making recess appointments. Under the Adjournments Clause of the U.S. Constitution, neither chamber of Congress can adjourn for more than three days without consent from the other. *See Henry B. Hogue, Cong. Research Serv., Recess Appointments: Frequently Asked Questions*, [CRS RS21308](#) at 5 (2015). Congress has been using *pro forma* sessions – short meetings that are non-legislative in nature – to satisfy the Adjournments Clause and to avoid a recess of more than a couple of days.

during the recess. *Nat'l Labor Relations Bd. v. Noel Canning*, [134 S. Ct. 2550](#), 2565 (2014). But the President must appoint an individual during the congressional recess, and the break in business must generally be for at least ten days. *Id.* at 2577.

#### **E. Current Fixed Terms<sup>10</sup>**

**07/01/14 - 07/01/19** (Member Ernest DuBester confirmed)

**07/01/15 - 07/01/20** (Member James T. Abbott confirmed)

**07/29/17 - 07/29/22** (Chairman Colleen Duffy Kiko confirmed)

#### **F. Current Members of the Authority**

**Chairman Colleen Duffy Kiko** (confirmed to 07/29/17 - 07/29/22 term)

**Member Ernest DuBester** (confirmed to 07/01/14 - 07/01/19 term)

**Member James T. Abbott** (confirmed to 07/01/15 - 07/01/20 term)

#### **G. FLRA Chairmen (Chairs) Since Foundation**

Ronald W. Haughton, 1979 - 1983

Barbara J. Mahone, 1983 - 1984

Henry B. Frazier III, 1984 - 1985 (Acting)

Jerry L. Calhoun, 1985 - 1988

Jean McKee, 1989 - 1994

Phyllis N. Segal, 1994 - 2000

Donald S. Wasserman, 2000 - 2001

Dale Cabaniss, 2001 - 2008<sup>11</sup>

Thomas M. Beck, 2008 - 2009<sup>12</sup>

Carol Waller Pope, 2009 - 2013<sup>13</sup>; 2013 - 2017<sup>14</sup>

Ernest DuBester, 2013<sup>15</sup>; 2017<sup>16</sup>

Patrick Pizzella, 2017<sup>17</sup> (Acting)

**Colleen Duffy Kiko**, 2017 - Present<sup>18</sup>

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<sup>10</sup> As noted above, the Members' fixed terms continue to run regardless of whether there is an incumbent or whether an incumbent has been confirmed to the new term. This section sets forth the current fixed terms – not necessarily the terms to which the current incumbents are confirmed. The terms to which the current incumbents are confirmed appear in Section I.F.

<sup>11</sup> Designated Chairman March 8, 2001. Resigned effective July 14, 2008.

<sup>12</sup> Designated Chairman October 16, 2008. Resigned effective August 3, 2012.

<sup>13</sup> Designated Acting Chairman February 19, 2009. Designated Chairman March 26, 2009. Holdover service ended January 3, 2013.

<sup>14</sup> Sworn in November 12, 2013, and designated Chairman. Holdover service ended January 3, 2017.

<sup>15</sup> Designated Chairman January 15, 2013. Served as Chairman until November 12, 2013.

<sup>16</sup> Designated Chairman January 5, 2017. Served as Chairman until January 23, 2017.

<sup>17</sup> Designated Acting Chairman January 23, 2017. Resigned effective December 8, 2017.

<sup>18</sup> Sworn in December 11, 2017, and designated Chairman.

## **H. FLRA Members Since Foundation**

Henry B. Frazier III, 1979 - 1987  
Ronald W. Haughton, 1979 - 1984  
Leon B. Applewhaite, 1979 - 1983  
Barbara J. Mahone, 1983 - 1984  
William J. McGinnis, Jr., 1984 - 1985 (Recess Appointment)  
Jerry L. Calhoun, 1985 - 1988  
Jean McKee, 1986 - 1994  
Pamela Talkin, 1989 - 1995  
Othniel “Tony” Armendariz, 1989 - 1997; 2001 - 2006  
Phyllis N. Segal, 1994 - 2000  
Donald S. Wasserman, 1996 - 2001  
Dale Cabaniss, 1997 - 2008  
Carol Waller Pope, 2000 - 2006; 2007 - 2013; 2013 - 2017  
Wayne Cartwright Beyer, 2006 - 2007 (Recess Appointment)  
Thomas M. Beck, 2008 - 2012  
**Ernest DuBester**, 2009 - Present  
Patrick Pizzella, 2013 - 2017  
**Colleen Duffy Kiko**, 2017 - Present  
**James T. Abbott**, 2017 - Present<sup>19</sup>

## **III. The Office of the General Counsel**

### **A. Role of the OGC**

The OGC promotes effective labor-management relations in the federal sector by: investigating alleged unfair labor practices and prosecuting them when warranted; conducting secret-ballot union elections, and otherwise determining representation matters; and issuing guidance and providing training to federal managers and unions.

The OGC is composed of a small headquarters office in Washington, D.C., and five Regional Offices in Atlanta, Chicago, Denver, San Francisco, and Washington D.C.<sup>20</sup> [5 U.S.C. § 7104\(f\)\(3\).](#)

### **B. OGC Leadership: General Counsel and Deputy General Counsel**

The OGC is led by a PAS General Counsel and a Deputy General Counsel who is a career member of the Senior Executive Service (SES). [Id. § 7104\(f\)\(1\).](#) The General Counsel has direct authority over, and responsibility for, employees in the OGC headquarters office and the Regional Offices. [Id. § 7104\(f\)\(3\).](#) The General Counsel serves at the pleasure of the President. Whereas the President may remove the Authority Members only for cause, as noted

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<sup>19</sup> Sworn in December 11, 2017.

<sup>20</sup> Previous office locations included New York City, Philadelphia, Kansas City, Diamond Bar, Los Angeles, Boston, and Dallas.

above in Section II.B., the President may remove the General Counsel for any reason, at any time. [Id. § 7104\(f\)\(1\)](#).

The General Counsel serves a term of five years, which does not have a holdover period. *Id.*

After Senate confirmation, the General Counsel must be sworn in before he or she can be officially hired or paid by the Agency. [Id. § 3331](#). He or she can be sworn in by a Judge (including an FLRA ALJ), a Notary Public, the Vice President, or the head of an agency. The Agency must document the swearing in by completing an Appointment Affidavit (SF-61).

The General Counsel is paid at the annual basic pay rate of EX V, subject to any applicable [Continued Pay Freeze for Senior Political Officials](#). [Id. § 5316](#). The General Counsel is a full-time employee who is excluded from the annual and sick leave provisions applicable to SES and GS employees. [5 U.S.C. § 6301\(2\)\(x\)](#); [5 C.F.R. § 630.211\(a\)\(3\)](#).

Both the General Counsel and the Deputy General Counsel are required to file new entrant, incumbent, or termination financial disclosure reports using OGE Form 278e, as well as OGE Form 278-T periodic transaction reports, as appropriate, in accordance with [FLRA General and Administrative Policy Instruction 6410.4](#), *Procedures for Filing Financial Disclosure Reports*. See [5 C.F.R. § 2634.202](#). The Solicitor's Office provides specific guidance on the General Counsel and the Deputy General Counsel's financial-disclosure obligations.

### **C. General Counsel Vacancy**

Issuance of an unfair-labor-practice complaint is a power reserved exclusively to the General Counsel's discretion. 5 U.S.C. §§ [7104\(f\)\(2\)\(B\)](#), [7118\(a\)\(1\)](#). Thus, if there is no General Counsel or Acting General Counsel, then the OGC cannot issue unfair-labor-practice complaints. See Memorandum from Noah Peters, FLRA Solicitor and Rebecca Osborne, FLRA Deputy Solicitor, to Charlotte Dye, Deputy General Counsel (Nov. 26, 2019) (on file with the Solicitor's Office). But the OGC may continue to investigate unfair-labor-practice charges and issue dismissals.

The General Counsel is the only Senate-confirmed position at the FLRA subject to the Federal Vacancies Reform Act, [5 U.S.C. § 3345-3349d](#) (Vacancies Act). Under § 3345(a)(1) of the Vacancies Act, the career Deputy General Counsel – as “first assistant” to the General Counsel – automatically becomes the Acting General Counsel in the event of a vacancy in the General Counsel position, subject to time limits elsewhere in the Vacancies Act. Alternatively, the President may bypass the first assistant and direct another individual who meets the requirements of [5 U.S.C. § 3345\(a\)\(2\)-\(3\)](#) to temporarily serve as the Acting General Counsel. Thus, if there is no Deputy General Counsel or simply at the President's discretion, the President may appoint as Acting General Counsel either: (1) someone currently serving in a PAS position; or (2) an employee of the agency who has served in his or her position for at least ninety days within the last year and is at the pay level of General Schedule (GS) 15 or above. [Id. § 3345\(a\)\(2\)-\(3\)](#).

Generally, under the Vacancies Act, the person serving as an acting officer may serve in the office for no longer than 210 days beginning on the date that the vacancy occurs *or*, once a nomination is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate. [Id. § 3346\(a\)](#). Moreover, during a presidential transition, if the vacancy exists within 60 days of the “transitional inauguration day” – the date on which the new President takes the oath of office – the 210-day period shall begin on the latter of 90 days after that date or 90 days after the vacancy occurs. [Id. § 3349a](#). This means that, absent a nomination, an Acting General Counsel can serve up to 300 days.

For example, Deputy General Counsel Peter A. Sutton became Acting General Counsel effective January 20, 2017, during a presidential transition, following the resignation of General Counsel Julia Akins Clark. Consistent with the time limitations in §§ 3346 and 3349a of the Vacancies Act, because the President did not submit a nomination for the General Counsel position to the Senate by November 16, 2017, Sutton’s service as Acting General Counsel ended on that date. *Id.* §§ [3346\(a\)\(1\)](#), [3349a](#). But, if the President had submitted a nomination for the General Counsel position to the Senate by November 16, 2017, then Sutton could have continued to serve as Acting General Counsel “for the period that the nomination is pending in the Senate.” [Id. § 3346\(a\)\(2\)](#).

The Agency head – through the Solicitor – must inform the Comptroller General and each House of Congress when a vacancy to which the Vacancies Act applies occurs in the Agency. [Id. § 3349\(a\)](#). The U.S. Government Accountability Office (GAO) will generally issue letters to the Agency informing it of the expiration of permissible periods of acting service. *See, e.g.*, Letter from Susan A. Poling, General Counsel, GAO, to Patrick Pizzella, Acting [Chairman], FLRA (Oct. 30, 2017) (on file with the Solicitor’s Office). After the permissible period of acting service has expired, the position must remain vacant, and any non-delegable function or duty of that position can be performed only by the Agency head. [Id. § 3348\(b\)](#). The Comptroller General must report to Congress, the President, and the Office of Personnel Management any determination that an acting official has served longer than the period allowed by the Vacancies Act. [Id. § 3349\(b\)](#).

#### **D. Recess Appointments**

The President can temporarily fill the General Counsel position under the Constitution by recess appointment.<sup>21</sup> A recess appointee has the same legal power as a Senate-confirmed General Counsel. U.S. Const. art. II, § 2. But the recess appointee serves only until the end of the following session of Congress. *Id.* At least one past General Counsel – Peter Eide – received a recess appointment. For additional information, see Section II.D.

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<sup>21</sup> As noted above, n.9, starting with the 110th Congress, it has become common for the Senate and the House to use scheduling practices as a means of precluding the President from making recess appointments. Under the Adjournments Clause of the U.S. Constitution, neither chamber of Congress can adjourn for more than three days without consent from the other. *See* Henry B. Hogue, Cong. Research Serv., *Recess Appointments: Frequently Asked Questions*, [CRS RS21308](#) at 5 (2015). Congress has been using *pro forma* sessions – short meetings that are non-legislative in nature – to satisfy the Adjournments Clause and to avoid a recess of more than a couple of days.

**E. Current General Counsel**

Vacant

**F. Current Deputy General Counsel**

**Charlotte A. Dye**, 2019 - Present

**G. General Counsels Since Foundation**

H. Stephen Gordon, 1979 - 1982  
S. Jesse Reuben, 1982 - 1983 (Acting)  
John C. Miller, 1983 - 1987  
Dennis M. Devaney, 1987 - 1988  
Kathleen Day Koch, 1988 - 1992  
Alan R. Swendiman, 1992 - 1993  
Joseph Swerdzewski, 1993 - 2001  
David Feder, 2001 - 2003 (Acting)  
Peter Eide, 2003 - 2004 (Recess Appointment)  
Colleen Duffy Kiko, 2005 - 2008<sup>22</sup>  
Julia Akins Clark, 2009 - 2017<sup>23</sup>  
Peter A. Sutton, 2017 (Acting)<sup>24</sup>

**IV. The FSIP**

**A. Role of the FSIP**

The FSIP is an entity within the FLRA. It resolves impasses between federal agencies and unions representing federal employees that arise from negotiations over conditions of employment under the Statute and the Federal Employees Flexible and Compressed Work Schedules Act, [5 U.S.C. §§ 6120-6133](#).

The FSIP is composed of a Chairman and at least six other Members who are appointed by the President. [Id. § 7119\(c\)\(2\)](#). Unlike the Authority Members and the General Counsel, the FSIP Members are not subject to Senate confirmation. FSIP currently has 10 members.<sup>25</sup>

**B. FSIP Leadership: FSIP Chairman and Members**

The President appoints the FSIP Members on the basis of their fitness to perform the duties and functions of the office, from among individuals who are familiar with Government operations and knowledgeable about labor-management relations. *Id.* The FSIP appoints a

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<sup>22</sup> Resigned effective March 1, 2008.

<sup>23</sup> Resigned effective January 20, 2017.

<sup>24</sup> Appointed as career Deputy General Counsel on March 18, 2013. Automatically became Acting General Counsel under the Vacancies Act on January 20, 2017; acting service expired November 16, 2017 (300 days). Retired as Deputy General Counsel on January 3, 2018.

<sup>25</sup> See The Federal Service Impasses Panel Biographies, [https://www.flra.gov/fsip\\_panel\\_bios](https://www.flra.gov/fsip_panel_bios)



career SES Executive Director and any other individuals whom it deems necessary for the proper performance of its duties. [Id. § 7119\(c\)\(4\)](#).

FSIP Members serve on a part-time basis for a fixed term of five years. [Id. § 7119\(c\)\(3\)](#). The FSIP Chairman and the Members are Special Government Employees (SGEs). [18 U.S.C. § 202\(a\)](#). SGEs are employees who are appointed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. *Id.* The FLRA generally considers the aggregate duties performed by all FSIP Members to constitute one full-time equivalent (FTE).

The FSIP Members' terms are staggered. This is consistent with the initial FSIP appointments under the Statute: two Members were appointed for one-year terms, two Members were appointed for three-year terms, and the Chairman and the remaining Members were appointed to five-year terms. [5 U.S.C. § 7119\(c\)\(3\)](#). The Statute further provides that all subsequent FSIP Members will be appointed for five-year terms, resulting in staggered terms. *Id.* A Member who is chosen to fill a vacancy is appointed for the unexpired remainder of the outgoing Member's term. *Id.*

The FSIP Members must be sworn in before they can be officially hired or paid by the Agency. [Id. § 3331](#). A FSIP Member may be sworn in by a Judge (including an FLRA ALJ), a Notary Public, the Vice President, or the head of an agency. The Agency must document the swearing in by completing an Appointment Affidavit (SF-61).

In accordance with [FLRA General and Administrative Policy Instruction 6410.4, Procedures for Filing Financial Disclosure Reports](#), FSIP Members who spend 60 or fewer days in a calendar year performing official duties are required to complete an OGE Form 450 financial disclosure report and provide it to the Solicitor's Office. *See also* [5 C.F.R. § 2634.903\(b\)](#). FSIP Members who spend more than 60 days in a calendar year performing official duties are required to file a new entrant OGE Form 278e financial disclosure report, as well as OGE Form 278-T periodic transaction reports, as appropriate. *See id. § 2634.202*. The Solicitor's Office provides specific guidance on FSIP Members' financial disclosure obligations.

FSIP Members are paid an hourly rate at the daily rate equivalent of EX IV. [5 U.S.C. § 7119\(c\)\(4\)](#); *see* Memorandum from William R. Tobey, Acting Solicitor, FLRA, to Carol Waller Pope, FLRA Chairman, at 2 (Jan. 10, 2014) (on file with the Solicitor's Office); *see also* Letter from Robert L. Higgins, Associate General Counsel, GAO, to David M. Smith, Solicitor, FLRA, B-258394 (May 3, 1995) (on file with the Solicitor's Office) (citing *General Accounting Office Personnel Appeals Board – Compensation of Members*, B-258548 (Oct. 14, 1994)) (determining that the FLRA has discretion to pay FSIP Members on an hourly basis). A FSIP Member is paid for each day that he or she engages in the performance of official business for the FSIP, including travel time and expenses. [5 U.S.C. § 7119\(c\)\(4\)](#).

On March 29, 2013, the Inspector General of the FLRA was informed that there was a potential issue with FSIP-Member pay, because the Members were being paid at the EX III rate, which was higher than the rate that the Statute permits. The Solicitor's Office determined that the FSIP Members should be paid at the EX IV rate, because, under the Statute, FSIP Members' pay may not exceed the daily rate equivalent of the maximum basic pay under the current GS,



which is GS-15, Step 10. *See* Memorandum from William R. Tobey, Acting Solicitor, FLRA, to Carol Waller Pope, Chairman, FLRA, at 2 (Jan. 10, 2014) (on file with the Solicitor's Office); [5 U.S.C. § 5376](#).

All FSIP Members serve at the pleasure of the President, which means that the President may remove a FSIP Member at any time. *Id.* [§ 7119\(c\)\(3\)](#). By a memo dated November 12, 2019, the President concurrently delegated his power to remove FSIP Members to the FLRA. *See* Memorandum of November 12, 2019, 84 Fed. Reg. 63,789 (Nov. 18, 2019).

### **C. FSIP Vacancies**

The FSIP can continue regular business as long as a quorum of Members exists. [5 C.F.R. § 2470.2\(f\)](#). A majority of FSIP Members – four or more – constitutes a quorum. *Id.* [§ 2470.2\(h\)](#).

### **D. Current FSIP Members<sup>i</sup>**

**Mark A. Carter**, 2017 - Present (serving 1/11/17 - 1/10/22 term)

**Andrea Fischer Newman**, 2017 - Present (serving 1/11/17 - 1/10/22 term)

**David R. Osborne**, 2017 - Present (1/11/15 - 1/10/20 term) (new term of 5 years through 1/10/25)

**Karen Czarnecki**, 2017 - Present (1/11/15 - 1/10/20 term) (new term of 5 years through 1/10/25)

**Jonathan Riches**, 2017 - Present (serving 1/11/19 - 1/10/24 term) (sworn in May 8, 2019)

**F. Vincent Vernuccio**, 2017 - Present (serving 1/11/19- 1/10/24 term) (sworn in May 8, 2019)

**Robert Gilson**, 2019 – Present (serving 10/3/19 - 10/2/24 term)

**Maxford Nelsen**, 2019 – Present (serving 10/3/19 -10/2/24 term)

**Patrick James Wright** – 2019 - Present (appointed 12/5/19 serving 1/11/19 - 1/10/24 term)

**Michael Lucci** – 2020 - Present (appointed 1/23/20 – 1/23/25 new term of 5 years) (sworn in February 14, 2020)

### **E. FSIP Chairmen (Chairs) Since Foundation**

Jacob Seidenberg, 1970 - 1975

Robert G. Howlett, 1976 - 1978; 1982 - 1983

Howard Gamser, 1979 - 1981

Roy M. Brewer, 1984 - 1991

Edwin D. Brubeck, 1991 - 1994

Betty A. Bolden, 1994 - 2000

Bonnie P. Castrey, 2000 - 2002

Becky Norton Dunlop, 2002 - 2009

Mary E. Jacksteit, 2009 - 2017

**Mark A. Carter**, 2017 - Present

### **F. FSIP Members Since Foundation**

John J. McGovern, 1970 - 1972

Jacob Seidenberg, 1970 - 1975

James Vadakin, 1970 - 1978  
 Lloyd Bailer, 1970 - 1978  
 Richard Epstein, 1970 - 1978  
 Arthur Stark, 1970 - 1982  
 Jean McKelvey, 1970 - 1990  
 Albert McDermott, 1972 - 1978  
 Robert G. Howlett, 1976 - 1978; 1982 - 1983  
 Irving Bernstein, 1978 - 1980  
 James E. Jones, 1978 - 1982  
 Charles J. Morris, 1978 - 1983  
 Beverley Schaffer, 1978 - 1983  
 Howard Gamser, 1979 - 1981  
 Donald F. Rodgers, 1982 - 1983  
 N. Victor Goodman, 1982 - 1994  
 Daniel H. Kruger, 1982 - 1984  
 Robert G. Howlett, 1983 - 1990  
 Thomas Farr, 1983 - 1990  
 Susan Robfogel, 1983 - 1994  
 Roy M. Brewer, 1983 - 1994  
 John R. Van De Water, 1988 - 1994  
 Edwin D. Brubeck, 1990 - 1994  
 Charles A. Kothe, 1990 - 1994  
 Dolly M. Gee, 1994 - 1999  
 Betty A. Bolden, 1994 - 2000  
 Edward F. Hartfield, 1994 - 2002; 2009 - 2017  
 Stanley M. Fisher, 1994 - 2002  
 Gilbert Carrillo, 1995 - 1999  
 Bonnie P. Castrey, 1995 - 2000  
 Mary E. Jacksteit, 1995 - 2002; 2009 - 2017  
 Marvin E. Johnson, 1999 - 2002; 2009 - 2012; 2015 - 2017  
 David J. Leland, 2000 - 2002  
 John G. Wofford, 2000 - 2002  
 John G. Cruz, 2002 - 2008  
 Becky Norton Dunlop, 2002 - 2009  
 Grace Flores-Hughes, 2002 - 2009  
**Andrea Fisher Newman, 2002 - 2009; 2017 - Present**  
 Joseph C. Whitaker, 2002 - 2009  
 Richard B. Ainsworth, 2002 - 2009  
**Mark A. Carter, 2002 - 2009; 2017 - Present**  
 Barbara Bruin, 2008 - 2009  
 Thomas E. Angelo, 2009 - 2015  
 Martin H. Malin, 2009 - 2017  
 Barbara B. Franklin, 2009 - 2017  
 Donald S. Wasserman, 2009 - 2017  
 David E. Walker, 2015 - 2017  
**David R. Osborne, 2017 - Present**

**Karen Czarnecki, 2017 - Present**

Donald Todd, 2017 - 2019

**Jonathan Riches, 2017 - Present**

**F. Vincent Vernuccio, 2017 - Present**

**Robert Gilson, 2019 – Present**

**Maxford Nelsen, 2019 – Present**

**Patrick James Wright, 2019 – Present**

**Michael Lucci, 2020 -- Present**

## **V. The Foreign Service Act Entities**

The [Foreign Service Act of 1980](#), 22 U.S.C. §§ 3901-4226 (FSA), established the [Foreign Service Labor Relations Board](#) (FSLRB) and the [Foreign Service Impasse Disputes Panel](#) (FSIDP). The FLRA provides program and staff support to the FSLRB and to the FSIDP.

### **A. FSLRB**

#### **1. Role of the FSLRB**

The FSLRB administers the labor-management relations program for Foreign Service employees working for the U.S. Department of State (State), the U.S. Agency for Global Media (Global Media) (formerly the Broadcasting Board of Governors (BBG)), the U.S. Agency for International Development (USAID), the U.S. Department of Agriculture (USDA), and the U.S. Department of Commerce (Commerce). [Id. § 4103\(a\)](#).

The FLRA Chairman serves as the Chairperson of the FSLRB. [Id. §§ 4102\(1\), 4106\(a\)](#). The FLRA General Counsel serves as the General Counsel for the FSLRB. [Id. §§ 4102\(10\), 4108](#).

#### **2. FSLRB Leadership: FSLRB Chairperson and Members**

The FSLRB is composed of three Members: the FLRA Chairman, who serves as the Chairperson of the FSLRB, and two Members whom the Chairperson appoints. [Id. § 4106\(a\)](#).

The FSA provides that the Chairperson will select the other two FSLRB Members from nominees approved in writing by State, Global Media, USAID, USDA, and Commerce; and the exclusive representative of employees in those agencies – the American Foreign Service Association (AFSA). *Id.* However, the Chairperson is not required to appoint a nominee whom he or she considers unsuitable. *Id.*; *see also* Letter from General Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, to Jan K. Bohren, Executive Director, FLRA (Jan. 10, 1985) (on file with the Counsel for Regulatory and Public Affairs). In the absence of agreement on a nominee, the Chairperson may appoint Members from among individuals whom the Chairperson considers to be knowledgeable in labor-management relations and the conduct of foreign affairs. *Id.*

The Chairperson serves concurrently as Chairman of the Authority. [Id. § 4106\(b\)](#). The Chairperson may at any time designate an alternate Chairperson from among the Members of the

Authority. *Id.* The other two FSLRB Members are appointed for a term of three years. *Id.*<sup>26</sup> They generally serve the same three-year term, except an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the Member replaced. *Id.*

Other than the Chairperson, Members of the FSLRB may not hold another office or position in the Government except as authorized by law. [\*Id.\* § 4106\(d\)](#).

The FSLRB Members must be sworn in before they can be officially hired or paid by the Agency. [5 U.S.C. § 3331](#). An FSLRB Member may be sworn in by a Judge (including an FLRA ALJ), a Notary Public, the Vice President, or the head of an agency. The Agency must document the swearing-in by completing an Appointment Affidavit (SF-61).

In accordance with [FLRA General and Administrative Policy Instruction 6410.4, Procedures for Filing Financial Disclosure Reports](#), FSLRB Members who spend 60 or fewer days in a calendar year performing official duties are required to complete an OGE Form 450 financial disclosure report and provide it to the Solicitor's Office. *See also* [5 C.F.R. § 2634.903\(b\)](#). FSLRB Members who spend more than 60 days in a calendar year performing official duties are required to file a new entrant OGE Form 278e financial disclosure report, as well as OGE Form 278-T periodic transaction reports, as appropriate. *See id.* [§ 2634.202](#). FSLRB Members submit OGE Form 278e and OGE Form 278-T online at <http://integrity.gov>. The Solicitor's Office provides specific guidance on FSLRB Members' financial disclosure obligations.

An FSLRB Member is paid at the daily equivalent of EX V for each day that he or she engages in the performance of official business, including travel time. [22 U.S.C. § 4106\(b\)](#).

The Chairperson may remove an FSLRB Member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except when the right to a hearing is waived in writing. [\*Id.\* § 4106\(e\)](#).

### **3. FSLRB Vacancies**

If the FSLRB has a single vacancy, then it does not impair the right of the remaining Members to exercise the full powers of the Board. [\*Id.\* § 4106\(c\)](#).

### **4. Current FSLRB Members**

**Chairperson Colleen Duffy Kiko**, 2017 - Present

**Thomas Miller**, 2019 - Present (sworn in July 24, 2019 serving 10/7/18 - 10/6/21 term)

**Dennis K. Hays**, 2018 - Present (sworn in ??????????serving 10/7/18 - 10/6/21 term)

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<sup>26</sup> Initially, the FSLRB had a staggered board because one Member was appointed for a two-year term and the other was appointed for a three-year term. *Id.*

## **5. FSLRB Chairpersons Since Foundation**

Ronald W. Haughton, 1981 - 1983  
Barbara J. Mahone, 1983 - 1984  
Henry B. Frazier, III, 1984 - 1985 (Acting)  
Jerry L. Calhoun, 1985 - 1988  
Jean McKee, 1989 - 1994  
Phyllis N. Segal, 1994 - 1999  
Donald S. Wasserman, 2000 - 2001  
Dale Cabaniss, 2001 - 2008  
Thomas M. Beck, 2008 - 2009  
Carol Waller Pope, 2009 - 2013; 2013 - 2017  
Ernest DuBester, 2013; 2017  
Patrick Pizzella, 2017 (Acting)  
**Colleen Duffy Kiko**, 2017 - Present

## **6. FSLRB Members Since Foundation**

Ronald W. Haughton, 1981 - 1983  
Arnold M. Zack, 1981 - 1984  
Arnold Ordman, 1981 - 1986  
Barbara J. Mahone, 1983 - 1984  
Henry B. Frazier, III, 1984 - 1985 (Acting)  
Jerry L. Calhoun, 1985 - 1988  
Marcia L. Greenbaum, 1986 - 1992  
Tia Schneider Denenberg, 1986 - 2002  
Jean McKee, 1989 - 1994  
Ira L. Jaffe, 1992 - 1995  
Phyllis N. Segal, 1994 - 1999  
Richard I. Bloch, 1998 - 2009  
Donald S. Wasserman, 2000 - 2001  
Dale Cabaniss, 2001 - 2008  
Thomas M. Beck, 2008 - 2009  
Carol Waller Pope, 2009 - 2013; 2013 - 2017  
Earl W. Hockenberry, Jr., 2009 - 2015  
Stephen R. Ledford, 2009 – 2018  
Ernest DuBester, 2013; 2017  
Herman J. Cohen, 2015 – 2018  
Patrick Pizzella, 2017  
**Colleen Duffy Kiko**, 2017 – Present  
Madelyn E. Spirnak, 2018 – 2019 (resigned May 15, 2019, during her term, 10/7/18 - 10/6/21 term)  
Dennis K. Hays, 2018 – Present  
Thomas Miller, 2019 - Present

## **B. FSIDP**

## **1. Role of the FSIDP**

The FSIDP assists in resolving impasses arising in the course of collective bargaining over conditions of employment affecting Foreign Service employees working for the U.S. Department of State, the U.S. Agency for Global Media (formerly the Broadcasting Board of Governors (BBG)), the U.S. Agency for International Development (USAID), the U.S. Department of Agriculture (USDA), and the U.S. Department of Commerce.

## **2. FSIDP Leadership: FSIDP Chairperson and Members**

The FSLRB Chairperson appoints the five FSIDP Members. [22 U.S.C. § 4110\(a\)](#). The FSIDP's membership is made up of: (1) two Members of the Foreign Service (who are not management officials, confidential employees, or labor organization officials); (2) one Member of the FSIP; (3) one Member who is employed by the U.S. Department of Labor (DOL); and (4) one public Member who does not hold any other office or position in the Government. *Id.* The FLRA coordinates with the U.S. Department of State and DOL regarding nominations for Member positions reserved for the Foreign Service and DOL. The Executive Director of the FSIP used to be the FLRA's coordinator for these nominations, *see* Memorandum from David M. Smith, Solicitor, FLRA to Dale Cabaniss, Chairman, FLRA, *Composition of the Foreign Service Impasse Disputes Panel*, at 2 (2007) (on file with the Solicitor's Office), but since approximately 2009, the FLRA's Counsel for Regulatory and Public Affairs has coordinated those efforts.

The FSLRB Chairperson sets the length of the FSIDP Members' terms and determines who chairs the FSIDP. [22 U.S.C. § 4110\(a\)](#). FSIDP Members who are not the FSIP Member typically serve three-year terms that are the same, when possible.

The FSIDP Members must be sworn in before they can be officially hired or paid by the Agency. [5 U.S.C. § 3331](#). An FSIDP Member may be sworn in by a Judge (including an FLRA ALJ), a Notary Public, the Vice President, or the head of an agency. The Agency must document the swearing in by completing an Appointment Affidavit (SF-61).

In accordance with FLRA Policy 6411, *Procedures for Filing Financial Disclosure Reports*, FSIDP Members who spend 60 or fewer days in a calendar year performing official duties are required to complete an OGE Form 450 financial disclosure report and provide it to the Solicitor's Office. *See also* [5 C.F.R. § 2634.903\(b\)](#). FSIDP Members who spend more than 60 days in a calendar year performing official duties are required to file a new entrant OGE Form 278e financial disclosure report, as well as OGE Form 278-T periodic transaction reports, as appropriate. *See id.* [§ 2634.202](#). The Solicitor's Office provides specific guidance on FSIDP Members' financial disclosure obligations.

The FLRA provides compensation to only two Members of the FSIDP: the Member who serves on the FSIP and the public Member. [5 U.S.C. § 4110\(b\)](#). But the FSIP Member is not entitled to pay for any day for which he or she receives pay for FSIP service. *Id.* Both Members receive compensation for each day that they are performing their official duties, including travel time. FSIDP Members are paid at EX IV because their pay may not exceed the daily rate equivalent of the maximum basic pay under the current GS (GS-15, Step 10). *Id.*

Members of the FSIDP serve at the pleasure of the FSLRB Chairperson. *See* Memorandum from David M. Smith, Solicitor, FLRA to Dale Cabaniss, Chairman, FLRA, *Composition of the Foreign Service Impasse Disputes Panel*, at 2 (2002) (on file with the Solicitor's Office).

### **3. FSIDP Vacancies**

The FSIDP can continue regular business as long as a quorum exists. [22 C.F.R. § 1470.2\(g\)](#). The FSIDP has a quorum if it has three or more Members. [Id. § 1470.2\(i\)](#).

### **4. Current FSIDP Members**

**Mark A. Carter**, 2017 - Present (term expires January 10, 2022; FSIP Member)

**Vacant** (vice Andrew R. Arthur, 2017 – January 24, 2020 (7/28/17 - 7/28/20 term; Public Member)

**Shawn Hooper**, 2015 - Present (serving 5/10/18 - 5/10/21 term; DOL Member)

**Brent T. Christensen**, 2018 - Present (serving 5/10/18 - 5/10/21 term; Foreign Service Member)

**Jay R. Raman**, 2018 - Present (serving 5/10/18 - 5/10/21 term; Foreign Service Member)

Richard Terrell Miller, 2020 – Present (serving 2/12/20 – 2/12/23 term; Foreign Service Member)

### **5. FSIDP Chairpersons**

Margery Gootnick, 1982 - 1997

Thomas Colosi, 1997 - 2001

Peter Tredick, 2002 - 2006

Olden Lee, 2006 - 2008

Mary E. Jacksteit, 2010 - 2017

**Mark A. Carter**, 2017 - Present

### **6. FSIDP Members**

Margery Gootnick, 1982 - 1997

Robert G. Howlett, 1982 - 1988

Julius Balog, Jr., 1982 - 1992

Francis J. McNeil, 1982 - 1988

Rodney W. Johnson, 1982 - 1988

Anthony M. Kern, 1988 - 1991

Diane Blane, 1990 - 1992

Victor Goodman, 1990 - 1992

William G. Robinson, 1991 - 1995

Edwin D. Brubeck, 1992 - 1994

Eleanor Raven-Hamilton, 1992 – 1993

Ralph H. Ruedy, 1992- 1995

Robert S. Deutsch, 1993 - 1996

Betty A. Bolden, 1994 - 1999

John Douglas Marchant, 1995 - 1996  
 Dorothy Young, 1996 - 1999  
 George Lannon, 1996- 1998  
 Thomas Colosi, 1997 - 2001  
 David W. Geiss, 1997 - 2002  
 Allen L. Keiswetter, 1999 - 2002  
 Marvin E. Johnson, 2000 - 2002  
 Frank Coulter, 2000 - 2002  
 Kevin Brennan, 2002 - 2004  
 Peter Tredick, 2002 - 2006<sup>27</sup> (Public Member)  
 Becky Norton Dunlop, 2002 - 2009 (FSIP Member)  
 Jose A. Lira, 2004 - 2009 (DOL Member)  
 Holly Higgins, 2005 - 2009 (Foreign Service Member)  
 Judy Rolph Ebner, 2005 - 2006<sup>28</sup> (Foreign Service Member)  
 Olden Lee, 2006 - 2008 (Public Member)  
 Diane T. McFadgen, 2010 - 2015 (DOL Member)  
 Jonita Whitaker, 2010 - 2015 (Foreign Service Member)  
 Alexandria L. Panehal, 2010 - 2015 (Foreign Service Member)  
 Mary E. Jacksteit, 2010 - 2017 (FSIP Member)  
 Betty A. Bolden, 2010 - 2017 (Public Member)  
 May Baptista, 2015 - 2016<sup>29</sup> (Foreign Service Member)  
 John C. Sullivan, 2015 - 2018<sup>30</sup> (Foreign Service Member)  
**Shawn Hooper**, 2015 - Present<sup>31</sup> (DOL Member)  
 William C. Hansen, 2016 - 2018<sup>32</sup> (Foreign Service Member)  
**Mark A. Carter**, 2017 - Present<sup>33</sup> (FSIP Member)  
**Andrew R. Arthur**, 2017 - 2020<sup>34</sup> (Public Member)  
**Brent T. Christensen**, 2018 - Present<sup>35</sup> (Foreign Service Member)  
**Jay R. Raman**, 2018 - Present<sup>36</sup> (Foreign Service Member)

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<sup>i</sup> The current FSIP Members first appointed in 2017 were sworn in on June 27, 2017. Donald Todd, who served until January 10, 2019, was sworn in on August 3, 2017.

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<sup>27</sup> Resigned effective May 12, 2006.

<sup>28</sup> Resigned effective May 12, 2006.

<sup>29</sup> Resigned effective July 1, 2016, because she accepted a position within the U.S. Department of State that made her a “management official” or a “confidential employee,” and, therefore, ineligible to serve under [22 U.S.C. § 4110\(a\)](#).

<sup>30</sup> Resigned effective January 10, 2018, because he accepted a position within the U.S. Department of State that made him a “management official,” and, therefore, ineligible to serve under [22 U.S.C. § 4110\(a\)](#).

<sup>31</sup> Re-appointed and currently serving May 10, 2018, to May 10, 2021 term.

<sup>32</sup> Term expired March 7, 2018.

<sup>33</sup> Term expires January 10, 2022, consistent with the expiration of his FSIP term.

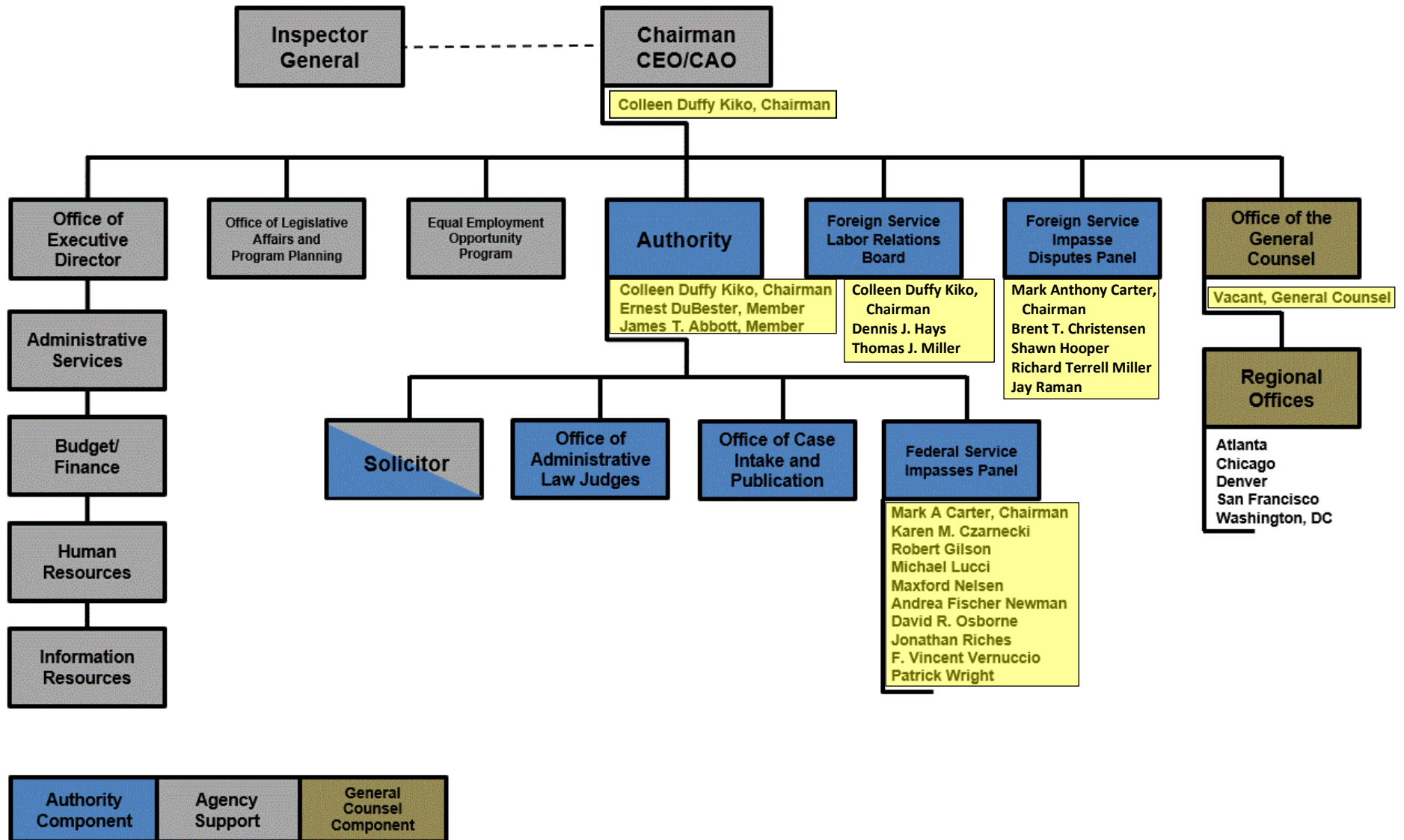
<sup>34</sup> Resigned effective January 24, 2020. He had been serving a July 28, 2017 to July 28, 2020 term.

<sup>35</sup> Currently serving May 10, 2018 to May 10, 2021 term.

<sup>36</sup> Currently serving May 10, 2018 to May 10, 2021 term.



# Federal Labor Relations Authority





## **PRESIDENTIAL TRANSITION TEAM** **2020**

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# TOP FLRA CONGRESSIONAL CONCERNS

1. Absence of a New General Counsel

The FLRA has been without a General Counsel (GC) (or acting General Counsel under the Vacancies Act) since November 17, 2017. As a result, a mountain of backlogged unfair labor practice (ULP) cases and appeals sits in the Office of the General Counsel (OGC).

2. Expiration of the Terms of Two Authority Members

At the end of the 117<sup>th</sup> Congress, the terms of two Authority Members will expire.

3. Securing a Budget and Appropriations to Meet the Needs of the Agency

The budget for FY 2021 is being considered by the House and Senate. The budget for FY 2022 has been submitted to OMB.

4. Tracking Legislation that Could Affect the FLRA

- a. Legislation has been introduced to ensure federal employees have input into how agencies respond to the coronavirus pandemic. The Federal Labor-Management COVID Partnership Act ([S. 4347](#)), introduced by Sen. Brian Schatz, D-Hawaii, would establish a task force of federal officials and representatives from unions and other federal employee groups to review agencies' policies related to the COVID-19 emergency and make recommendations. It also establishes a governmentwide directive for agencies to consult with federal employee unions when developing and implementing pandemic-related policies. Among the policies under the task force's purview would be telework, leave, cleaning, training and the availability of personal protective equipment. The bill also orders agencies to create their own labor-management councils to develop workforce policies during the pandemic, effectively temporarily reviving collaborative bodies last employed under the Obama administration. The main task force would be made up of the director of the Office of Personnel Management, the director of the National Institute for Occupational Safety and Health, the assistant Labor secretary for Occupational Safety and Health, the Office of Management and Budget's deputy director for management, the chairwoman of the Federal Labor Relations Authority, the director of the Federal Mediation and Conciliation Service, five representatives from federal employee unions and one representative from the Federal Managers Association.