Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV

Changes to Current Addresses and Geographic Jurisdictions

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This document amends regulations listing the current addresses and describing the geographic jurisdictions of the Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel. These changes reflect the closing of the Dallas Regional Office and changes to the geographical jurisdictions of the Atlanta, Chicago, and Denver Regional Directors.

DATES: Effective September 21, 2018.

FOR FURTHER INFORMATION CONTACT: William Tosick, Executive Director, Federal Labor Relations Authority, 1400 K St. NW, Washington, DC 20424, (202) 218–7791, *wtosick@flra.gov.*

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR chapter XIV (2018).

After an examination of budgets, caseloads, rental costs, operating costs, and staffing, the Authority is closing its Dallas Regional Office and reassigning its jurisdiction to the Denver and Atlanta Regional Directors, effective September 21, 2018. It is also reassigning jurisdiction for the state of South Dakota from the Denver Regional Director to the Chicago Regional Director. The Authority expects no adverse effect on the quality or efficiency of casehandling as a result of the Dallas Regional Office closure.

This amendment updates paragraphs (d) and (f) of Appendix A to 5 CFR chapter XIV to reflect the new organizational structure by removing the Dallas Regional Office from the list of current addresses, telephone numbers, and fax numbers of the Authority's Regional Offices and by revising the geographical jurisdictions of the Federal Labor Relations Authority. As this rule pertains to agency organization, procedure, or practice, it is exempt from prior notice and public comment pursuant to 5 U.S.C. 553(b)(A). For this same reason, pursuant to 5 U.S.C. 553(d)(3), the Authority finds that good cause exists for not providing a more delayed effective date. This type of action is also exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011), and 13771 (82 FR 9339, February 3, 2017).

For additional information regarding case handling procedures following the Dallas Regional Office closure, please go to *www.flra.gov.*

List of Subjects in 5 CFR Chapter XIV

Administrative practice and procedure.

Chapter XIV—Federal Labor Relations Authority

For the reasons set forth in the preamble and under the authority of 5 U.S.C. 7134, the authority amends 5 CFR chapter XIV as follows:

■ 1. Appendix A to 5 CFR chapter XIV is amended by removing paragraph (d)(5), redesignating paragraphs (d)(6) and (7) as (d)(5) and (6), and revising paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(f) The geographic jurisdictions of the Regional Directors of the Federal Labor Relations Authority are as follows:

State or other locality	Regional office
Alabama	Atlanta.
Alaska	San Francisco.
Arizona	Denver.
Arkansas	Atlanta.
California	San Francisco.
Colorado	Denver.
Connecticut	Boston.
Delaware	Boston.
District of Columbia	Washington, DC.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90 degrees East.	San Francisco.
Idaho	San Francisco.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Chicago.
Kansas	Denver.
Kentucky	Chicago.
Louisiana	Atlanta.
Maine	Boston.
Maryland	Washington, DC.
Massachusetts	Boston.

State or other locality	Regional office
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri	Chicago.
Montana	Denver.
Nebraska	Denver.
Nevada	San Francisco.
New Hampshire	Boston.
New Jersey	Boston.
New Mexico	Denver.
New York	Boston.
North Carolina	Atlanta.
North Dakota	Chicago.
Ohio	Chicago.
Oklahoma	Denver.
Oregon	San Francisco.
Pennsylvania	Boston.
Puerto Rico and coastal islands	Boston.
Rhode Island	Boston.
South Carolina	Atlanta.
South Dakota	Chicago.
Tennessee	Chicago.
Texas	Denver.
Utah	Denver.
Vermont	Boston.
Virginia	Washington, DC.
Washington	San Francisco.
West Virginia	Washington, DC.
Wisconsin	Chicago.
Wyoming	Denver.
Virgin Islands	Atlanta.
Panama/limited FLRA jurisdiction	Atlanta.
All land and water areas east of the continents of North and South America to long. 90 degrees East, except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Washington, DC.

Authority: 5 U.S.C. 7134.

Dated: September 10, 2018.

For the Federal Labor Relations Authority.

William Tosick,

Executive Director.

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix A—Opinions of the Authority's Majority and Dissent With Respect to the Closure of the Federal Labor Relations Authority's Boston and Dallas Regional Offices

I. Authority's Opinion

The Authority voted in January 2018 to close the Boston and Dallas Regional Offices. At that time, the Authority considered arguments echoing those of Member DuBester. We concluded, however, that consolidating the FLRA's Regional Office structure would husband the FLRA's budgetary and operational resources and best serve the labor-management relations community.

In the end, Member DuBester raises nothing new. We have reprinted Chairman Kiko's March 26, 2018 letter to the Senate Subcommittee on Financial Services and General Government, Committee on Appropriations (attachments omitted), explaining why we undertook this Regional Office consolidation. We have also included Chairman Kiko's May 21, 2018 response to the letter from a group of Senators that Member DuBester references, which reiterates the rationale for the consolidation and offers Chairman Kiko's additional personal reflections on the need for reform. In our opinion, these two letters thoroughly refute Member DuBester's dissent.

Colleen Duffy Kiko,

Chairman.

James T. Abbott,

Member.

BILLING CODE 6727–01–P

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424
(202) 218-7900
www.FLRA.gov

OFFICE OF THE CHAIRMAN

March 26, 2018

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate
SD-133 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chris Coons
Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate
SH-125 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Capito and Ranking Member Coons:

In accordance with Division E, Title VI, Section 608 of the Consolidated Appropriations Act, 2018, H.R. 1625, 115th Cong. (2018) (enacted), I respectfully advise you that the Federal Labor Relations Authority (FLRA) proposes to reorganize by consolidating the regional-office structure of its Office of the General Counsel (OGC) component.

Consistent with 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), the FLRA assembled a cross-component working group on March 27, 2017, to develop agency reform proposals and a long-term workforce plan focused on improving the agency's efficiency, effectiveness, and accountability. This provided the agency with a real opportunity to take a close look at its structure and operations, and to develop and implement solutions for streamlining and reducing costs across the FLRA – while continuing to carry out the agency's important mission. The agency sought internal and external stakeholder feedback for improving the efficiency and effectiveness of the FLRA in May 2017. Among the internal suggestions were recommendations to increase the use of electronic case files, reduce the agency's physical footprint, utilize hoteling, and reduce the regional-office structure from the current seven to only three or four regional offices.

As outlined in the FLRA's FY 2019 Congressional Budget Justification, the FLRA has already implemented a number of cost-saving measures, including reducing its travel and training budgets and increasing its use of technology (e.g., videoconferencing and electronic-case-file developments). But, like most small agencies, only a small portion of the FLRA's budget is discretionary – with approximately 80% devoted to

employee compensation and benefits, and another approximately 10% committed to rent costs. 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 regional-office structure were logical places to look for additional cost savings.

As noted in the President's budget, "[a]ll work throughout the agency is undertaken to support a single program" – to promote stable, constructive labor-management relations through the resolution and prevention of labor disputes in a manner that determines the respective rights of employees, agencies, and labor organizations in their relations with one another. The regional offices, on behalf of the FLRA General Counsel, investigate and resolve unfair-labor-practice (ULP) charges, prosecute ULP complaints, investigate and resolve representation cases, and conduct secret-ballot elections. There are currently seven regional offices in: Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Denver, Colorado; San Francisco, California; and Washington, D.C. (co-located with FLRA headquarters).

It has been over twenty years since the FLRA has reorganized its regional-office structure. After reviewing potential costs and efficiencies, the FLRA reorganized 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. The current proposal is to consolidate from 7 regional offices into 5, resulting in the closure of the FLRA's Boston and Dallas regional offices. This would directly affect 16 employees – 9 in Boston and 7 in Dallas. *All* affected employees will be offered reassignment within the agency to positions in another regional office or headquarters.

As an initial matter, it is important to note that technology has changed significantly since the agency opened its doors in 1979, providing the ability to easily transact business virtually through electronic means. As such, it is no longer as crucial or cost-effective as it was in 1979 for the FLRA to have regional offices and employees in as many geographic locations. In addition, consolidating the regional-office structure will not result in substantial increases in travel costs for the FLRA or its customers. Generally, the only time that a customer may be required to travel is to participate in a ULP hearing before an FLRA Administrative Law Judge (ALJ) or a representation hearing before an FLRA hearing officer. But the ALJ typically travels (at FLRA expense) from Washington, D.C. to where the parties and witnesses are located, and the FLRA pays the travel expenses for FLRA counsel and all FLRA witnesses, the majority of whom are union representatives. Moreover, the number of ULP hearings is quite small – for example, there were only 14 hearings in FY 2017, and an average of only 16 hearings per year for the last four years. As to representation cases, the OGC relies heavily on telephonic meetings. These can take place before a petition is filed to educate party representatives, or after a petition is filed to investigate, narrow, and resolve issues. To the extent that the parties have to participate in representation hearings, the FLRA hearing officers generally travel, at FLRA expense, to the parties' or witnesses' location. Moreover, the number of representation hearings is small – the OGC conducted only 10 representation hearings in FY 2017. And the OGC is increasingly using videoconferencing to conduct all or parts of those hearings. Finally, the OGC

increasingly uses electronic voting and mail-ballot elections to conduct secret-ballot elections, minimizing the need for FLRA staff to utilize paid travel.

Against this backdrop, factors considered by agency leadership in making the current consolidation recommendation include: (1) five-year average case intake for each regional office; (2) annual rent costs for each regional office outside of D.C.; (3) the number of employees in each region; and (4) proximity to another regional office.

Based on 5-year case-intake averages (from FY 2012 – FY 2016), Boston and Dallas have the lowest overall average case intake. As to ULP cases, Boston and Dallas have average annual intake of 532 and 507 cases, respectively, or a total of 1,039 cases. By comparison, the remaining five regional offices have averages of 771 (Atlanta), 676 (Chicago), 564 (Denver), 750 (San Francisco), and 696 (Washington, D.C.). Turning to representation cases, Boston and Dallas have five-year average annual intake of 25 and 22 cases, respectively, or a total of 47 cases. By comparison, the remaining five regional offices have averages of 37 (Atlanta), 29 (Chicago), 24 (Denver), 45 (San Francisco), and 67 (Washington, D.C.). It is important to note that the agency specifically used a five-year average of case-intake data to avoid penalizing a regional office that had had "an off year," as case intake can fluctuate from year to year. However, if we were to include FY 2017 data in the averages, the disparity between the Boston and Dallas regional offices' intake compared to the other regional offices is even more significant.

In addition to case intake, other considerations included rent costs, the number of affected employees, and proximity to other regional offices. As to rent, at $48 per square foot in 2017 and $45 per square foot in 2018, rent for the Boston regional office is significantly greater per square foot than all of the FLRA's other regional offices outside of Washington, D.C. By comparison, the average rent per square foot for those offices is $25.87 per square foot. Closing the Boston and Dallas regional offices will save the agency in future fiscal years approximately $300,000 annually in lease payments, $1,500,000 over five years, and $3,000,000 over ten years. With respect to the impact on FLRA employees, the Dallas regional office has the fewest number of employees (7 employees), so closure of that office will result in disruption to, and relocation payments for, the fewest employees. Moreover, the Boston and Dallas regional offices are in close proximity to other regional offices, and the agency will continue to have a regional presence both on the East Coast and in the South/Southwest.

In accordance with M-17-22, the agency submitted all of its reform proposals, including the recommendation to consolidate the regional-office structure and close the Boston and Dallas regional offices, to OMB on September 11, 2017. OMB approved the consolidation as part of the annual development of the FY 2019 President's Budget, contingent on a vote of the Authority Members – the FLRA's three-Member decisional body, which includes the FLRA Chairman, who is the agency's chief executive and administrative officer.[1] On December 11, 2017, the FLRA experienced a transition in its leadership. I was sworn in as an FLRA Member and designated by the President to serve

[1] Under 5 U.S.C. §7104(b), "The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority."

as Chairman; Member Ernest DuBester was sworn in for his third term as an Authority Member; and Member James T. Abbott was sworn in for his first term as an Authority Member. Consistent with FLRA regulations,[2] a majority of the Authority voted on January 11, 2018, to reduce its physical footprint and to consolidate its existing seven regional offices to five regional offices located in: Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Washington, D.C. (co-located at FLRA headquarters).

Based on comprehensive analysis and planning, the FLRA has taken or will take the following implementation actions to consolidate the regional-office structure and realign the casework and the workforce of its regional offices. These include:

- On February 12, 2018, I personally shared the details of the consolidation with employees in a series of three meetings: (1) a meeting with the Regional Directors of all seven regional offices; (2) a meeting of all employees in the Boston and Dallas regional offices, including the employees' representative; and (3) an all-employee meeting. Following the all-employee meeting, a handout was distributed to all employees, which is enclosed here as Attachment 1.

- The agency will close its Boston, Massachusetts and Dallas, Texas regional offices no later than September 30, 2018, by providing no less than the required 4 months' notice to the General Services Administration that it intends to terminate the leases and vacate the offices scheduled for closure.

- The agency will adjust the geographic jurisdiction and caseloads for each of the remaining regional offices. Specifically, the workload of the Boston and Dallas regional offices – an average of 1,039 ULP cases annually (or 23% of the total OGC average annual intake of 4,496 ULP cases) and 47 representation cases annually (or 19% of the total OGC average annual intake of 249 representation cases) – will be redistributed to the other regional offices through a published regulatory change[3] to the geographic jurisdiction of each regional office. The regulatory change will be published no later than July 30, 2018, and the specific changes regarding the geographic areas covered by each regional office before and after the consolidation are outlined in detail in Attachments 2 and 3. OGC management will meet to determine the best way to accomplish the caseload transition, which will dictate how soon the regulation will be published and how soon the Boston and Dallas regional offices will cease to accept new cases. OGC management will also develop a detailed plan for transferring cases that are already pending in the Boston and Dallas regional offices at the time of the regulatory change.

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[2] Appendix B to 5 C.F.R. Chapter XIV provides that "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."

[3] As with the most recent realignment of the OGC's geographic jurisdiction in 2014, the Agency will issue the change as a final rule, without notice and comment. *See* 79 Fed. Reg. 33,849, 33,850 (June 13, 2014).

- The 16 employees currently working in the Boston and Dallas regional offices – 2 Senior Executive Service (SES) regional directors; 2 GS-15 supervisory attorneys; 10 GS-12 to GS-14 attorneys/agents; 1 GS-11 administrative officer; and 1 GS-8 legal assistant – will be reassigned and relocated, at agency expense, to existing regional office or headquarters offices, without the agency leasing any additional space. No reduction-in-force actions will be initiated because there are adequate positions to retain all of the directly affected employees, without a loss to their SES status or grade level.

- The agency has already requested and received Voluntary Early Retirement Authority (VERA) from the Office of Personnel Management (OPM), and it offered VERA to all employees agency-wide on February 12, 2018, to maximize relocation opportunities for the directly affected employees. That is, potential vacancies in other locations may provide additional relocation options for the Boston and Dallas employees. The agency has already provided retirement estimates to all seven VERA-eligible or optional-retirement-eligible employees in Boston and Dallas, as well as individual retirement counseling sessions to them upon request. Anyone who accepts VERA will be expected to retire by September 30, 2018.

- The agency has notified employees that it will not request Voluntary Separation Incentive Payment (VSIP) authority from OMB and OPM, because it is not attempting to reduce its workforce through this reorganization.

- I have established a dedicated email address for employees to submit questions about the consolidation, and I am personally committed to ensuring that every question is answered – either by direct reply or in a list of questions and answers that are regularly updated and posted on the agency's intranet site.

- Meetings are currently underway with the employees' representative organization to discuss the consolidation. It is anticipated that all directed reassignment letters will issue no later than May 1, 2018. But some employee relocations will likely spill over into FY 2019 depending on funding.

- Internal work groups, led by the agency's Executive Director, have been assembled to develop and coordinate the logistics of the consolidation.

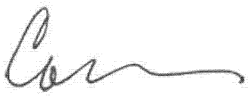
Due to the already deep cost-cutting measures taken through the Agency Reform Plan, the agency will fund as many of the employee relocations resulting from the consolidation as possible from its baseline FY 2018 budget, with no loss of service to the agency's mission.[4]

[4] Relocation costs not covered by the agency's baseline FY 2018 budget (up to approximately $900,000) will be absorbed from the FY 2019 budget, again with no loss of mission service. The first realization of cost savings will not occur until FY 2020.

If you or your staff need additional information or have any questions, please contact me or Gina Grippando, Counsel for Regulatory and Public Affairs (at 202-218-7776 or ggripp@flra.gov).

An identical letter is being sent to Chairman Tom Graves and Ranking Member Mike Quigley, House Subcommittee on Financial Services and General Government, Committee on Appropriations.

Sincerely,



Colleen Duffy Kiko
Chairman

Cc (with enclosures):

The Honorable Thad Cochran, Chairman
Committee on Appropriations
United States Senate

The Honorable Patrick J. Leahy, Vice Chairman
Committee on Appropriations
United States Senate

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
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May 21, 2018

OFFICE OF THE CHAIRMAN

The Honorable Edward J. Markey
United States Senator
255 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sheldon Whitehouse
United States Senator
530 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Bernard Sanders
United States Senator
332 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Elizabeth Warren
United States Senator
317 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Angus S. King, Jr.
United States Senator
133 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Christopher A. Coons
United States Senator
127A Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jack Reed
United States Senator
728 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Susan M. Collins
United States Senator
413 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeanne Shaheen
United States Senator
506 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard Blumenthal
United States Senator
706 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Robert P. Casey, Jr.
United States Senator
393 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
United States Senator
513 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Christopher S. Murphy
United States Senator
136 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators:

Thank you for your letter of May 1, 2018, expressing concern for federal employees currently served by the Boston Regional Office of the Federal Labor Relations Authority (FLRA). I am

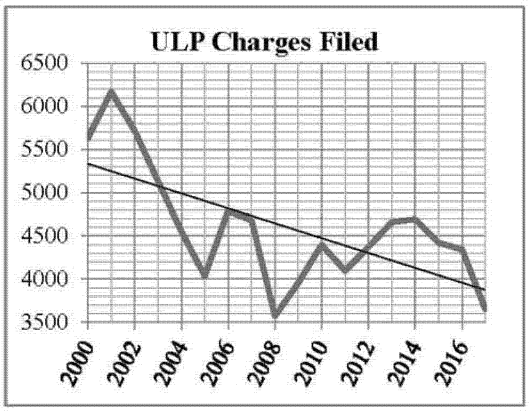
encouraged by your support for our mission and our shared belief that the Civil Service Reform Act is vital for safeguarding the rights of federal employees, federal agencies, and federal employees' unions.

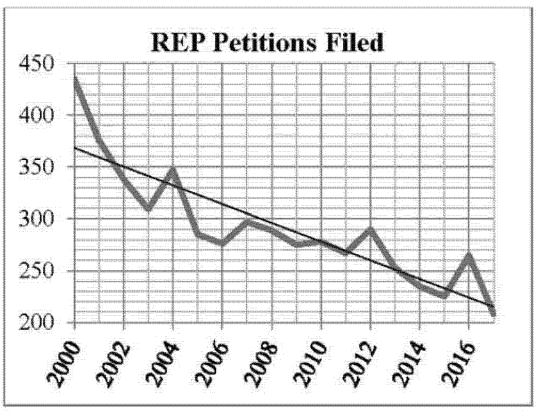
When the FLRA first opened its doors in 1979, I worked as a career employee in its Washington, D.C. regional office, and later in the Authority headquarters, until 1982 when I left to attend law school. I eventually returned to the agency to serve as its General Counsel from 2005 to 2008, overseeing all seven of the current regional offices. I know first-hand what the work of the FLRA's regional offices entails – at all levels – as well as how the work has changed dramatically over the past four decades.

In 1979, there were nine FLRA regional offices. In the 1990s, the FLRA consolidated those nine regional offices into seven. Recently, as required by our internal regulations, the Authority voted to approve a plan that will consolidate those seven regional offices into five. While the plan physically closes the Boston and Dallas offices, it does so without any job losses to current FLRA employees and without any reduction to the high-quality services that the FLRA provides to our stakeholders.

Although the consolidation plan was developed before I became the FLRA's Chairman, I wholly endorse it because the analysis underlying it was thorough, data-driven, and fully consistent with recent presidential and Office of Management and Budget (OMB) mandates – 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). In other words, I am convinced that this plan will enhance and improve the FLRA's ability to carry out its mission and to do so in a more efficient manner. It also is consistent with the following three realities.

First, there is the reality of declining caseloads. Since 2000, according to FLRA Congressional Budget Justification submissions, our highest total annual intake of unfair labor practice (ULP) charges – across all seven regions – was 6,167 in 2001. In 2017, our annual intake of ULP charges was 3,655. Our highest total annual intake of representation (REP) petitions was 435 in 2000. In 2017, our annual intake of REP petitions was 208.





In the face of this indisputable data, it is hard to justify maintaining regional offices in seven cities when, as I explain below with regard to technology, the FLRA's work can be carried out just as efficiently in fewer locations. In fact, to address declining caseloads in particular regions, the Office of the General Counsel has been routinely transferring cases among the seven regions for at least a decade to ensure parity in caseloads. In light of that fact, there is not – and there has not been for many years – a guarantee that a case filed in Boston would be investigated by a Boston agent.

Just as Congress said that the law we administer must be interpreted in a manner consistent with the requirement of an effective and efficient Government, 5 U.S.C. § 7101(b), the FLRA, too, must ensure that it is managing its operations in a way that is most effective and efficient for the American taxpayer. I am convinced that this plan enhances our ability to carry out our mission even more effectively.

Second, we and the federal labor-management-relations community are beneficiaries of technological advancements that enable us to perform our mission much differently than in the past. With the introduction of technological modernization, the majority of the FLRA's customers – and all of the FLRA's staff – enjoy constant access to internet, email, cell phones, and even video teleconferencing. As such, there is much less of a need for FLRA agents to conduct on-site investigations. These technological advancements facilitate communication and allow agents to build trust with our parties in ways that were impossible 40 – or even 20 – years ago. They also facilitate the investigation of cases that are routinely transferred among the seven regions as described above. Moreover, for more than a decade, the FLRA has also used technology to provide to our customers training materials that are current and easily accessible on the FLRA's website. Our staff has therefore demonstrated that geographic distance does not hinder their ability to provide top-notch customer service to your constituents. These technological initiatives are in keeping with Congress' and the past several Administrations' intent to leverage technology to the maximum extent feasible.

Third, there is a fiscal reality. When 80 percent of the FLRA budget is personnel costs, and 10 percent is rent, there is little room for cost-cutting without looking at the staff reductions that we would like to avoid. By planning ahead and reducing rental costs now without a reduction-in-force, we are proactively managing resources *and* preserving our experienced staff. Our employees are our greatest resource.

It seems that some confusing and inaccurate information has been conveyed about what our plan does and does not do. I would like to set the record straight on a few key points and facts. Our plan will result in a net reduction of only two Office of the General Counsel positions (from 62 to 60) – both of which are managerial, Senior Executive Service (SES) positions. These two SES employees are being reassigned to two vacant SES positions in the Office of the General Counsel and Authority headquarters. The number of agents available to perform investigative work will actually increase, as one current GS-15 manager will begin performing investigative work full-time, thereby enhancing our ability to address workplace unfair labor practices. Through this process, we will have reduced our manager-to-employee ratio.

Moreover, while it closes two physical offices, the plan directly reassigns *every employee* – a total of 16 (4 managers, 10 attorneys, 1 administrative officer, and 1 legal assistant) – to positions in the other five regions or at headquarters. No one loses their job. No one loses their grade or step. And, through an agreement negotiated with our employee representative organization on the impact and implementation of this move, we have ensured that employees were given their preference of reassignment locations.

Thus, all 16 employees – attorneys, administrative staff, and managers – who currently work in the Boston and Dallas offices have been offered their preferred positions in one of the other regions or headquarters with paid relocation. Continuity on specific cases in Boston and Dallas will not be lost. Further, by working hard to retain our current employees and by continuing to have them provide training to the same customers, relationships with parties that have been developed over the years in those regions will remain intact.

In the end, these changes will enable us to continue to effectively serve our customers, but to do so more efficiently and without a reduction in service.
With regard to your citation to Division E, Title VI, Section 740 of Public Law 115-141, the Consolidated Appropriations Act, 2018, we respectfully disagree that this section applies to our consolidation. Section 740 concerns attempts to use funds to "increase, eliminate, or reduce funding for a program, project, or activity." However, the consolidation plan does not increase, eliminate, or reduce funding for any program, project, or activity because the Boston Regional Office is not a program, project, or activity of the FLRA. Consistent with the Government Accountability Office's definition of "program, project, or activity," the FLRA's three activities are the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel. *See* A Glossary of Terms Used in the Federal Budget Process, https://www.gao.gov/new.items/d05734sp.pdf and the FLRA's FY 2019 Congressional Budget Justification, https://www.flra.gov/about/public-affairs. The Boston Regional Office is a location where those activities are conducted. The amount that the FLRA is using for these activities remains the same as what we explained in our FY 2019 Congressional Budget Justification; all that has changed is the location of those activities. Therefore, Section 740 does not apply.

Just as importantly, the reorganization is not cutting any staff or reducing mission-related funding in any way. The same people will be doing the same work in different locations. Thus, the FLRA will be equally well positioned after the reorganization – with substantial annual cost savings on rent and two SES salaries – to promote stable, constructive labor-management relations through the resolution and prevention of labor disputes in a manner that determines the respective rights of employees, agencies, and labor organizations in their relations with one another.

As for working with our Appropriations Committees, I have personally briefed the Majority and Minority Appropriations staff in both the Senate and the House on this plan. We also provided formal notification of the plan to the leadership of those committees, consistent with P.L. 115-141, Division E, Title VI, Section 608 guidelines, by letter dated March 26, 2018.

Again, I appreciate your concerns and trust that I have addressed them. At the end of the day, this regional-office consolidation is good government, and I welcome your support.

If you have any questions or require additional assistance, please do not hesitate to contact me or Gina K. Grippando, Counsel for Regulatory and Public Affairs, at (202) 218-7776 or ggripp@flra.gov.

Sincerely,

Colleen Duffy Kiko
Chairman

cc: The Honorable Ernest DuBester, Member
The Honorable James T. Abbott, Member

BILLING CODE 6727–01–C

II. Dissenting View of Member Ernie DuBester

I strongly disagree with the decision to close the FLRA's Dallas Regional Office at the end of this fiscal year and the Boston Regional Office in November 2018. My opposition to these regional office closures is based in significant part on the perspective gained during my extensive experience in government.

In that respect, I have served over nine years as a Member of the FLRA. For most of 2013, the first year of sequestration, I served as the FLRA's Chairman. I also had the privilege of serving for eight years as the Chairman (and Member) of another federal labor-management relations agency—the National Mediation Board. In these 17 years of service, I have always been mindful of the need for efficiencies that could improve government performance. Similarly, I have always tried to exercise leadership in a fiscally responsible manner.

With those thoughts in mind, the decision to close the Dallas and Boston Offices is unjustified, unwarranted, and will undermine the FLRA's ability to perform its mission. Beyond my grave concerns about this decision's substantive impact, I also take serious issue with the circumstances surrounding the process by which this decision was made and implemented.

The FLRA administers the labor-management relations program for over two million non-Postal, federal employees worldwide, including civilians in the Armed Forces. Until this decision, within its Office of the General Counsel (OGC), the FLRA had seven Regional Offices around the country, including one at its Washington, DC headquarters. These seven offices served the entire country, and overseas locations where federal employees work.

Ostensibly, the decision to close the Dallas and Boston Offices is responsive to Executive Order No. 13781, *Comprehensive Plan for Reorganizing the Executive Branch* (March 13, 2017), and the Office of Management and Budget (OMB) Memorandum M–17–22 (April 12, 2017). These directives ask federal agencies to consider organizational changes that could be made to effect operational savings. But it is evident that the purpose is not simply to show a cost savings without regard to an agency's mission and its delivery of services to stakeholders. To the contrary, agencies are to implement changes that will ''dramatically improve effectiveness and efficiency of government.''

The decision to close the Dallas and Boston Offices fails this test. It was made without thoughtful consideration of the FLRA's mission or the nature of its work to perform that mission. And significantly, it ignores the considerable sacrifices made by the FLRA and its employees in recent years which have already saved the government tens of millions of dollars.

Concerning mission effectiveness, as the attached letter to FLRA Chairman Kiko (May 1, 2018) from 13 U.S. Senators representing a quarter of a million federal employees currently served by the Boston Office indicates, its closure will ''place FLRA Staff farther away from those who rely on their services.'' Indeed, federal agencies and federal employees in the Northeast, all the way to the tip of Maine, will have to come to Washington, DC to address their rights and responsibilities. And, as the Senators' letter indicates, the decision is being made without Congressional oversight. Is this really the direction that we want to go?

Analogous concerns apply to the Dallas Office closure. With that closure, the FLRA is closing the Regional Office located in the state which has the second largest number of federal employees outside of the Washington, DC Metropolitan area. Considered in this context alone, the decision defies logic.

This is especially true given that the decision was made without any apparent outreach to stakeholders. Any serious consideration of the FLRA's mission and its delivery of services to the parties demands that there be some kind of outreach *BEFORE* such a decision was made.

Also ignored, as indicated, is that, for the last 20 years, the FLRA has practiced fiscal responsibility, saving the government tens of millions of dollars. As the attached letter from eight retired FLRA Regional Directors (RDs) to the Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs states (March 9, 2018), the FLRA has gone ''far beyond most agencies in reducing operational costs and expenses.'' [A comparable letter was sent to the Chairman and Ranking Member of the House Oversight Committee].

There are many illustrations. For example, from a recent high of 215 employees (FTEs) in fiscal year (FY) 2000, the FLRA reduced its workforce by over 45%, to 114 FTEs, by FY 2009.

Since that time, the FLRA has implemented many additional cost-saving measures and efficiencies. This includes reducing the size of its headquarters by about 12,000 square feet in FY 2014, eliminating an entire floor. And, the FLRA similarly reduced its space in five Regional Offices (Chicago, Denver, San Francisco, as well as Dallas and Boston).

In the last year, moreover, the FLRA has eliminated at least 12 more FTEs, about 10% of its already small workforce. Elimination of the Dallas and Boston Offices will result in a further reduction of FTEs. This means that, since FY 2000, the FLRA will have eliminated over 55% of its employees.

As the attached retired-RDs letter suggests, after these repeated sacrifices, the severity of this additional action to close Dallas and Boston, without good reason, is demoralizing and impairs the FLRA's ability to perform its mission. It should be remembered that, in FY 2009, after the 45% reduction in employees, the FLRA was ranked dead last (32nd of 32 similarly-sized agencies) in the Partnership for Public Services ''Best Places to Work'' rankings. But in recent years, at least until last year, though implementing many cost-

saving measures and innovative practices to promote efficiencies, the FLRA has climbed to a #1 ranking in most categories of the Best Places to Work Rankings, and has ranked in the top five overall for several years. With elimination of the Dallas and Boston Offices, it is questionable whether this will continue.

What a shame. Nobody knows better than OMB (and Congress) the recent record of the FLRA in saving the government significant dollars. Sometimes, after such repeated sacrifices, a small agency like the FLRA, with a relatively modest budget, has become ''right-sized.'' Before elimination of the Dallas and Boston Offices, the FLRA was already the optimal size to perform its mission effectively and efficiently.

In addition to disregarding the FLRA's repeated fiscal sacrifices, the decision to close Dallas and Boston fails to consider thoughtfully the substantial mission-related value of Regional Offices being located where FLRA staff is more readily accessible to the parties. Again, as the retired-RDs letter suggests, this value has been ''demonstrated again and again over the years.''

Certainly, a value is provided through ''[r]egularly scheduled regional training presentations'' which have become ''an established resource to both labor and management representatives, many of whom could not travel to Washington DC or other distant cities.'' In the last 10 years, the FLRA has provided training to thousands of FLRA stakeholders at Regional Office sites. And, by facilitating opportunities for the parties to meet and interact with Regional Office Staff, the FLRA's credibility and effectiveness is enhanced.

This is particularly true, and important, regarding access to our RDs, who are FLRA decision-makers. Access to, and interaction with, RDs by the federal sector labor-management community, not only builds trust in the FLRA's operations, but also promotes early settlements which produce real cost savings.

Apparently, the FLRA Members supporting the closures do not believe that this value still exists. Rather, it is suggested that technology has changed the nature of Regional Office work. In other words, it does not matter where you are. As long as you have a computer, a fax, and a telephone, you can be on top of a mountain anywhere in the U.S.A.

This suggestion is little more than a fabrication. The FLRA is in the business of labor-management relations. As is often said, the often overlooked word in that phrase is ''relations.'' Constructive relationships require direct human interaction. And, notwithstanding rapid advances in technology, direct human interaction will continue to be a vital element in building constructive labor-management relationships for the foreseeable future.

And, finally, in a related sense, now is the worst time to downsize further a dispute-resolution agency like the FLRA. While the FLRA is a small agency, accomplishing its mission, including timely, quality, and impartial resolution of labor-management disputes, is critical to promoting effective and efficient performance at *EVERY* federal agency under its jurisdiction. In other words, the FLRA's successful mission performance has a positive rippling effect government-wide.

Given the current effort to streamline federal government agencies, there is very likely to be an increase in the number of grievances and labor-management disputes. Viewed against this background, it is the wrong time to cut further the size and resources of a small dispute-resolution agency like the FLRA—particularly given its many sacrifices and practice of fiscal responsibility in recent years.

Indeed, considering the adverse impact on the FLRA's ability to perform its mission, the significant loss of quality employees, and the number of silent people who know better, the decision to close the Dallas and Boston Regional Offices is not just a shame—it is a crying shame.

The Mind reels.

Ernie DuBester,

Member.

BILLING CODE 6727–01–P

United States Senate
WASHINGTON, DC 20510

May 1, 2018

Chairman Colleen Duffy Kiko
Federal Labor Relations Authority
1400 K Street, NW
Washington, DC 20424

Dear Chairman Kiko:

As Senators representing the roughly 250,000 federal employees served by the Boston Regional Office of the Federal Labor Relations Authority (FLRA), we are writing to express our concern over the announcement that the FLRA intends to close its regional offices in Dallas and Boston.

The FLRA is critical to safeguarding the rights of federal employees and ensures that they receive due process under the Civil Service Reform Act. Through its adjudicatory and prosecutorial roles, the FLRA resolves disputes over bargaining units, unfair labor practices, and other matters important to federal employees. The Authority also trains union officers and agency officials to ensure that they know their rights and responsibilities under the law. Critical to this mission is the regional office structure of the FLRA, so that agency staff can build relationships with parties across the country to fulfil the agency's core mission.

Closing regional offices would place FLRA staff farther away from those who rely on their services. Additional harm to the rights of federal employees would likely be compounded by agency efforts to reduce funding for staff travel in order to conduct elections, representational hearings, onsite Unfair Labor Practice (ULP) investigations, and other essential work.

In the FLRA's Congressional Budget Justification for the President's budget request for Fiscal Year 2019, the FLRA proposed closing the Boston Regional Office. However, under the 2018 Consolidated Appropriations Act (the "Omnibus"), that action is prohibited unless approved by Congress following detailed reprogramming reporting by the agency. Specifically, we call your attention to Section 740 of Public Law 115-141, which states:

> None of the funds made available in this or any other appropriations Act may be used to increase, eliminate, or reduce funding for a program, project, or activity as proposed in the President's budget request for a fiscal year until such proposed change is subsequently enacted in an appropriation Act, or unless such change is made pursuant to the reprogramming or transfer provisions of this or any other appropriations Act.

Congress demonstrated support for the current FLRA structure by appropriating level funding to the agency for Fiscal Year 2018. With a two-year budget agreement now in place, federal agencies should focus on delivering the most effective services for their constituencies rather than harmful cuts that will reduce responsiveness.

Therefore, we urge you to immediately cease all planning and execution of the announced office closures and instead allow the Appropriations Committees to review and approve any plans for reorganization, ensuring that such actions are the best use of taxpayer funds.

We ask that you immediately inform us of any decision to submit a reprogramming request pursuant to Public Law 115-141.

Thank you for your attention to this matter. We look forward to working with you to protect to the rights of federal employees in our states and across the country.

Sincerely,

Edward J. Markey
United States Senator

Susan M. Collins
United States Senator

Sheldon Whitehouse
United States Senator

Jeanne Shaheen
United States Senator

Bernard Sanders
United States Senator

Richard Blumenthal
United States Senator

Elizabeth Warren
United States Senator

Robert P. Casey, Jr.
United States Senator

Angus S. King, Jr.
United States Senator

Thomas R. Carper
United States Senator

Christopher A. Coons
United States Senator

Christopher S. Murphy
United States Senator

Jack Reed
United States Senator

cc:
Member James T. Abbott
Member Ernest DuBester

March 9, 2018

The Honorable Ronald H. Johnson
Chairman, Senate Committee on
Homeland Security and Governmental
Affairs
SD-340, Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Claire C. McCaskill
Ranking Member, Senate Committee on
Homeland Security and Governmental
Affairs
SH-503, Hart Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

By way of introduction, all of the individuals named below are former career members of the United States Senior Executive Service, who retired after more than 200 combined years of civilian service with the Federal Government. We each have served for extended periods as Regional Directors of the Federal Labor Relations Authority (FLRA), under both Democratic and Republican administrations, and now join together to bring to your attention what we deem to be a matter of the greatest importance to the federal sector labor-management relations community.

It has come to our attention that the FLRA senior management has recommended the closure of two (2) of its Regional Offices (Boston and Dallas) in its recent FY 2019 budget submission to the Office of Management and Budget (OMB). For the reasons set forth below, we believe this decision, if accepted, will adversely affect not only the efficient performance of that agency's mission, but will also negatively impact the very significant progress which has been made in recent years to reduce reliance on confrontational labor relations in the federal sector, while also encouraging alternative methods of dispute resolution.

The FLRA was created by act of Congress in 1978 and charged with the enforcement of the Federal Service Labor-Management Relations Statute (Statute) as applied to Federal Government Agencies and more than two million civilian federal employees, with specified statutory exemptions. This represented the first statutory recognition of collective bargaining in the federal sector, which had formerly been governed by Executive Orders beginning with President John F. Kennedy. Disputes arising under the Executive Orders had been investigated and processed by the Department of Labor (DOL), Labor-Management Services Administration.

At the outset, the FLRA regional structure was streamlined from that of its DOL predecessor, by not absorbing or quickly closing regional locations in Buffalo, Newark and Seattle. This left a new field structure consisting of nine (9) Regional Offices in Boston, New York, Washington D.C., Atlanta, Kansas City (later moved to Denver), Chicago, Dallas, Los Angeles and San Francisco (and two (2) sub-offices in Cleveland and Philadelphia) charged with investigating several thousand pending cases transferred from DOL to FLRA at the transition, as well as all new cases being filed under the Statute. In 1981, FLRA, along with other Federal Agencies, experienced a mandated Reduction in Force, which while reducing

staff, left the regional office structure unchanged. However, in 1990, the number of Regional Offices was reduced from nine (9) to seven (7), initially reducing both the Los Angeles and New York Regions to sub-office status, and, in later years, eliminating both of those offices in addition to the Cleveland and Philadelphia sub-offices. All of the noted staff and organizational reductions were carried out in furtherance of various budgetary and fiscal cutbacks.

The value of Regional Offices in locations where FLRA staff was accessible to the parties was demonstrated again and again over the years. Regularly scheduled regional training presentations became an established resource to both labor and management representatives, many of whom could not travel to Washington or other distant sites. Feedback surveys prepared by attendees immediately after each regional training program clearly demonstrated that the parties valued these opportunities to meet and interact with regional staff and gain a clearer understanding of the investigative process. Moreover, having regional offices located closer to the actual work sites allowed FLRA agents to develop working relationships with the labor and management community, facilitating communication and trust during the investigative process. Despite having to limit field travel at various times due to repeated travel budget constraints, there is no doubt that regular, onsite investigations had been the norm and was viewed as the best practice for achieving more accurate and complete results. This is especially true for rank and file employees, with very limited knowledge of the Statute and legal process, who would be understandably reluctant to speak openly with FLRA personnel who were simply an unseen voice on the telephone. When used, this alternate process was not in furtherance of efficient and effective government, but was strictly a consequence of resource limitations. To eliminate two of the Regional Offices as now proposed, would further reduce the credibility and effectiveness of the FLRA.

Essentially, FLRA went far beyond most agencies in reducing operational costs and expenses. In FY 2000, FLRA had 215 FTE's; by FY 2009, the number of FTE's was 114, a 45% reduction. In FY 2017, FLRA reduced staffing by another 12 positions, 10% of its staffing level at that time. Further, in FY 2014, FLRA reduced space in several regional offices and surrendered 12,000 square feet (1 entire floor) in its headquarters office.

Despite these repeated sacrifices, the staff of the FLRA continued its total commitment to carrying out the agency's mission. Employee feedback made clear that they believed strongly in their work to improve the collective bargaining climate in federal sector. But there were impacts. In the FY 2009, Partnership For Public Service "Best Places to Work" survey, FLRA ranked last (32 of 32) among similar-sized agencies. In no small part due to genuine internal policy shifts and pro-active outreach to both labor and management, the survey results for the past three (3) fiscal years now showed FLRA ranking first in many categories and in the top five of similar-sized agencies.

There has been no FLRA General Counsel since January of 2017. While the Deputy General Counsel was initially able to carry on some functions in an acting capacity, even that ended in November of 2017 pursuant to requirements of the Vacancies Act. In the absence of a General Counsel, no Complaints may issue despite administrative determinations by Regional Directors that violations are present. Parties are well aware of this inability, now entering its

fifth month, and case filings have significantly declined throughout the country accordingly. It is in this environment that the current FLRA leadership has recommended the closure of two (2) of its seven (7) Regional Offices.

In July 2017, OMB issued guidance to federal agencies on the preparation of their FY 2019 budget requests, to include areas where organizational changes could be made to effect operational savings. It is clear however, that this guidance was not to simply show a savings in dollars without regard to the mission of each agency and delivery of services to its stakeholders. Rather, the instruction was to implement change that has the potential to "dramatically improve effectiveness and efficiency of government." The closing of the Dallas and Boston Regional Offices will reduce the number of Regional Offices by 29% and adversely affect 17 persons working in those offices. Moreover, this is being done in the absence of a General Counsel whose role it is to oversee regional operations. This will have a predictable negative impact on national staff morale (after working so hard to rise from its dismal standing in FY 2009). The closures would further limit face-to-face communication with parties and further move toward an undesirable teleservice center approach to collective bargaining in the federal sector. It is noted in this regard that more than 445,000 members of the Federal civilian workforce now reside in the geographic jurisdictions of the Dallas and Boston Regions.

In our view, this is serious error and should not be approved.

Sincerely,

Gerald Cole (San Francisco)

Edward Davidson (Boston)

Matthew Jarvinen (Denver)

Jean Perata (San Francisco)

James Petrucci (Dallas/New York)

Marjorie Thompson (Denver)

Richard Zaiger (Boston)

Barbara Kraft (Washington, DC)

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