



MAIL BALLOT ELECTIONS

Report No. OIG-AMR-101-24-03

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Memorandum from the Associate General Counsel, Division of Operations-Management, OIG Report No. OIG-AMR-101-XX-XX, signed May 21, 2024

EXECUTIVE SUMMARY

One of the National Labor Relations Board's (NLRB or Agency) statutory functions is to investigate and resolve questions concerning representation among employees to determine whether the employees wish to be represented by a union. As part of the investigation and resolution of questions concerning representation, the NLRB conducts elections. Elections can be conducted manually, by mail, or both.

The objectives of this audit were to evaluate the Regional Offices' compliance with the Agency's mail ballot election procedures; determine if any external factors are impeding the Agency's mail ballot elections; and determine if the Agency's internal controls for mail ballot elections are effective. The scope of the audit was the mail ballot elections conducted during Fiscal Year 2022.

We found that the Regional Offices were not consistently complying with the Agency's mail ballot election procedures. We also determined that the delivery of ballots to the voters and the return of ballots to the Regions were external factors that may be impeding the mail ballot election process. In general, we found that there is a lack of appropriate internal controls for the mail ballot election process. We made one recommendation that the Division of Operations-Management establish a system of internal controls exclusive to the mail ballot process.

The Management Comments state agreement that there is a need for clearer Regional guidance and also stated agreement with the recommendation. The comments, however, also stated disagreement with certain findings. As appropriate, we addressed disagreements in the body of the report. The Management Comments are included in their entirety as an appendix.

BACKGROUND

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

Elections can be conducted manually, by mail, or both. According to the NLRB's Casehandling Manual, the Regional Director has discretion in deciding which type of election to conduct and should consider the following situations when deciding the propriety of using mail ballots: (a) where eligible voters are "scattered" because of their job duties over a wide geographic area; (b) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (c) where there is a strike, a lockout, or picketing in progress. During the COVID-19 pandemic, the NLRB provided additional guidance to the Regional Directors involving the use of mail ballot elections due to the circumstances caused by the pandemic. As a result, the use of mail ballot elections far exceeded historical trends.

OBJECTIVE SCOPE AND METHODOLOGY

The objectives of this audit were to:

- Evaluate the Regional Offices' compliance with the Agency's mail ballot election procedures;
- Determine if any external factors are impeding the Agency's mail ballot elections; and
- Determine if the Agency's internal controls for mail ballot elections are effective.

The scope of the audit was the mail ballot elections conducted during Fiscal Year 2022.

From the Division of Operations-Management, we obtained the guidance documentation related to mail ballot elections. As appropriate, we consulted with the Division of Operations-Management for interpretation and explanation of the guidance.

We reviewed NxGen Case Management System (NxGen) reports to determine which data fields were related to mail ballot elections. We obtained, from the Office of Chief Information Officer, an extract of NxGen representation election data during the scope period. We determined whether the data in the NxGen data fields related to the conduct of mail ballot elections was reliable, both accurate and complete, for purposes of the audit.

We selected provisions of the Casehandling Manual and Administrative Support Procedures Manual that were applicable to the mail ballot process. We then selected a random sample of mail ballot election cases and tested the cases to determine compliance with the selected provisions. To do so, we used a generally accepted sampling criteria to achieve a 90 percent confidence level. The 90 percent confidence level is consistent with U.S. Government Accountability Office (GAO) guidance and our expected deviation rate. The results of the random sample testing can be applied to the universe of mail ballot elections conducted during the scope period.

In situations where the universe of cases for a particular Casehandling Manual requirement would generally be smaller than our expected random sample size for the entire universe of mail ballot elections, we tested all of the cases rather than using a random sample. Also, as noted in the report, in one instance we tested the known cases for a requirement because it was not possible to determine the universe. We considered that instance to be a judgmental sample, the results of which cannot be applied to the entire universe of mail ballot elections conducted during the scope period.

We used statistical sampling to review case files to determine the timeliness of duplicate ballot request processing and the extent to which mail ballot kits were not received by voters and whether duplicate ballot kits were dispatched. The results of the random sample testing can be applied to the

universe of mail ballot elections conducted during the scope period.

We also reviewed all the cases in the three Regions that, during the scope period, conducted the most mail ballot elections to determine the extent to which mail ballot kits were not received by the voters and whether duplicate ballot kits were dispatched. The results are applicable only to the particular Regions.

We reviewed information provided to the Office of Inspector General regarding a group of high-profile cases. Our review of those cases was limited to compliance with the Casehandling Manual. We compared the results of our review with the results from our random sample testing.

We reviewed objections filed for the cases in the scope period to identify external factors that may impede the election process.

We interviewed Regional personnel to learn about external factors that may be affecting mail ballot elections. As part of the interview process, we inquired about their experience with the mail ballot election process. We also used surveys to obtain information.

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

We conducted this performance audit in accordance with generally accepted government auditing standards during the period from October 13, 2022, through June 4, 2024. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS SUMMARY

We found that the Regional Offices were not consistently complying with the Agency's mail ballot election procedures. We also determined that the delivery of ballots to the voters and the return of ballots to the Regions were an external factors that may be impeding the mail ballot election process. In general, we found that there is a lack of appropriate internal controls for the mail ballot election process.

Management Comments

The Management Comments included a statement:

We note that the Report did not indicate that any of the issues referenced in the Report affected the outcome or evidenced bias for any election conducted during FY 2022.

The Management Comments also included a summary of the Board decisions regarding the appropriateness of mail ballot elections and statistical information.

Office of Inspector General Response

The objectives of the audit did not include determining whether any Region or its staff was bias in performing any duties related to the conduct of the election. Therefore, our testing was not specifically designed to address or find bias. The effect for compliance with the mail ballot procedures is the difference between the condition, what we found in the case files, and the criteria, the procedures outlined in the Casehandling Manual or the Administrative Support Procedures Manual, as reported below. With regard to the outcome of the election or bias, that effect or potential effect may not be discernable within the GAGAS evidence standards. The absence of those specific findings or statements of effect regarding election outcome or bias should not be considered an OIG determination.

We provided information directly from the Casehandling Manual and General Counsel Memorandum regarding when mail ballot elections may be conducted for background purposes. The audit report expresses no findings with

regard to the determination to conduct a mail ballot election for any case that we reviewed. With regard to the statistical information provided in the Management Comments, we did not audit the data, and we likewise express no findings with regard to the accuracy of the data.

MAIL BALLOT ELECTION PROCEDURES

The Casehandling Manual sets forth the procedures for conducting elections. The Casehandling Manual states that it sets forth the guidelines and there is the expectation that the guidelines will be followed by Regional Directors and their staffs. The manual also states that there will be situations in which the Regional staff will need to use their judgment and experience to adapt the guidelines to circumstances. The Administrative Support Procedure Manual also has provisions related to the mail ballot election process.

Management Comments

The Management Comments included a statement:

In sum, the guidelines in the [Casehandling Manual] are not intended to be binding procedural rules, but rather are a framework for the application of the Board's decisional law, rulings and *policies* to the facts of the situation presented to Region Directors and their staff.
(Emphasis added)

Office of Inspector General Response

The Casehandling Manual provision cited does not include the term *policies*. While this might be viewed as a minor editorial change, it is significant if it were to be read as a disclaimer with regard to internal controls. As noted above, the manual states that it is an expectation that guidelines will be followed. That specific statement is:

Although it is expected that the Agency's Regional Directors and their staffs will follow the Manual's guidelines in the handling of cases, it is also expected that in their exercise of professional judgment and

discretion, there will be situations in which they will adapt these guidelines to circumstances.

With regard to the findings detailed below, the Management Comments do not provide an adequate factual basis to support a deviation from the Casehandling Manual provisions that were tested.

Decision and Direction of Election

The Casehandling Manual provides that a Regional Director has discretion to direct mail ballot elections when the eligible voters are scattered because of their duties over a wide geographic area; are scattered in the sense of their work schedules vary significantly so that they are not present at a common location at common times; and when there is strike, lockout, or picking in progress. During the COVID 19 pandemic, mandatory telework, and other factors related to safety were also considered appropriate justifications for mail ballot elections.

Although there are no specific documentation requirements for the Regional Director's determination to conduct a mail ballot election, the Casehandling Manual states that the case file should be a complete history with no gaps.

To test whether the Regional Director's determinations to hold mail ballot elections were supported by appropriate documentation in the case file, we reviewed a statistical random sample of Decision and Direction of Election documents. For cases with a Decision and Direction of Election, a statistical random sample was 60 cases. We found that 50 of the 60 Decision and Direction of Election documents had appropriate supporting documentation. For the 10 that did not:

- For one, there was no documentation of the Regional Director's determination or the Decision and Direction of Election in the case file;
- For one, the Regional Director's determination was stated in the Decision and Direction of Election, however, there was no supporting documentation in the case file; and

- For eight, the Decision and Direction of Election document had an Internet link, but the link did not provide the COVID-19 rate at the time that the Decision and Direction of Election was issued. When we accessed the links, they appeared to provide current COVID-19 data without any apparent means to access the historical data. No other supporting documentation was found in the case file.

Using the statistical random sample of 60 Decision and Direction of Election documents, we also tested to determine if the documents contained the necessary elements as identified in the Casehandling Manual. We determined that 46 of 60 (77 percent) of the documents contained the necessary elements. For the 14 that did not they either did not state the number of employees in the appropriate unit or did not include a brief description of the employer's business.

Management Comments

In response regarding the lack of supporting documentation in the case files for the Decision and Direction of Election, the Management Comments state "there is no specific documentation requirement for a Regional Director's determination to conduct a mail ballot election." The comments also state that the inclusion of "active links" to external Web sites for information viewed at the time of the issuance of the Decision and Direction of Election was a consistent Agency practice.

The Management Comments, in footnote 3, state when parties agree to a mail ballot election, the Decision and Direction of Election would appropriately address only those matters that presented a question concerning representation.

Office of Inspector General Response

With regard to the comments concerning documentation, the Casehandling Manual states that the case file should contain a complete history of the case and that there should be no gaps. The manual also states that:

The term documentary evidence means any paper whether in written, printed, graphic, or other visual form, containing facts germane to the case that might be necessary to introduce at a hearing. Documentary evidence includes correspondence to the Regional Office, other letters, emails and attachments, records, charts, pictures, affidavits, and other signed statements.

The use of “active links” does not meet the Casehandling Manual’s documentation requirements. Because the information is changing at the linked Web site, it creates a “gap” in the information in the case file. Additionally, any link to an external Web site that is not static, does not meet the requirements of evidence because it is not a “paper whether in written, printed, graphic, or other visual form, containing facts germane to the case that might be necessary to introduce at a hearing.”

If including an active external Web site link was in fact an “Agency practice,” it is and was a practice that is inappropriate. The Government’s internal control standards state that management, as a control activity, clearly “documents all transaction and other significant events in a manner that allows the documentation to be readily available for examination.” Because the information at the links was necessary for inclusion in the Decision and Direction of the Election, it should meet this documentation requirement, and an “active link” fails to do so.

With regard to the footnote, we verified that each of the 14 Decision and Direction of Election documents was missing an element and that there were no other documents, such as an agreement, that addressed the missing element as reported above.

Election Agreements

We also tested a statistical random sample of the 77 Election Agreements to determine if they contained the necessary elements as identified by the Casehandling Manual. We found that all 77 Election Agreements had the necessary elements.

Management Comments

The Management Comments stated disagreement with the finding in the draft audit report regarding one Election Agreement that did not have all the necessary elements.

Office of Inspector General Response

After reviewing the case file documents, we determined the finding with regard to the one Election Agreement was in error and the finding was removed for the final audit report.

Election Process

We tested a random sample of cases that had a mail ballot election to determine if the election was conducted in accordance with the Casehandling Manual’s procedural process. For the cases with a mail ballot election, a statistical random sample consisted of 77 cases.

Voter Lists

The Casehandling Manual states that within 2 business days after the issuance of a Decision and Direction of Election or an Election Agreement is approved, the employer shall provide the voter list to the Regional Director and the parties. The Casehandling Manual states that Regional personnel then check the list. To test that provision, we reviewed the case files to determine if they contained a voter list and if the voter list contained all required information. For the cases in the sample, we found the following:

	Yes	Percent	No	Percent
Voter list received by Regional Office within 2 business days of the DD&E or Election Agreement	74	96	3	4

	Yes	Percent	No	Percent
Case file contained voter list	77	100	0	0
Voter list contained all required information	75	97	2	3

One voter list did not contain shifts. The other did not contain job descriptions and shifts.

Written notification is to be sent at least 24 hours before the time and date on which mail ballots will be dispatched to the voters, informing the parties of the dispatch time and thus the time of the “start” of the election:

	Yes	Percent	No	Percent
Case file contained Letter of Ballot dispatch	77	100	0	0
Documentation that written notification was sent at least 24 hours before election	54	70	23	30

Tally of Ballots

We reviewed the random sample to determine if the election tally documents were in the NxGen case file:

	Yes	Percent	No	Percent
Case file contained documentation of the tally of ballots	77	100	0	0

We also reviewed the documents and NxGen tally data in the random sample. The tally documents were correctly complete and, except for one case, did not contain errors. In the one case with an error, we determined that a void ballot was included in the numeric entry for *Number of Valid Votes Counted*. The error did not affect the election’s outcome.

The NxGen data, with the exception of the category *Number of Valid Votes Counted*, was generally complete and accurate. For the data element *Number of Valid Votes Counted*, there was an error rate of 16 percent with half of the errors apparently coming from the inclusion of the challenged ballots in the total.

Election Cancellation

The Casehandling Manual states that parties should be advised immediately if the election is postponed or canceled, and written notification should also be provided expeditiously. The Casehandling Manual did not define “immediately” or “expeditiously.” For purpose of this testing, we considered the cancellation notification to be “immediate” when sent to the election parties the same day. We also considered written notification to be “expeditious” when sent

to the election parties the same day or the day after the cancelation was approved.

Because there were only 49 cases where the election was canceled, we tested all 49 cases and found that the case file contained the following:

	Yes	Percent	No	Percent
Documentation that parties were notified immediately of canceled or postponed election	27	55	22	45
Documentation that written notification was provided to parties expeditiously	28	57	21	43

Challenged and Impounded Ballots

Non-determinative Challenged Ballots

Using the NxGen data, for the cases in the scope period, we selected a statistical random sample of 74 elections that had non-determinative challenged ballots, in that the outcome of the challenge would not affect the result of the election, out of the universe of 530 elections with challenged ballots during the scope period.

For mail ballot elections, the Casehandling Manual states that when challenges are not determinative, individual challenged ballot envelopes should be secured and preserved in a physical folder that is labeled with the case name and number. The word “Challenged” should be written across the face of the envelope and copies of the “front” of each challenged ballot envelope should be uploaded into the electronic case file. To test compliance with this requirement, we reviewed the statistical random sample of 74 non-determinative challenged ballot cases. We determined the following:

Non-Determinative Challenged Mail Ballots Envelopes in NxGen	Cases	Percent
Front and Back	23	31
Back Only	5	7
Not in NxGen	46	62

- Three of the 23 non-determinative challenged ballot cases with challenged ballots uploaded into NxGen had the word “Challenged” written across the face of the envelopes; and
- One of the 23 non-determinative challenged ballot cases uploaded into NxGen had an incomplete set of envelopes. For that case, two of the six challenged ballots were not uploaded into NxGen.

The Casehandling Manual states that information that is normally written on the face of the *Challenged Ballot* envelope be written on the “reverse side” of the yellow mailing envelope with the non-determinative challenged ballot. There is no requirement that the reverse side/back of the non-determinative challenged mail ballots be uploaded into NxGen. As a judgmental, rather than a statistical random sample, we reviewed the information for the 28 cases with a copy of the reverse/back side of the envelopes that were uploaded into NxGen. We determined that none of the 28 cases included all of the required information on the reverse side of the non-determinative challenged mail ballot yellow envelopes, as show in the table below:

Information to be included on challenged mail envelopes	Yes	Partial
Voter’s Name	4	
Job Classification	2	
Employer	10	
Date/Place of Election	4	1
Reason Given for the Challenge	19	1
Identity of the Challenger	18	1
Board Agent’s Initials	6	2

Because this was a judgmental sample, we cannot impute these finding to the universe of non-determinative challenged ballots. It does, however, show that information that the Agency determined should be recorded may not be maintained in the NxGen case file because there is no requirement to copy the reverse side of the envelope.

Determinative Challenged Ballots

Using NxGen data, we identified 78 cases that had determinative challenged ballots. A challenged ballot is determinative when the result of the challenge could affect

the outcome of the election. Because of the size of the universe of the determinative challenged ballot cases, we tested all 78 cases for compliance with the Casehandling Manual procedures.

The Casehandling Manual states that determinative challenged ballots are to be placed in an envelope(s) identified as *Form NLRB 5126* and stored promptly. A photocopy of the face of the *Form NLRB 5126* and a memorandum stating where the ballots have been stored should be placed in the electronic case file.

We determined that 20 of the 78 cases with determinative challenged ballots had copies of both the face and the back of the *Form NLRB 5126* uploaded into NxGen; 38 had only the face uploaded; and 20 did not have copies of *Form NLRB 5126* uploaded.

For the 58 cases with copies of the face of the *Form NLRB 5126* uploaded to NxGen case file, 47 election cases had *Form NLRB 5126* with all the required information including the case name and number, election date, description, total number of envelopes if more than one was used, and the name of the Board Agent. However, some had errors:

- One *Form NLRB 5126* had an incorrect election date; and
- Fifteen *Form NLRB 5126*s had an incorrect total number of envelopes used because the number of ballots was entered rather than the number of *Form NLRB 5126* that were used.

We determined that 20 of the 47 cases with the *Form NLRB 5126* included in the NxGen case file with all the required information also had a copy of the backside of the form in the NxGen case file. For those cases, only one had the signatures of the parties and Board Agent on the flap as required by the Casehandling Manual.

The Administrative Support Procedures Manual states that a letter regarding the determinative challenges be sent to the parties and that a memorandum be placed in the case file regarding stating where the determinative ballots are maintained. For 70 of the 78 (89.7 percent) cases with

determinative ballots, a letter regarding determinative challenged ballots was documented in the case file. All cases with letters documented in the case file included the required information. For 50 of those cases, the case file also had documentation that the letter was sent to the parties. Also, only 11 of the 78 (14.1 percent) cases had documentation in NxGen stating where the determinative ballots were maintained.

Management Comments

The Management Comments state:

[I]n 70 of 78 cases, a memorandum was uploaded into the electric case file stating where the determinative ballots were maintained per the Administrative support Procedures Manual.

Office of Inspector General Response

The Management Comments misstate the finding. Only 11 of the 78 cases had documentation in the NxGen case file stating where the determinative ballots were maintained. The finding, as stated above, is that 70 of 78 cases had a copy of the letter to the parties and that for 50 of those cases there was also documentation that the letter was sent to the parties.

Impounded Ballots

The NxGen data had 37 cases marked as having impounded ballots. Ballots can be impounded for several reasons. For the scope period, the Casehandling Manual identified two situations -- one being elections with a Request for Review of the Decision and Direction of Election that was filed within a specified period of time and is pending and the other being an election where an unfair labor practice charge is filed and appropriately blocks the election. We also identified situations in which Regional Directors impounded ballots to protect the secrecy of the voter.

For the 37 cases that were marked as “Y” for impoundment in the NxGen case file, we performed testing to determine whether ballots marked as impounded have the documentation uploaded into the case file to support basis

for impoundment. After reviewing the case files in NxGen, we determined that 17 of the 37 (46 percent) case files, had documentation in NxGen to support impoundment of ballots.

Impounded ballots are also required to be stored in envelope(s) *Form NLRB 5126*. For the nine cases with *Form NLRB 5126* uploaded into NxGen, we verified whether the face of the envelope included the required information. We found that eight election cases with impounded ballots had the face of the *Form NLRB 5126* with all the required information in the NxGen case file. We also determined that five cases also had a copy of the back of the *Form NLRB 5126*, and that none had all the signatures from election parties and Board Agent on the flap of *Form NLRB 5126*.

Ballot Logs

The Casehandling Manual states that both determinative challenged and impounded ballot envelopes must be stored in an office safe and a log for the ballots should be maintained by the custodian and also stored in the safe. Fifteen of the 26 Regions were able to provide documentation that they maintained a log of determinative challenged and impounded ballots. Our review of the documentation found that 3 of the 15 Regions had logs that collected all of the information required by the Casehandling Manual and 5 Regions collected none of the information.

Management Comments

The Management Comments state:

We also note that, while there were issues with ballot logs, the Report does not indicate that ballots were not stored properly. . . .

Office of Inspector General Response

The report does not include a finding regarding whether the Regions were properly storing impounded ballots in the safe. Impoundment of ballots is not a permanent state, impounded ballots are eventually counted, therefore it is not possible to determine if the ballots that were once impounded were properly stored in the safe. Additionally, the lack of properly completed and maintained logs

prevented using the logs to determine if the Regions had a practice of documenting that impounded ballots were properly stored in the safe. The audit report expresses no finding with regard to whether the Regions properly stored impounded ballots.

Duplicate Ballot Processing

The Casehandling Manual states that any contacts from prospective voters who report that they have not received a ballot kit should be given the action warranted. It also states that if a prospective voter has never been sent a ballot kit a duplicate should be sent immediately. If the voter moved and it appears merely that the mail is delayed by the necessity for forwarding, the Casehandling Manual states to advise a 2-day wait unless the deadline is imminent. If a ballot envelope is returned without signature, the election administrative professional should, if sufficient time remains before the deadline, send a duplicate kit with a letter explaining that failure to sign voids a returned ballot.

For the 77 cases in the random sample, we found that there were 39 cases (51 percent) with 304 instances of duplicate ballots issues. We categorized the issues in the following chart. Because we cannot verify that every duplicate ballot request was properly documented, we cannot represent that the figures are total amounts. Rather, we are reporting known instances. The total number of incidents may be higher.

Reasons for duplicate ballots	Number of duplicate ballots
Duplicate ballots sent at voter or a party's request after original mailing date	180
Duplicate ballots sent after the original was returned undeliverable	21
Duplicate ballots sent after the original was returned unsigned or spoiled	63
Duplicate ballots sent without any documented reason	30
Duplicate ballots issues with no documentation that a duplicate ballot was sent by the Region	10

Duplicate Ballot Requests

We determined the number of business days it took the Region to send the duplicate ballots for the 180 instances of a duplicate ballot sent at the voter or party's request. The results are shown in the table below:

Business days between request and sent date	Duplicate ballot requests	Percent
0	37	20.56
1	31	17.22
2	3	1.67
3	1	0.56
Not Documented	108	60.00

For the four instances of duplicate ballot requests with more than one business day between the request and sent date, we found documentation that the Region received the request without additional address information and then confirmed the address before sending the duplicate ballots. We also determined that each ballot was sent to the voter with at least 8 days before the count – an amount of time that should have been sufficient for the voter to receive and return, based on mail delivery standards, and therefore the election could be reasonably categorized as not imminent. The term “imminent” is not define by the Casehandling Manual.

For the 108 duplicate ballot requests for which the number of business days between the request date and sent date could not be calculated because of missing documentation:

- There were 84 requests with documentation of the sent date, but not the request date; 22 instances were missing a sent date, but had documentation of the request date; and 2 were missing both;
- For the 84 instances with a duplicate ballot sent date, 74 duplicate ballots were placed in the mail at least 8 days before the ballot count. For the remaining 10 instances, 3 duplicate ballots were returned before the ballot count; and

- For the 24 instances with no documentation of the duplicate ballot sent date, 8 duplicate ballots were returned before the ballot count.

Returned, Unsigned, and Spoiled Ballots

For the 21 ballots sent because the original ballot was returned undeliverable and the 63 ballots that were returned unsigned or spoiled, we determined the number of business days it took the Region to send the duplicate ballots. The results are shown in the table below:

Business days between receipt by Region and sent date	Duplicate ballots	Percent
0	34	40.48
1	29	34.52
2	2	2.38
3	1	1.19
4	1	1.19
Not Documented	17	20.24

For the 4 instances of duplicate ballots with more than one business days between request and sent date:

- One duplicate ballot was placed in the mail with 8 or more days to return it prior to the count; and
- In one instance, the Region contacted the voter for an updated address and the voter provided the address 4 business days later. The duplicate ballot was returned before the ballot count.

For the 17 duplicate ballots for which the number of business days between the request date and sent date could not be calculated because of missing documentation:

- Nine incidents had documentation of the sent date, but not the received date. For those nine instances, six duplicate ballots were placed in the mail with 8 or more days before the ballot due date. For the three instances that were not sent with 8 days or more before the ballot due date, none of the duplicate ballots were returned before the ballot count; and

- For eight instances with no documentation of the duplicate ballot sent date, 4 duplicate ballots were returned before the ballot count.

Management Comments

The Management Comments included the following statements:

We further note that the Report did not find that any election count was tainted because of a voter may have received, via a request, a duplicate ballot in addition to the original one; and

In sum, as to the Report's findings and conclusions regarding mail ballot processing, we fully acknowledge that there are Regional documentation issues, but note that the Report did not identify any that affected the outcome of the election.

Office of Inspector General Response

As stated above, the report's findings are related to the objectives of the audit. The effect for compliance with the mail ballot procedures related to duplicate ballot processing is the difference between the condition, what we found in the case files, and the criteria, the Casehandling Manual's provisions.

With regard to Management Comment's statements that the Report did not find that any election count was "tainted" because of a voter may have received, via a request, a duplicate ballot in addition to the original one and that the Report did not identify any findings that affected the outcome of the election, as reported above, we did test the tallies and ensured that the tally information was correct. We did not, however, test for "taint" or determine the effect on an election outcome with regard to processing duplicate ballot request. Determining those issues would require additional testing procedures unrelated to the objective of determining compliance with the mail ballot procedures.

Additionally, effect or potential effect with regard to “taint” or outcome may not be discernable within the GAGAS evidence standards. The terms as used in the context of the Management Comments are more likely, for individual cases, a question for the Board through its review process. The absence of a specific finding or statement of effect regarding “taint” and/or outcome should not be considered an OIG determination.

EXTERNAL FACTORS THAT MAY IMPEDE AN ELECTION

Based on the below analysis, the primary external factors that may be impeding the mail ballot election process was the ability to ensure that voters receive ballots and that ballots are returned to the Region in time and proper form to be counted.

Mailing Issues

When we interviewed Regional personnel, we asked about external factors that could impede the elections process. Based on their experience, they stated that their perception was that the delivery of the ballots to the voters was impeding the election process.

In mail ballot elections, the delivery of ballots is outside the control of the Agency. Undelivered ballots could impede an election either because of delay in a voter receiving a duplicate ballot or instances when any ballot is never received by a voter.

To determine the extent of known instances that the original ballots were not being delivered to the voters, we reviewed both the random sample of cases and all the cases in the three Regions that conducted the most elections during the scope period for documentation of issues involving ballots not being received by voters. The three top Regions were Region 1, 18, and 19. The actual instances of ballots not received by voters may be higher.

Random Sample

For the 77 cases in the random sample, we performed testing to identify any issues of ballots not being received by voters.

After reviewing the case files in NxGen, we found that there were 38 cases (49 percent) with instances of issues with ballots not being received by voters.

For the cases with instances of issues with ballots not being received by voters, we identified the issues and the number of cases for each issue. A case may have more than one issue. The table below shows the results of the review of the documentation in the case file:

Issue	Ballots Not Received		Duplicate Ballots sent	
	Cases	Ballots	Cases	Ballots
Ballot returned undeliverable	20	47	10	21
Notify of address change	24	107	24	106
Correct address, ballot not received	15	38	13	35

For the 20 cases with ballots returned undeliverable, we found 26 instances in 15 cases that lacked documentation of a duplicate ballot being sent. For those instances:

- We found documentation that confirmed that six ballots were returned undelivered after the ballot count date;
- In four instances, the Region contacted the voter to update the voter’s address, but there is no documentation of a response from the voter;
- For five instances, we found internal communication by Regional personnel that confirmed that the Region initiated action to process a duplicate ballot, but we could not confirm that one was sent; and
- In 11 instances, we did not find documentation in the case file of any action taken by the Region.

We also found seven instances when ballots were received after the count. However, there is no requirement, as noted by Regional managers during the interviews, that the receipt of ballots after the count be documented in the case files.

Region 1

For Region 1, we determined that 28 percent of the elections conducted had issues with mail ballots that were not received by a voter. A case may have more than one issue. The table below shows the results of the review of the documentation in the case file:

Region 1 Ballots not Received by Voters			Duplicate Ballots Sent	
Issue	Cases	Ballots	Cases	Ballots
Ballot returned undeliverable	4	4	3	3
Notify of address change	23	122	23	122
Correct address, ballot not received	16	56	16	56

For the four cases with ballots returned undeliverable, there was one instance that lacked documentation in the case file of a duplicate ballot being sent. For that instance, there was documentation that the Region contacted the voter for an updated address, but there was no documentation of a response from the voter.

Region 18

For Region 18, we determined that 43 percent of the elections had issues with ballots not being received by voters. A case may have more than one issue. The table below shows the results of the review of the documentation in the case file:

Region 18 Ballots not Received by Voters			Duplicate Ballots Sent	
Issue	Cases	Ballots	Cases	Ballots
Ballot returned undeliverable	6	13	5	11
Notify of address change	33	99	31	97
Correct address, ballot not received	3	10	3	10

For the 6 cases with ballots returned undeliverable, there were two instances that lacked documentation of a duplicate ballot being sent. In one instance, the Region contacted the

voter for an updated address, and there is no documentation of a response from the voter.

Region 19

For Region 19, the Region with the most elections conducted during the scope period, we determined that 56 percent of the elections had issues with ballots not being received by voters. A case may have more than one issue. The table below shows the results of the review of the documentation in the case file:

Region 19 Ballots not Received by Voters			Duplicate Ballots Sent	
Issue	Cases	Ballots	Cases	Ballots
Ballot returned undeliverable	40	79	18	28
Notify of address change	73	183	63	152
Correct address, ballot not received	36	56	34	54

We found two instances that the voter responded to a request for updated address information by stating they did not want a ballot and two instances where the voter did not respond.

Objections

We also reviewed post-election objections to determine if there were trends related to external factors. We observed that most objections with merit were generally resolved at the Regional level by stipulation of the parties.

For the elections within the scope of the audit, there were 150 elections with objections. Of those 150 elections, 69 elections had at least one objection that was related to conducting a mail ballot election, with 153 objections in total.

Based on the review of the 153 objections related to conducting a mail ballot election, the objections were organized into 11 categories. Those categories, the number of objections, and the resolution of the objections by category are shown in the table below. An objection may have

multiple categories, so the total number of instances will be greater than the total number of objections.

- The resolution of the objection is *Merit* when the objection was sustained or stipulated;
- The resolution is *No Merit* when the objection was overruled or dismissed”; and
- The resolution was *Undetermined* if the representation case was either consolidated with a unfair labor practice case that was outstanding, there was no decision on the objection, the objection was moot, or the objection was withdrawn.

		Resolution of Issues in Objections					
		Merit		No Merit		Undetermined	
Issue	Instances	Num	Percent	Num	Percent	Num	Percent
Regional Receipt of returned ballots	17	4	23.5	9	52.9	4	23.5
Mailing issues to voters	15	5	33.3	3	20.0	7	46.7
Whether a mail election was appropriate	12	0	0.0	10	83.3	2	16.7
Ballot count, void ballots, and timing	43	7	16.3	31	72.1	5	11.6
Not following election procedures not otherwise categorized	19	4	21.1	13	68.4	2	10.5
Ballots collected by parties or assisting in the voting	12	0	0.0	5	41.7	7	58.3
Region Failed to Timely Mail Ballots	6	0	0.0	6	100.0	0	0.0
Communication about voting and Picking up/hand delivery of ballots	10	4	40.0	6	60.0	0	0.0
Instructions/notice issues	4	1	25.0	1	25.0	2	50.0
Tampering with ballots/coercion and misstatements regarding procedures	12	2	16.7	2	16.7	8	66.7
Low voter turnout	12	1	8.3	8	66.7	3	25.0

Based on the objections with merit, the mailing to and from the voters accounted for 9 of the 26 objections with merit and count, voided ballots, and timing accounted for another 7. Together, the process of the mail ballots and then getting them back for the count resulted for 16 of the 26 (61.5 percent) meritorious objections.

INTERNAL CONTROLS

The internal controls as detailed in the Casehandling Manual, are not suitably designed to communicate the who, what, when, where, and why of the controls to the Regional personnel. Based on the entirety of our audit work, we determined that the findings as detailed above and the internal controls findings detailed in the internal control matrix provided at Appendix A, are caused by the lack of a suitably designed, implemented, and monitored internal control environment.

While there are some controls in place, the controls are confusing and incomplete. Key terms used in the controls and documentation requirements are not clearly defined and other controls appear to be nonsensical as they are applied to the mail ballot process. There is no uniform process to document a request for a duplicate ballot or record the receipt of mail ballots on what is commonly called a *key voter list*. Also, there is no process for documenting post-election receipt of mail ballots. Knowing the number of ballots that are received after the election would seem important information for management to assess the effectiveness of the process. The lack of a consistent documentation practice across the Regions impedes management's ability to timely review ongoing matters to ensure that the mail ballot election process is operating as intended.

As noted above, the Casehandling Manual states that it sets forth the guidelines and there is the expectation that the guidelines will be followed by Regional Directors and their staffs, but there will be situations in which they will need use their judgment and experience to adapt the guidelines to circumstances. Regional managers, however, expressed a desire for clear policies on using private delivery services after the initial ballot mailing; processes related to duplicate

ballot requests and receiving ballots; appropriate steps to take after a ballot is returned undelivered; and when, or if, it is appropriate to not send a duplicate ballot because of the likelihood that it cannot be returned prior to the count. In our review of case files, during interviews of Regional personnel, and in allegations made regarding the Agency's handling of mail ballot elections, we found examples of Regions taking different approaches regarding matters that were not directly addressed by the Casehandling Manual. Such situations can create the appearance of an arbitrary process or preferential treatment.

We also found documentation of communication with a party regarding a duplicate ballot request that implicitly confirmed that a ballot was not received. It is apparent that when Regional personnel inform a party that they will, in fact, send a duplicate ballot to a voter, they are also implying that the Region has not received the original ballot. We also found documentation that a party was included in an email to a voter from the Region regarding the processing of a duplicate ballot request. The lack of clear guidance in the Casehandling Manual appears to have contributed to these situations.

RECOMMENDATION

We recommend that the Division of Operations-Management establish a system of internal controls exclusive to the mail ballot process.

APPENDIX A

GAO - STANDARDS	CONCLUSION	RESULTS
<p>3.09 Management develops and maintains documentation of its internal control system.</p>	<p align="center">MEETS</p>	<p>The Casehandling Manual and the Administrative Support Procedure Manual document the policies, procedures, and internal controls related to mail ballot elections.</p>
<p>3.10 Effective documentation assists in management’s design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel.</p>	<p align="center">PARTIALLY MEETS</p>	<p>The Casehandling Manual and the Administrative Support Procedures Manual document the policies, procedures, and internal controls specifically related to mail ballot elections. The documents, however, do not establish and communicate the who, what, when, where, and why of internal control execution to personnel as it relates to the mail ballot election process.</p> <p>We found instances where the manual election process is overlaid on the mail ballot election process but was not fully adapted to reflect processes of the mail ballot election. For example, documenting challenged ballots. In addition, we found inconsistencies between internal controls that may cause confusion for Regional personnel during implementation. For example, the Casehandling Manual states that determinative challenged ballots must be stored in an office safe while the Administrative Support Procedure Manual states that determinative challenged ballots should be placed in the office safe or other designated, secured area.</p> <p>We also found lack of controls related to documenting requests for duplicate ballots or ballots that were returned undelivered. We found that some Regions have a memorandum in the case files to document what happens at the count, but there is no requirement to do so, and the practice is not uniform.</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
		Regional Offices are not consistently handling requests for duplicate ballots. In addition, there are no procedures for documenting duplicate ballot requests and the controls related to processing duplicate ballot requests are incomplete and vague.
8.03 In addition to fraud, management considers other forms of misconduct that can occur, such as waste and abuse.	MEETS	The Casehandling Manual include steps to address various forms of misconduct.
<p>9.02 As part of risk assessment or a similar process, management identifies changes that could significantly impact the entity’s internal control system.</p> <p>9.03 Management identifies, on a timely basis, significant changes to internal and external conditions that have already occurred or are expected to occur. Changes in internal conditions include changes to the entity’s programs or activities, oversight structure, organizational structure, personnel, and technology.</p> <p>9.04 As part of risk assessment or a similar process, management analyzes and responds to identified changes and related risks in order to maintain an effective internal control system. Changes in conditions affecting the entity and its environment often require changes to the entity’s internal control system, as existing controls may not be effective for meeting objectives or addressing risks under changed conditions.</p>	PARTIALLY MEETS	Operations-Management performs quality review for selected Representation cases in each Regional Office. During the quality review process for each Regional Office, management analyzes and responds to identified changes and related risks to maintain an effective internal control system in the mail ballot election process. The risk assessment process, however, does not appear to have been suitably designed to ensure compliance with the general documentation requirements for the NxGen case file.

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>10.02 Management designs control activities in response to the entity’s objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives to achieve the entity’s objectives and address related risks.</p>	<p align="center">PARTIALLY MEETS</p>	<p>The Casehandling Manual and the Administrative Support Procedures Manual include control activities to achieve the Agency’s objectives and an internal control system as it relates to the mail ballot election process. However, the Casehandling Manual provides guidance that is incomplete and vague.</p>
<p>10.03 Management designs appropriate types of control activities for the entity’s internal control system. Control activities help management fulfill responsibilities and address identified risk responses in the internal control system.</p>		<p><i>See below responses to section 10.03 applicable to the mail ballot election process.</i></p>
<p>10.03 - <i>Controls over information processing:</i> A variety of control activities are used in information processing. Examples include edit checks of data entered; accounting for transactions in numerical sequences; comparing file totals with control accounts; and controlling access to data, files, and programs.</p> <p>10.03 - <i>Accurate and timely recording of transactions:</i> Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all</p>	<p align="center">PARTIALLY MEETS</p>	<p>The Agency published and implemented various control activities for information processing. Quarterly, Regions run data integrity reports and certify to Operations-Management that the reports have been run and that all necessary corrections have been made. There are data integrity reports related to mail ballot elections.</p> <p>When we performed accuracy testing on the information in the <i>Tally of Ballots</i>, we found the information to be generally accurate.</p> <p>However, we identified the following NxGen data reliability issues:</p> <p>20 of 37 elections marked as having impounded ballots did not have documentation that ballots were impounded; and</p> <p>8 of the 49 canceled cases tested had an incorrect or missing disposition date in NxGen.</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>transactions are completely and accurately recorded.</p>		<p>The NxGen case files lacked documentation showing that parties were notified immediately of canceled election and that the cancelation letter was sent. We found that NxGen lacked documentation showing written notification was sent to the parties at least 24 hours before the time and date on which mail ballots will be dispatched to the voters, informing the parties of the dispatch time, and thus the time of the “start” of the election.</p> <p>Case files are maintained in NxGen. NxGen is password-protected, and access rights are granted to authorized users.</p> <p>We also found that case files lacked documentation related to duplicate ballot requests.</p>
<p>10.03 - <i>Physical control over vulnerable assets:</i> Management establishes physical control to secure and safeguard vulnerable assets.</p>	<p align="center">DOES NOT MEET</p>	<p>Regional Offices are not maintaining logs for determinative challenged and impounded ballots to ensure ballots are safeguarded. We determined that 15 of the 26 Regional Offices maintained a log for impounded and determinative challenged ballots. Of the 15 Regional Offices that maintained a log, 3 logs had all the information required by the Casehandling Manual.</p> <p>We also determined that the Agency's policies and procedures do not provide guidance on the security of ballots prior to the count. We identified two instances involving ballots not being counted because they were not adequately secured.</p>
<p>10.03 - <i>Segregation of duties:</i> Management divides or segregates key duties and responsibilities among different people to reduce the</p>	<p align="center">MEETS</p>	<p>Mail ballot elections are conducted based on an agreement among the parties or directed by the Regional Director through a Decision and Direction of Election. The elections</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.</p>		<p>are conducted and recorded by Regional staff. The ballots are counted by the Regional staff with representatives of the parties observing the count. Parties have the ability to challenge ballots and file objections to election conduct.</p>
<p>10.03 - <i>Proper execution of transactions:</i> Transactions are authorized and executed only by persons acting within the scope of their authority. This is the principal means of assuring that only valid transactions to exchange, transfer, use, or commit resources are initiated or entered into. Management clearly communicates authorizations to personnel.</p>	<p>MEETS</p>	<p>Mail ballot elections are conducted based on an agreement among the parties or directed by the Regional Director through a Decision and Direction of Election. (W/P 1.5a p. 113, W/P 3.7)</p>
<p>10.03 - <i>Access restrictions to and accountability for resources and records:</i> Management limits access to resources and records to authorized individuals and assigns and maintains accountability for their custody and use. Management may periodically compare resources with the recorded accountability to help reduce the risk of errors, fraud, misuse, or unauthorized alteration.</p>	<p>PARTIALLY MEETS</p>	<p>Case files are maintained in NxGen. NxGen is password-protected and access rights are granted to authorized users. We observed however, deficiencies in internal controls related to determinative challenged and impounded ballots.</p> <p>Regional Offices are not maintaining logs of determinative challenged and impounded ballots. 15 of the 26 Regional Offices maintained a log. For the Regional Offices that maintained a log, 3 had all the information required by the Casehandling Manual.</p>
<p>10.03 - <i>Appropriate documentation of transactions and internal control:</i> Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for</p>	<p>PARTIALLY MEETS</p>	<p>The Casehandling Manual and the Administrative Support Procedures Manual document the policies, procedures, and internal controls specifically related to mail ballot elections.</p> <p>We identified instances in the Casehandling Manual regarding</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.</p>		<p>challenged ballot processing that are unclear and could be interpreted in different ways with regard to documenting non-determinative and determinative challenged ballots.</p> <p>As previously noted, the Casehandling Manual and the Administrative Support Procedures Manual state different requirements for documenting <i>Form NLRB 5126</i> (envelope). The Casehandling Manual appears to address manual elections rather than mail ballot elections as the requirements apply to when the Board Agent returns to the office. For a mail ballot election, the Board Agent is conducting the count in the office and the parties were not present to sign the <i>Form NLRB 5126</i> flap.</p> <p>We also determined that 3 of the 11 mail ballot requirements tested lacked proper documentation to support the requirements of cases tested. These include transmittal of written notification of dispatch, documentation of immediate notification of canceled or postponed elections, and transmittal of the written notification of the cancelation.</p>
<p>10.05 Management evaluates the purpose of the control activity as well as the effect a deficiency would have on the entity in achieving its objectives.</p>	<p align="center">PARTIALLY MEETS</p>	<p>Operations-Management evaluates the purpose of control activities and the effect of deficiencies by reviewing cases completed by Regional Offices during the quality review process. However, the process was not sufficient to identify apparent deficiencies in case file documentation.</p>
<p>10.08 Management designs control activities for appropriate coverage of objectives and risks in the operations. Operational</p>	<p align="center">DOES NOT MEET</p>	<p>Internal controls related to mail ballot elections are documented in The Casehandling Manual and the Administrative Support Procedure</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
<p>processes transform inputs into outputs to achieve the organization’s objectives. Management designs entity-level control activities, transaction control activities, or both depending on the level of precision needed so that the entity meets its objectives and addresses related risks.</p>		<p>Manual and include entity-level controls, transaction control activities to achieve program objectives, and address risks in the operations of mail ballot elections.</p> <p>However, we found the following control errors during our testing:</p> <p>There are no procedures for documenting duplicate ballot requests and the controls related to processing duplicate ballot requests are incomplete and vague.</p> <p>Regional Offices documented in case files the face of Form NLRB 5126 for 8 of the 37 election cases marked as having impounded ballots.</p> <p>Regional Offices did not document in NxGen the envelopes containing determinative challenge ballots in 20 of 78 cases tested.</p> <p>Regional Offices did not upload a memorandum into NxGen stating where the determinative challenge ballots were stored for 67 of the 78 cases tested.</p>
<p>11.03 Management designs the entity’s information system to obtain and process information to meet each operational process’s information requirements and to respond to the entity’s objectives and risks. An information system is the people, processes, data, and technology that management organizes to obtain, communicate, or dispose of information.</p>	<p align="center">PARTIALLY MEETS</p>	<p>NxGen enables the Agency to process electronic case files rather than paper case files. The system uses actions, documents, and tasks to process case files. The Agency published and implemented various controls to process and meet operational requirements and to respond to the entity’s objectives and risks. These include:</p> <ul style="list-style-type: none"> •NxGen Data Integrity Reports •NxGen Quality Review Checklist •NxGen Best Practices <p>Based on our review of case files, we found instances in NxGen where</p>

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GAO - STANDARDS	CONCLUSION	RESULTS
		case files did not include all of the documentation for processing. For example, of the 37 cases marked as having impounded ballots, 20 (54 percent) had no documentation in NxGen to support the impoundment of ballots.
11.05 Management also evaluates information processing objectives to meet the defined information requirements. Information processing objectives may include Completeness, Accuracy, and Validity.	MEETS	The Agency published and implemented various control activities for information processing. Quarterly, Regions run data integrity reports and certify to Operations-Management that the reports have been run and necessary corrections have been made. There are data integrity reports related to mail ballot elections.
12.03 Management documents in policies for each unit its responsibility for an operational process's objectives and related risks, and control activity design, implementation, and operating effectiveness.	DOES NOT MEET	Overall, the Casehandling Manual controls related to the process of conducting mail ballot elections is incomplete and vague in critical areas including duplicate ballot processing and documenting actions by Regional personnel.
12.05 Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately.	MEETS	The Casehandling Manual is periodically reviewed and updated.
13.02 Management designs a process that uses the entity's objectives and related risks to identify the information requirements needed to achieve	MEETS	The NxGen system has reports that support the case management process based on the strategic goals.

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GAO - STANDARDS	CONCLUSION	RESULTS
the objectives and address the risks.		
13.04 Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent.	PARTIALLY MEETS	Management obtains relevant data from parties and voters during the mail ballot election process. Data is entered into NxGen. However, we found instances where the voter list had address issues resulting in duplicate ballots being sent to incorrect addresses.
13.05 Management processes the obtained data into quality information that supports the internal control system.	DOES NOT MEET	<p>Regional Offices input data into data fields and upload documents into the NxGen system for mail ballot elections. When compared to source documents, we identified data fields in NxGen that were not reliable. For example, 20 of the 37 cases marked as having impounded ballots had no documentation in NxGen to support the impoundment of ballots.</p> <p>In addition, 12 of the 77 cases tested for the Number of Valid Votes Counted data element, had incorrect amounts in NxGen.</p> <p>Because guidance provided by policies and procedures is not clear and could be interpreted differently, information inputted into the system is inconsistent. The inconsistency and unreliability of data in the system could prevent management from accessing quality data to make informed decisions relating to the mail ballot election process.</p>
16.02 Management establishes a baseline to monitor the internal control system. The baseline is the current state of the internal control system compared against	DOES NOT MEET	The Agency's internal controls over mail ballot elections are documented in policies and manuals and are used as a baseline to monitor the internal controls over mail ballot

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GAO - STANDARDS	CONCLUSION	RESULTS
management's design of the internal control system.		elections. Operations-Management evaluates and documents the results of ongoing monitoring to identify internal control issues with mail ballot elections through its quality review program. The process was ineffective to identify incomplete and vague controls.
16.05 Management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions.		
16.09 Management evaluates and documents the results of ongoing monitoring to identify internal control issues.		

APPENDIX B

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

Memorandum

TO: David P. Berry, Inspector General

FROM: Joan A. Sullivan, Associate General Counsel

DATE: May 21, 2024

SUBJECT: OIG Report No. OIG-AMR-101-XX-XX

Thank you for the opportunity to review and respond to the April 26, 2024, Audit Report on Mail Ballot Elections (Report). Below you will find that we have provided some context, have addressed your recommendation, advising where there is agreement and where there is not, and have offered the Agency's action plan for moving forward.

I. Background

The Office of the Inspector General undertook an audit of mail ballot elections conducted during FY 2022, the objectives of which were to:

- Evaluate the Regional Offices' compliance with the Agency's mail ballot election procedures.
- Determine if any external factors are impeding the Agency's mail ballot elections; and
- Determine if the Agency's internal controls for mail ballot elections are effective.

We accept the Objective, Scope and Methodology used in the Report. We also accept that the performance audit was conducted in accordance with generally accepted government auditing standards during the period from October 13, 2022, through April

15, 2024, and that it is your belief that the evidence obtained provides a reasonable basis for your findings and conclusions based on your audit objectives. We note that the Report did not indicate that any of the issues referenced in the Report affected the outcome or evidenced bias for any election conducted during FY 2022. However, we acknowledge that, as discussed more fully herein, the Agency should improve Regional practices regarding the completion and uploading of documentation in the electronic case file.

As set forth in the Report, one of the two primary functions of the National Labor Relations Board is to investigate and resolve questions concerning representation among employees to determine whether the employees wish to be represented by a union. As part of this function, the NLRB conducts representation elections. Representation elections can be conducted manually—in person—or depending on the circumstances, by mail, or a combination of manually and by mail. The preference is to conduct elections manually; however, Regional Directors have the discretion to conduct elections in another manner based upon an assessment of the factual circumstances in a particular case.

The Casehandling Manual

The Office of the General Counsel has prepared, and routinely updates a Casehandling Manual (CHM or Manual). The CHM provides procedural and operational guidance for Regional Directors and their staffs when processing both unfair labor practice and representation cases. The CHM consists of three parts, with Part Two covering Representation Proceedings, which is the relevant part for purposes of this Report.

The CHM Part Two specifically provides that: “[t]he Manual has been neither reviewed nor approved by the Board. As to matters on which the Board has issued rulings, the Manual seeks to accurately describe and interpret Board law; while the Manual can be regarded as reflecting Board policies as of the date of its preparation, in the event of conflict, it is the Board’s decisional law, not the Manual, that is controlling.” Likewise, while the Manual reflects casehandling policies of the General Counsel as of the date of its preparation, these policies may be revised or changed from time to time. It is important to note that “[t]he Manual is not a form of binding authority, and the

procedures and policies set forth in the Manual do not constitute rules or directives of the General Counsel or the Board.” And, as you correctly note in your Report, the Manual also provides that, while the expectation is that Regional Directors and their staffs follow the guidelines in casehandling, there will be situations in which the Regional Staff will need to use their judgment and experience to adapt the guidelines to circumstances. Thus, such variations are permissible and necessary at times.

In sum, the guidelines in the CHM are not intended to be binding procedural rules, but rather are a framework for the application of the Board’s decisional law, rulings and policies to the facts of the situations presented to Regional Directors and their staffs.

Mail Ballot Elections

Specifically, as to mail ballot elections, the procedures for conducting a mail ballot election are covered by Sections 11336 through 11344 of the CHM. Additionally, Section 11301.2 of the CHM and the Board’s decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998) provide factors for consideration in deciding whether a mail ballot election should be conducted.¹ These factors include: (a) where eligible voters are “scattered” because of their job duties over a wide geographic area; (b) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (c) where there is a strike, a lockout, or picketing in progress. Under extraordinary circumstances, other relevant factors may also be considered by the Regional Director. One such extraordinary circumstance was the COVID-19 pandemic.

During the pandemic, which includes the time period audited, Regional offices had to balance maintaining continuity of operations to carry out the Agency’s statutory mission - including conducting elections under unprecedented circumstances - against maintaining the health and safety of its workforce as well as any participant in an election. And, to add context, during FY 2022, there was extensive telework due to safety issues. Thus, there were fewer board agents physically working in each Regional Office at any

¹ In addition, Sections 11335.1 and 11335.2 of the CHM Part 2, set forth the guidelines for conducting a mixed manual ballot/mail ballot election.

given time to receive mail ballots, to address and document related issues, and to timely upload such information into the electronic case file.

The Agency turned to conducting representation elections by mail in an effort to balance these competing but equally important needs. In *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), the Board issued guidelines and parameters to assist the Regions in determining the propriety of conducting mail ballot elections under then current circumstances. The Board outlined six situations that suggested the propriety of conducting mail ballot elections due to the COVID-19 pandemic.² These factors were later updated in *Starbucks, Inc.*, 371 NLRB No. 154 (2022). Specifically, the Board re-aligned *Aspirus* factor 2 to track the CDC county-based Community Level System and advised that Regional Directors do not abuse their discretion by directing a mail-ballot election whenever the relevant Community Level is “high.”

As stated in the Report, during the COVID-19 pandemic, the use of mail ballot elections far exceeded historic trends. In this regard, Regional offices conducted 1,545 elections in FY 2022; 1,199 elections were conducted by mail ballot, 342 elections were conducted manually, and 4 elections were mixed manual/mail ballot. There were 94,157 eligible voters; of that number, 61,434 voters were eligible to vote in mail ballot elections.

² The six situations were:

- (1) The NLRB office tasked with conducting the election was operating under “mandatory telework” status.
- (2) Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located was increasing, or the 14-day testing positivity rate in the county where the facility was located was 5 percent or higher.
- (3) The proposed manual election site could not be established in a way that avoided violating mandatory state or local health orders relating to maximum gathering size.
- (4) The employer failed or refused to commit to abide by the GC Memo 20-10 protocols.
- (5) There was a current COVID-19 outbreak at the facility or the employer refused to disclose and certify its current status.
- (6) Other similarly compelling considerations.

The Board found that in the presence of any of the above situations, Regional Directors must consider directing a mail-ballot election; however, the presence of any of these situations did not require a mail-ballot election.

In contrast, in FY 2023 – the time when the pandemic subsided - Regions conducted only 425 mail ballot elections.

II. Mail Ballot Election Process

Decisions and Direction of Elections

The audit considered the mail ballot election process and covered such areas as Decisions and Direction of Elections (DDEs) and Election Agreements. For DDEs, the audit looked for documentation in the file to support the determination to conduct a mail ballot election. Although the audit found 10 out of the 60 cases reviewed did not have sufficient supporting documentation in the electronic case file for the determination to conduct a mail ballot election, the DDEs provided sufficient documentation to support the Director’s decision, including review and application of the relevant factors under *Aspirus*. And, as the Report notes, there is no specific documentation requirement for a Regional Director’s determination to conduct a mail ballot election.³ Further, we note that inclusion of active links to external websites for information to be viewed at the time of DDE’s issuance, such as the then-current COVID-19 rates, was consistent with Agency practice.

Election Agreements

The audit looked at a statistical sample of Election Agreements in which the parties agreed to conduct a mail ballot election, to determine if the agreements contained all necessary elements identified in the CHM. Out of 77 elections agreements reviewed, one did not contain all the necessary elements. From the description in the Report of the agreement, it appears that the auditors may have reviewed an initial draft of an agreement opposed to the final election agreement.⁴

³ It is noted that, when parties agree to a mail ballot election, the DDE would appropriately address only those matters that presented a question concerning representation.

⁴ The Report describes the agreement as missing commerce data, a full unit description, and the payroll period for eligible voters, but the election could not have been conducted without that information.

Election Procedures

The audit then looked at whether mail ballot elections followed the procedures set forth in the CHM. We accept that, of the 77 cases reviewed to determine whether Regional personnel checked the voter lists, 74 voter lists were received within two days of the DDE or Election Agreement, all files contained voter lists, and 75 voter lists contained all required information. We also accept that all ballot tallies, except in one case, did not contain any errors.

Concerning elections that were cancelled, the audit looked at whether parties were advised immediately if the election was postponed or cancelled and whether written notification was provided expeditiously. As the Report correctly advises, the CHM does not define the terms “immediately” or “expeditiously.” Thus, according to the Report, the auditors, who do not and have not performed any casehandling at the Regional level, independently chose to define cancellation notification to be “immediate” when sent the same day and “expeditious” when sent the same day or the day after the cancellation was approved. Based on those imposed definitions, the auditors determined that, of the 49 cases reviewed, 27 had documentation in the electronic case file that parties were notified immediately of a canceled or postponed election and documentation that written notification was sent expeditiously in 28 cases. It is noted that, when an election is postponed or cancelled, regardless of what documentation about notifications was in the file, the Region issues an Order that is sent to the parties with a letter advising that the Notice of Election should be removed, and the Order be posted in its place.

Challenged and Impounded Ballots and Ballot Logs

We acknowledge that, in a number of instances, copies of the envelopes and forms related to non-determinative and determinative challenges and to impounded ballots were not uploaded to the electronic case file, and that some that were uploaded did not have complete information per the CHM.

However, we would like to provide context related to the audit finding that cases were missing signatures of the parties and the Board Agent on the envelope flap as

provided for in the CHM. That missing information was due to the fact that most of the mail ballot counts were handled virtually during this time because of the pandemic. Thus, there were no parties available in-person at the count to sign the flap. We also note that, while there were issues with ballot logs, the Report does not indicate that ballots were not stored properly and, further, in 70 of the 78 cases, a memorandum was uploaded into the electronic case file stating where the determinative ballots were maintained per the Administrative Support Procedures Manual.

Duplicate Ballot Processing

The CHM provides that prospective voters who have not received ballots be sent duplicate mail ballot kits. It also provides that if a mail ballot envelope is returned without signature that the voter be sent a duplicate ballot if there is sufficient time remaining before the deadline to vote. The audit looked at 77 randomly sampled cases and found that 51% involved duplicate ballots, and of those, some lacked proper documentation in the electronic case file, which we acknowledge. We note that, for those cases with sufficient documentation uploaded into the electronic case file for the auditors to assess, the majority of duplicate ballots was sent within one business day of the request, and each ballot was sent at least eight days before the ballot count. We further note that the Report did not find that any election count was tainted because a voter may have received, via a request, a duplicate ballot in addition to the original one.

In sum, as to the Report's findings and conclusions regarding mail ballot processing, we fully acknowledge that there are Regional documentation issues, but note that the Report did not identify any that affected the outcome of an election.

III. External Factors

Mailing Issues

The Report advised that, of the 77 cases reviewed, almost half (49%) involved instances of issues with ballots not being received by voters. We agree that the delivery

of mail ballots is outside the Agency's control. We note that those ballots not received because they were undeliverable, had an address change or otherwise implicates issues with U.S. Postal Service as well as with employer providing inaccurate voter addresses to the Region. And, we further note that, as a result of those external issues, Regions used their discretion, at times, to allow for voters to pick up and/or return a ballot to the Regional office in order to promote enfranchisement of every eligible voter.

Objections

The Report advised that the auditors reviewed post-election objections to determine if there were trends related to external factors. As a result, it found there were 150 elections with post-election objections filed, and of those 26 objections with merit, 61.5% were due to the delivery and return of mail ballots for the count.

IV. Internal Controls

We agree that, while we have some internal controls in place, there are some key terms that are not clearly defined and some procedures that are not well suited for mail ballot elections as opposed to manual ballot elections. We also agree that there should be a more uniform process around documenting and recording information, and then ensuring that it is uploaded into the electronic case file system. Thus, we agree that there is a need for clearer Regional guidance in the handling of mail ballot elections, which should lead to more consistency, recognizing that we cannot know every situation that might arise requiring Regional staff to use its discretion based on its own good judgment and experience.

V. Conclusion

We accept the only recommendation in the Report, specifically that the Division of Operations-Management establish a system of internal controls exclusive to the mail ballot process. We have already begun the review and revision process in order to have

a separate CHM section dedicated to the mail ballot election process from petition filing to certification. And, as the vast majority of the Report discussed a lack of proper documentation uploaded into our electronic case file system, we plan to provide clearer guidance to Regions about timely uploading necessary information for review during the course of the election.

Conclusion

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

JOAN SULLIVAN Digitally signed by JOAN
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Joan A. Sullivan Associate General Counsel
Division of Operations-Management

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