UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Audit of the NLRB Fiscal Year 2010 Financial Statements

Report No. OIG-F-15-11-01

December 2010

INSPECTOR GENERAL

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

December 15, 2010

I hereby submit the Audit of the National Labor Relations Board's (NLRB) Fiscal Year (FY) 2010 Financial Statements, Report No. OIG-F-15-11-01.

The Accountability of Tax Dollars Act of 2002 requires that the NLRB prepare and submit to the Congress and the Director of the Office of Management and Budget (OMB) an audited financial statement.

We contracted with Carmichael, Brasher, Tuvell & Company (CBTC) to perform the audit. The objectives of the audit were to issue an opinion on the fair presentation of the principal financial statements, obtain an understanding of the Agency's internal controls, and test compliance with laws and regulations that could have a direct and material effect on the financial statements. The audit was conducted by CBTC in accordance with Government Auditing Standards issued by the Comptroller General of the United States and OMB Bulletin No. 07-04, Audit Requirements for Federal Financial Statements.

This document is the Office of Inspector General's comprehensive report related to auditing the Agency's financial statements and includes CBTC’s independent auditors’ report and management letter; NLRB's financial statements and related notes; and management's responses to both the independent auditors’ report and management letter.

CBTC is responsible for the independent auditors’ report and the conclusions expressed in the report. We reviewed CBTC's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. Our review disclosed no instances in which CBTC did not comply, in all material respects, with generally accepted government auditing standards.

On November 9, 2010, we transmitted CBTC's independent auditors' report, which was included in the Agency's FY 2010 Performance and Accountability Report. The audit results were:

- The financial statements present fairly, in all material respects, the financial condition and activity of the NLRB as of and for the years ending September 30, 2009 and 2010.

- The tests on internal controls showed:

    - No material weaknesses in controls over financial reporting were identified.

    - A significant deficiency in internal controls was found, as evidenced by the combination of deficiencies to be in compliance with laws related to the Antideficiency Act, the *bona fide* needs rule, and the recording statute, as described below, and the lack of a system to prevent or detect violations. A significant deficiency is a deficiency, or combination of deficiencies, in internal controls that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

  CBTC's opinion did not provide any assurances on the effectiveness of internal control over financial reporting. Providing assurances on internal control or on the effectiveness of NLRB's internal control over financial reporting was not an objective of the audit.

- The following instances of noncompliance with laws and regulations were identified:

    - The Agency did not adhere to the recording statute and the *bona fide* needs rule when the Office of Employee Development recorded certain obligations for training.

    - The Agency did not adhere to the recording statute and the *bona fide* needs rule when it contracted for court reporting services.

    - The Agency violated the Antideficiency Act when the Office of Equal Employment Opportunity purchased food as meals for employees.

    - The Agency violated the Antideficiency Act when the Acquisitions Management Branch entered into a prohibited personal services contract.

    - The prior year violation in which the Agency did not adhere to the *bona fide* needs rule when it purchased $250,000 of postage on September 29, 2009, was reported again.

No other instances of noncompliance with laws and regulations that would be reportable under U. S. generally accepted government auditing standards or OMB audit guidance were found. Providing an opinion on compliance with laws and regulations, however, was not an objective of the audit and, accordingly, such an opinion was not expressed.

CBTC's independent auditors' report did not include any recommendations for corrective action. CBTC's management letter contains recommendations to address the significant deficiency in internal controls and the four current year instances of noncompliance with laws and regulations. The management letter also provided information on the status of prior year recommendations.

In their comments to the management letter, the Chairman and Acting General Counsel stated that they are committed to making changes as are necessary or appropriate to ensure a properly controlled financial environment. To that end, they plan to undertake a comprehensive review of the Agency's financial management structure. They also stated that they are currently drafting an appropriate report for the Antideficiency Act violations and will defer formulating a course of action regarding noncompliance with proper recording and the *bona fide* needs rule until a Comptroller General decision is received.

The Agency's comments on the audit report were incorporated in their entirety into the independent auditors' report. The Agency's comments on the management letter are presented in their entirety as an appendix to this report.

David P. Berry
Inspector General

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INDEPENDENT AUDITORS' REPORT

To David P. Berry, Inspector General
National Labor Relations Board

The Accountability of Tax Dollars Act of 2002 made the National Labor Relations Board (NLRB) subject to the annual financial statement reporting requirements of the Chief Financial Officers Act of 1990, which requires agencies to report annually to Congress on their financial status and any other information needed to fairly present the agencies' financial position and results of operations.

The objectives of the audit are to express an opinion on the fair presentation of NLRB's principal financial statements, obtain an understanding of the Agency's internal control, and test compliance with laws and regulations that could have a direct and material effect on the financial statements.

We have audited the balance sheets of NLRB as of September 30, 2010 and 2009, and the related consolidated statements of net cost, changes in net position, and budgetary resources for the years then ended.

NLRB's management is responsible for preparing the financial statements in conformity with accounting principles generally accepted in the United States of America; establishing, maintaining, and assessing internal controls over financial reporting; preparing the Management's Discussion and Analysis (MD&A); and complying with laws and regulations.

Our responsibility is to express an opinion on the Fiscal Year (FY) 2010 and 2009 financial statements of NLRB based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements.* These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

OPINION ON FINANCIAL STATEMENTS

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net position of NLRB, as of September 30, 2010 and 2009; and the net cost, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

REPORT ON INTERNAL CONTROL

In planning and performing our audit, we considered NLRB's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control or on the effectiveness of NLRB's internal control over financial reporting. Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. Consequently, we do not provide an opinion on the effectiveness of NLRB's internal control over financial reporting.

A ***deficiency in internal control*** exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A ***material weakness*** is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the organization's financial statements will not be prevented, or detected and corrected on a timely basis. A ***significant deficiency*** is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above. However, we identified a significant deficiency in the NLRB's internal control as evidenced by the combination of deficiencies to be in compliance with laws related to the Anitdeficiency Act, the *bona fide* needs rule, and the recording statute, as described in the next section, and the lack of a system to prevent or detect such violations. NLRB's management response to our significant deficiency is included in Appendix A with our assessment of management's response at Appendix B.

We also identified other matters in internal control that came to our attention during our audit that we communicated in writing to the management of NLRB and those charged with governance.

We considered NLRB's internal control over Required Supplementary Information (RSI) by obtaining an understanding of the Agency's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of controls as required by OMB Bulletin No. 07-04. The objective of our audit was not to provide assurance on these internal controls. Accordingly, we do not provide an opinion on such controls.

REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to NLRB. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

Our tests of compliance with certain provisions of laws and regulations discussed in the preceding paragraph disclosed the following instance of noncompliance reported in the previous fiscal year that continues to be required to be reported under U. S. generally accepted government auditing standards and OMB audit guidance.

<u>FY 2009 and 2010</u>

U. S. Code, Title 31, Section 1502(a), the *bona fide* needs rule, states "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law."

NLRB did not adhere to the *bona fide* needs rule when NLRB's Division of Administration purchased $250,000.00 of postage on September 29, 2009 that was neither necessary to meet the need of FY 2009 nor was it necessary to avoid a disruption of the NLRB's operations.

In the FY 2009 Management Letter, we recommended that NLRB de-obligate the $250,000 in prepaid postage. NLRB management did not agree with this recommendation.

<u>FY 2010</u>

U. S. Code, Title 31, Section 1501(a)(1), the recording statute, states that an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement between an agency and another person or agency that is in writing, authorized by law, and executed before the end of the period of availability for obligation of the appropriation or fund used.

NLRB did not adhere to the recording statute or the *bona fide* needs rule when, on September 28, 2010, the Office of Employee Development recorded an obligation of $39,000 in training costs for two (2) participants to be trained in January 2011 at the Federal Executive Institute. The agreement for the training was not executed prior to the end of the period of availability for the FY 2010 appropriation and the training was not a *bona fide* need of FY 2010.

NLRB did not adhere to the recording statute or the *bona fide* needs rule when, on September 28 and 29, 2010, the NLRB obligated $876,374 for thirty-six (36) contracts for court reporting services. The contracts created a liability that is contingent upon a court reporter being scheduled for a hearing. Contingent liabilities are not recordable as obligations under the recording statute. Additionally, the court reporting expenses for FY 2011 are not a *bona fide* need of FY 2010.

U. S. Code Title 31, Section 1301(a) states "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

NLRB's Office of Equal Employment Opportunity (OEEO) purchased food for meals for employees. This is not an allowable expenditure under NLRB's appropriation and is a violation of the Antideficiency Act.

Furthermore, the NLRB Acquisitions Management Branch violated the Antideficiency Act when it entered into a prohibited personal services contract for $124,800 with a labor relations services contractor.

Except as noted above, our tests of compliance with selected provisions of laws and regulations disclosed no other instances of noncompliance that would be reportable under U. S. generally accepted government auditing standards or OMB audit guidance.

Providing an opinion on compliance with laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

OTHER ACCOMPANYING INFORMATION

Our audit was conducted for the purpose of forming an opinion on the financial statements of NLRB taken as a whole. The accompanying financial information is not a required part of the financial statements.

The other accompanying information included in the MD&A and RSI sections of the Performance and Accountability Report are required by the Federal Accounting Standards Advisory Board and OMB Circular A-136, *Financial Reporting Requirements*. We have applied limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the information. We did not audit the other accompanying information and, accordingly, do not express an opinion or any other form of assurance on it.

This communication is intended solely for the information and use of the management of NLRB, others within the organization, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

CARMICHAEL, BRASHER, TUVELL & COMPANY, PC

Carmichael, Brasher, Tuvell + Co., P.C.

Atlanta, Georgia
November 9, 2010

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 9, 2010

Carmichael, Brasher, Tuvell & Company, PC
Atlanta, Georgia

To Whom It May Concern:

We are in receipt of your draft Independent Auditor's Report with respect to the Financial Statements of the National Labor Relations Board for the fiscal year ended September 30, 2010.

We are extremely concerned with your finding of a "significant deficiency in the NLRB's internal control" and have initiated a comprehensive review of this matter. Please be assured that we are committed to making whatever structural and other changes may be necessary or appropriate to ensure a properly controlled financial environment. We appreciate your diligent efforts to bring this critical matter to our attention.

Sincerely,

Wilma B. Liebman
Chairman

Lafe E. Solomon
Acting General Counsel

APPENDIX B – CBTC'S ASSESSMENT OF MANAGEMENT'S RESPONSE TO SIGNIFICANT DEFICIENCY

CBTC has reviewed NLRB management's response to the reported significant deficiency made in connection with our audit of NLRB's 2010 Financial Statements which is included as Appendix A.

We believe Management's proposed actions are responsive to our significant deficiency, however; the significant deficiency will remain open pending our follow up review of NLRB's corrective actions once implemented.

MANAGEMENT LETTER

To David P. Berry, Inspector General
National Labor Relations Board

We audited the financial statements (balance sheet, and the related statements of net cost, changes in net position, and statement of budgetary resources, hereinafter referred to as "financial statements") of the National Labor Relations Board (NLRB) as of and for the years ended September 30, 2010 and 2009, on which we issued an unqualified opinion dated November 9, 2010.

In planning and performing our audit, we considered NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of its internal controls, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in the Office of Management and Budget's (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements,* but not for the purpose of expressing an opinion on the effectiveness of NLRB's internal control. We have not considered the internal control structure since the date of our report.

A ***deficiency in internal control*** exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A ***significant deficiency*** is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

As noted in our Report on Internal Control, we identified a ***significant deficiency*** in the NLRB's internal control as evidenced by the combination of deficiencies to be in compliance with laws related to the Antideficiency Act, the *bona fide* needs rule and the recording statute; and the lack of a system to prevent or detect such violations.

During our audit, we also noted certain matters involving the internal control structure and other operational matters that are presented in this letter for your consideration. These issues and related recommendations have been discussed with the appropriate members of NLRB's management and are intended to improve the internal control structure or result in operating efficiencies. NLRB's written responses to these matters identified in our audit have not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

We reviewed all four open recommendations made in the prior years' management letters (two from 2009, one from 2007, and one from 2006) and determined the status of corrective actions for each. Management has completed one recommendation, partially completed two recommendations, and decided not to implement the fourth one. NLRB's written responses to the prior years' management letter comments have not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

The report is intended for the information and use of those charged with governance and management of NLRB, the Office of Inspector General, others within the organization, OMB, and the U.S. Congress, and is not intended to be and should not be used by anyone other than those specified parties.

CARMICHAEL BRASHER TUVELL & COMPANY

Carmichael, Brasher, Tuvell + Co., P.C.

November 9, 2010

SIGNIFICANT DEFICIENCY

#1 Internal Controls in the Agency's Procurement Function

Condition

During the FY 2010 Financial Statement Audit, we identified a significant deficiency in the NLRB's internal control as evidenced by a combination of deficiencies to be in compliance with laws related to the Antideficiency Act, the *bona fide* needs rule, and the recording statute. Those matters are detailed as items 2 through 5 below.

Cause

The NLRB procurement function does not have sufficient internal controls to ensure that the Agency adheres to the relevant laws and regulations. In the non-compliances with laws and regulations noted above, the internal controls were insufficient to prevent these violations from occurring.

Effect

Because the internal controls over the procurement function were insufficient, the Agency is putting itself at risk for additional deficiencies related to violations of laws and regulations.

Criteria

The Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* states that "internal control is a major part of managing an organization. It comprises the plans, methods, and procedures used to meet missions, goals, and objectives and, in doing so, supports performance-based management. Internal control also serves as the first line of defense in safeguarding assets and preventing and detecting errors and fraud."

Recommendation

We recommend that the Agency establish a system of internal controls to ensure that laws and regulations relating to procurement are properly applied. These controls may include but are not limited to:

1. Establishment of a Chief Financial Officer outside of the Division of Administration that reports to those charged with governance;

2. Utilization of legal counsel to review non-GSA schedule contracts and contracts over specified monetary amount prior to award to determine compliance with the Federal Acquisition Regulation (FAR);

3. Creation of a formalized system of training contracting officers; and

4. Initiation of a quality control review system prior to issuing contracts that would include peer review.

Management's Response
NLRB is extremely concerned with the significant deficiency in internal control and has initiated a comprehensive review of this matter. NLRB's Chairman and General Counsel stated that the Agency is committed to making necessary or appropriate changes to ensure a properly controlled financial environment.

In a response dated December 7, 2010, the Chairman and Acting General Counsel stated that before any action is taken in regard to creating a new Chief Financial Officer position, they plan to undertake a comprehensive review of the Agency's financial management structure, including the possible engagement of outside experts.

CBTC'S Assessment of Management's Response
We believe Management's proposed actions are responsive to our significant deficiency, however; the significant deficiency will remain open pending our follow up review of NLRB's corrective actions once implemented.

MANAGEMENT COMMENTS

#2 Non-Compliance with the Recording statute and the *Bona fide* Needs rule - Training

Condition

The National Labor Relations Board (NLRB) requested and received seven slots for U.S. Office of Personnel Management training at the Federal Executive Institute (FEI). The cost of the training is $19,500 per participant. On September 28, 2010, the Agency used the Standard Form 182, Authorization, Agreement and Certification of Training (SF 182) to obligate $39,000 in Fiscal Year (FY) 2010 funds for the cost of two participants' attendance at the January 2011 FEI session. The SF 182s were processed internally by the Agency, but were not forwarded to FEI until October 15, 2010. The Agency did not execute the FEI agreement for the training slots until October 12, 2010, and did not forward the agreement to FEI until October 15, 2010.

Cause

The Director, Office of Employee Development, stated that he charged the obligation against the FY 2010 funds because the time between the end of FY 2010 and the training in January 2011 was short and the scheduling was beyond his control.

Effect

The Office of Employee Development violated the recording statute, 31 U.S.C. § 1501, and the *bona fide* needs rule when it charged the obligations for the training occurring in January 2011 against the FY 2010 funds.

Criteria

31 U.S.C. § 1501(a)(1), states that an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement between an agency and another person or agency that is in writing, authorized by law, and executed before the end of the period of availability for obligation of the appropriation or fund used. Additionally, 31 U.S.C. § 1502(a) provides that funds from a fixed-term appropriation are "available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with [31 U.S.C. § 1501]."

Additionally, an agency may only obligate a fiscal year appropriation to meet a legitimate, or *bona fide*, need arising in the fiscal year for which the appropriation was made. 64 Comp.Gen. 359, 362 (1985). Training obligations are charged against the appropriation in the year in which the training is received. B-233243, Aug. 3, 1989; B-212141-O.M., Mar. 29, 1984. Comptroller General Decisions have found that training that crosses fiscal years or starts at the beginning of the fiscal year to be properly charged to the earlier fiscal year. See, 70 Comp. Gen. 296 (1991); B-233243, Aug. 3, 1989; and B-213141, Mar. 29, 1984.

Recommendation

We recommend that the Agency deobligate $39,000 of FY 2010 funds used for the training and obligate that amount, in addition to the remaining $97,500 that has not been recorded, using FY 2011 funds.

Management's Response
The Division of Administration responded by stating that as early as May 14, 2010, it identified a need to provide the training to recently appointed senior level managers and that it committed to using the January 2011 FEI training slots in June 2010. The Division of Administration also stated that the agreement between the NLRB and FEI for the training did not constitute an obligation, but was "just a commitment to pay, when the time comes, for the slots identified." The Division of Administration asserted that the SF 182s were the "actual obligating documents," and that they were "operative documents that serve to obligate the funds for the training purpose specified on the forms." The Division of Administration described the agreement with FEI as "internal FEI documents that serve to allocate the available slots among numerous agencies." The Division of Administration also stated that other unidentified agencies use funds from one fiscal year to pay for training in the following fiscal year and that FEI will accept such funds.

In a response dated December 7, 2010, the Chairman and Acting General Counsel stated that the Agency will defer formulating a course of action until a decision is received from the Comptroller General.

CBTC'S Assessment of Management's Response
The Division of Administration comments do not sufficiently address the issue that the agreement to commit the Agency funds was not completed until October 2010 (after the fiscal year-end). NLRB knew the training would take place in FY 2011 and should have known that the training was a *bona fide* need of that fiscal year. The fact that FEI accepted payments from other agencies from funds obligated in the prior fiscal years is not an adequate argument to support NLRB's position. NLRB has not pointed to any statutory or regulatory authority to support its position.

CBTC continues to recommend that the Agency deobligate $39,000 of FY 2010 funds used for the training and obligate that amount against FY 2011 funds. Additionally, the NLRB OIG submitted this issue to GAO for a Comptroller General's decision.

CBTC will follow up in the next fiscal year audit after a decision is received from the Comptroller General.

MANAGEMENT COMMENTS

#3 Antideficiency Act Violation due to OEEO Food Purchases

Condition

The Office of Equal Employment Opportunity (OEEO) purchased and served food as part of its 2010 National African American History Month program. The serving of food at this event constituted a meal. Because there is no authority to use appropriated funds to provide a meal to its employees, the NLRB violated the Antideficiency Act. The NLRB OIG reviewed FY 2006 to FY 2009 and discovered similar food purchases made by OEEO which were also possible violations of the Act. The violations have not been reported in accordance with statutory requirements and OMB guidance.

Cause

NLRB OEEO was not aware of the requirements for purchasing food for its programs and the Division of Administration did not have internal controls in place to identify inappropriate purchases on the OEEO purchase card.

Effect

The OEEO purchase of food for its cultural awareness and other programs violated the purpose statute, 31 U.S.C. § 1301(a). A violation of the purpose statute is a violation of the Antideficiency Act.

Criteria

As a general rule, the Agency may not use appropriated funds to purchase food for its employees. B-301184, Jan. 15, 2004 (citing B-288266, Jan. 27, 2003). There are a number of narrow exceptions to this general rule. One of the exceptions allows for the purchase of food that is provided to employees as a sampling of ethnic food, but the Agency is prohibited from using appropriated funds to provide a meal to its employees.

"Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." 31 U.S.C. § 1301(a). This statute prohibits charging unauthorized items to any appropriation. *See*, U.S. Government Accountability Office, Principles of Federal Appropriation Law 4-5 (3d ed. 2004).

The Antideficiency Act prohibits an agency from incurring obligations in excess or in advance of available appropriations. 31 U.S.C. § 1341(a)(1)(A). When appropriated funds are applied to a prohibited or unauthorized purpose, an Antideficiency Act violation occurs because the obligation of the funds are viewed as being in excess of the amount (zero) available for that purpose. 60 Comp. Gen 440, 441 (1981); *see also* B-302710, May 14, 2004; B-300325, Dec. 13, 2002; B-300192, Nov. 13, 2002; B-290005, July 1, 2002; 71 Comp. Gen. 402, 406 (1992); and B-246304, July 31, 1992; *cf* Southern Packaging and Storage Co. v. United States, 588 F. Supp. 532 (D.S.C. 1984).

Recommendation

We recommend that the Antideficiency Act violations that occurred in FY 2006 through FY 2010 be reported in accordance with the statutory requirements and OMB guidance.

Management's Response
The Division of Administration disagreed that an Antideficiency Act violation should be reported.

In a response dated December 7, 2010, the Chairman and Acting General Counsel stated that they are in agreement with our recommendations and are in the process of drafting an appropriate report in accordance with OMB guidance.

CBTC'S Assessment of Management's Response
The Division of Administration has not pointed to any statutory or regulatory authority to support its position that an Antideficiency Act violation need not be reported. CBTC continues to recommend that Antideficiency Act violations that occurred in FY 2006 through FY 2010 be reported in accordance with the statutory requirements and OMB guidance.

CBTC will follow up in the next fiscal year audit after we have received NLRB's report prepared in accordance with OMB guidance as stated in the NLRB board's response dated December 7, 2010.

MANAGEMENT COMMENTS

#4 Non-Compliance with the Recording statute and the *Bona fide* Needs rule – Court Reporting Services

Condition
The NLRB recorded obligations in the amount of $876,374 for 36 contracts for court reporting services. Obligations for the contracts were recorded against Fiscal Year (FY) 2010 funds on September 28 and 29, 2010. Each of the contracts has a period of performance spanning from FY 2010 to FY 2011.

The Chief, Acquisitions Management Branch, stated that he intended to create a contract for severable services. He stated that he wanted to avoid an indefinite-quantity or requirements contract because he was attempting to eliminate the need to make multiple obligations, the need for minimum requirements, and the requirement to use a single contractor in a particular Region. He acknowledged that the court reporting contracts were not reviewed by legal counsel. He stated that the amount of funding for each contract was based upon an estimate of the needs for court reporting services in each Region, which was derived from the prior year's needs. He also stated that there were seven uses of court reporters under the contracts in FY 2010.

The contracts describe the contract type as a "firm fixed unit price." Based upon our review of the contracts, we determined that they are requirements contracts.

Cause
The NLRB procurement function does not have sufficient internal controls to ensure the proper application of the laws and regulations related to the contracts for court reporting.

Effect
The NLRB violated the recording statute, 31 U.S.C. § 1501, and the *bona fide* needs rule, 31 U.S.C. § 1502, when it charged nonexistent obligations against the FY 2010 funds.

Criteria
The court reporting contracts, as requirement contracts without any specified minimum quantity, create a liability that is contingent upon a court reporter being scheduled for a hearing.

"Contingent liabilities are not recordable as obligations under section 1501 of title 31, United States Code (the recording statute), because they are not yet liabilities; that is, the agency has taken no action making a definite commitment, nor has the agency permitted some other entity to take an action that could mature into a legally enforceable claim against the United States. Rather, a contingent liability ripens into a recordable obligation for purposes of section 1501 only if and when the contingency materializes." B-305484. Therefore, no recordable obligations occurred when the court reporting contracts were executed on September 28 and 29, 2010.

Additionally, an agency may only obligate a fiscal year appropriation to meet a legitimate, or *bona fide*, need arising in the fiscal year for which the appropriation was made. 64 Comp.Gen. 359, 362 (1985). The court reporting services are not a *bona fide* need until they are incurred by the Agency. Therefore, any expenses incurred for court reporting services are obligations of the fiscal year in which they occur.

Recommendation

We recommend that the Agency deobligate the funds for the court reporting contracts, except for the seven uses that occurred in FY 2010, and record obligations for FY 2011 requirements against the FY 2011 funds as they occur.

Management's Response

The Division of Administration responded that the contracts were not issued as a requirements contracts and noted that the contracts did not contain the requirements contract clause (FAR 52.216-21), nor did it include any language establishing it as a requirements contract. The Division of Administration stated that the contracts have specific fixed unit prices for all services; that, although the total amounts may need to be adjusted, the amount obligated is believed to be consistent with the usage of these services in previous years; and that the contracts are a commitment of a certain amount of funds for a 12-month period. Although the Division of Administration makes this argument, it states that it would consider making a clarification, by modification, of the type of contract to a requirements contract, since the intended fixed-prices have an amount based on a competent estimate rather than an amount certain." The Division of Administration also cites a number of Comptroller General decisions for authority to record a contingent liability.

In a response dated December 7, 2010, the Chairman and Acting General Counsel stated that the Agency will defer formulating a course of action until a decision is received from the Comptroller General.

CBTC'S Assessment of Management's Response

We disagree with the analysis of the Division of Administration. The Comptroller General decisions cited by the Division of Administration do not support the proposition that the NLRB can record any obligation prior to Agency making a definite commitment of funds.

CBTC continues to recommend that the Agency deobligate certain court reporting services from FY 2010 funds and record future obligations against FY 2011 funds. Additionally, the NLRB OIG submitted this issue to GAO for a Comptroller General's decision.

CBTC will follow up in the next fiscal year audit after a decision is received from the Comptroller General.

MANAGEMENT COMMENTS

#5 Antideficiency Act Violation due to Personal Service Contract

Condition

The NLRB entered into a contract with a contractor (a former employee) for "Independent Contractor Labor Relations Support" for a period of performance from April 15, 2010 to October 15, 2010 at a cost of $62,400. On September 30, 2010, the NLRB extended the period of performance to April 2011, at a total cost of $124,800.

The contract does not require any specific tasks to be completed, but provides a list of duties of which one or all may be required to be performed. This list appears to be drawn from an NLRB employee position description. The contractor stated that her duties do not differ from the former employees who performed the work, with the exception that she cannot speak for the Agency.

The performance under the contract occurs at the NLRB Headquarters; the principal tools and equipment required for the contractor's performance are provided by the NLRB; the services provided by the contractor are an integral effort of the NLRB's labor relations function; the need for the services can reasonably be expected to last more than 1 year; and the nature of the services requires Government supervision to ensure that the interests of the NLRB are adequately protected, that the NLRB retains control over its labor relations program, and that the NLRB retains full personal responsibility for the labor relations function in a duly authorized Federal employee.

Cause

The procurement function is not operating with sufficient internal controls in that the NLRB's Acquisitions Management Branch did not perform an adequate procedural or legal review prior to executing the contract.

Effect

The NLRB violated the Antideficiency Act when it entered into a prohibited personal services contract with a contractor for "Independent Contractor Labor Relations Support."

Criteria

The contract for labor relations services is a personal services contract as it is defined by 48 C.F.R. 37.104. A personal services contract is characterized by regulation as one in which an employer-employee relationship is created between the NLRB and contractor personnel. The relationship may be created by the terms of the contract or by subjecting contractor personnel to relatively continuous supervision and control by NLRB employees. Because the NLRB does not have statutory authority to enter into a personal services contract, it is prohibited from doing so by 48 C.F.R. 37.104.

As noted above, the Antideficiency Act prohibits an agency from incurring obligations in excess or in advance of available appropriations. When appropriated funds are applied to a prohibited or unauthorized purpose, an Antideficiency Act violation occurs because the obligation of the funds are viewed as being in excess of the amount (zero) available for that purpose.

Recommendation
We recommend that the Agency:

1. Terminate the contract with the contractor; and

2. Report the Antideficiency Act violation in accordance with the statutory requirements and OMB guidance.

Management's Response
The Division of Administration acknowledged the concerns raised and stated that it would immediately remedy the deficiencies in the contract by terminating the present contract and issuing a replacement contract. The contract was terminated on November 19, 2010. The Division of Administration disagreed that there was a violation of the Antideficiency Act that needed to be reported.

In a response dated December 7, 2010, the Chairman and Acting General Counsel stated that they are in agreement with our recommendations and are in the process of drafting an appropriate report in accordance with OMB guidance.

CBTC'S Assessment of Management's Response
The Division of Administration has not pointed to any statutory or regulatory authority to support its position that the Antideficiency Act violation need not be reported. CBTC continues to recommend that the Antideficiency Act violation be reported.

CBTC will follow up in the next fiscal year audit after we have received NLRB's report prepared in accordance with OMB guidance as stated in the NLRB board's response dated December 7, 2010.

#6 PRIOR YEAR RECOMMENDATIONS

Open Prior Year Management Letter Recommendations

Four prior year management letter recommendations were open during FY 2010. As shown in the table below, management has completed action on one recommendation, partially completed action on two recommendations, and decided not to implement the fourth recommendation.

Prior Year Recommendation	Current Year Status
FY 2006 Management Letter Implement the recommendations summarized in INDR No. 5-2006. These related to information technology (IT) security vulnerabilities.	Partially complete.
FY 2007 Management Letter Ensure that IT personnel with security-related duties receive the training required by NLRB's ITSEAT policy. If sufficient funding is not available, free IT training should be pursued.	Partially complete.
FY 2009 Management Letter Deobligate $250,000 of postage advanced from FY 2009 funds and re-obligate the postage advance using FY 2010 funds. Develop and implement procedures to monitor postage that would ensure that purchases and distribution to the field offices would only be made when needed.	Management decided not to implement this recommendation. Complete.

PRINCIPAL FINANCIAL STATEMENTS

National Labor Relations Board
Balance Sheet
As of September 30, 2010 and 2009
(in dollars)

	FY 2010	FY 2009
Assets:		
Intragovernmental:		
Fund balance with Treasury (Note 2)	$ 36,676,482	$ 27,295,075
Advances (Note 4)	23,336	276,086
Total Intragovernmental	**36,699,818**	**27,571,161**
Accounts receivable, net (Note 5)	92,784	36,307
General property, plant and equipment, net (Note 6 and 10)	12,349,329	10,180,286
Total Assets	**$ 49,141,931**	**$ 37,787,754**
Liabilities:		
Intragovernmental:		
Accounts payable (Note 7)	$ 1,927,377	$ 1,439,222
Employer contributions and payroll taxes	2,155,315	1,888,037
FECA liability (Note 8 and 10)	641,628	785,013
Other	140,060	151,222
Total Intragovernmental	**4,864,380**	**4,263,494**
Accounts payable (Note 7):	10,522,138	5,311,634
Estimated future FECA liability (Note 8 and 10)	1,746,665	2,511,450
Accrued payroll and benefits	8,960,673	8,089,841
Accrued annual leave (Note 8 and 10)	15,064,659	14,691,885
Total Liabilities	**$ 41,158,515**	**$ 34,868,304**
Net position:		
Unexpended appropriations	$ 12,994,255	$ 10,691,205
Cumulative results of operations (Note 10)	(5,010,839)	(7,771,755)
Total Net Position	**$ 7,983,416**	**$ 2,919,450**
Total Liabilities and Net Position	**$ 49,141,931**	**$ 37,787,754**

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board

Statement of Net Cost

For the Periods Ended September 30, 2010 and 2009

(in dollars)

	FY 2010	FY 2009
Program Costs:		
Resolve Representation Cases		
Total Gross Cost	**$ 48,476,133**	**$ 45,368,125**
Resolve Unfair Labor Practices		
Total Gross Cost	**$ 247,582,839**	**$ 231,417,384**
Other:		
Gross Costs	59,371	132,918
Less: Earned Revenue	59,371	132,918
Total Net Cost – Other	**–**	**–**
Net Cost of Operations (Note 11)	**$ 296,058,972**	**$ 276,785,509**

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board
Statement of Changes In Net Position
For the Periods Ended September 30, 2010 and 2009

(in dollars)

	FY 2010	FY 2009
Cumulative Results of Operations:		
Beginning Balance	$ (7,771,755)	$ (7,330,398)
Budgetary Financing Sources:		
Appropriations-used	279,343,472	260,063,478
Other Financing Sources (Non-Exchange):		
Imputed financing costs (Note 13)	19,476,416	16,280,674
Total Financing Sources	**$ 298,819,888**	**$ 276,344,152**
Net Cost of Operations	(296,058,972)	(276,785,509)
Net Change	**$ 2,760,916**	**$ (441,357)**
Cumulative Results of Operations (Note 10)	**$ (5,010,839)**	**$ (7,771,755)**
Unexpended Appropriations:		
Beginning Balance	$ 10,691,205	$ 9,160,197
Budgetary Financing Sources:		
Appropriations-received	283,400,000	262,595,000
Appropriations-used	(279,343,472)	(260,063,478)
Recissions & cancelled appropriations	(1,753,478)	(1,000,514)
Total Budgetary Financing Sources	**$ 2,303,050**	**$ 1,531,008**
Total Unexpended Appropriations	**$ 12,994,255**	**$ 10,691,205**
Net Position	**$ 7,983,416**	**$ 2,919,450**

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board
Statement of Budgetary Resources
For the Periods Ended September 30, 2010 and 2009

(in dollars)

	FY 2010	FY 2009
Budgetary Resources:		
Unobligated balance, brought forward, October 1:	**$ 4,171,569**	**$ 4,610,732**
Recoveries of prior year unpaid obligations	**973,430**	**840,433**
Budget authority:		
Appropriations (Note 14)	283,400,000	262,595,000
Spending authority from offsetting collections:		
Earned		
Collected	211,226	216,802
Subtotal	**283,611,226**	**262,811,802**
Permanently not available (Note 14)	**(1,753,478)**	**(1,000,514)**
Total Budgetary Resources (Note 15)	**$ 287,002,747**	**$ 267,262,453**
Status of Budgetary Resources:		
Obligations incurred:		
Direct	$ 282,467,777	$ 262,958,149
Reimbursable	59,371	132,735
Subtotal (Note 15)	**$ 282,527,148**	**$ 263,090,884**
Unobligated balance:		
Apportioned (Note 15)	1,403,931	336,774
Unobligated balance not available	3,071,668	3,834,795
Total Status of Budgetary Resources	**$ 287,002,747**	**$ 267,262,453**
Change in Obligated Balance:		
Obligated balance, brought forward, October 1:	**$ 22,972,285**	**$ 17,199,031**
Obligations incurred, net	**282,527,148**	**263,090,884**
Gross Outlays	**(272,465,179)**	**(256,477,197)**
Recoveries of prior year unpaid obligations, actual	**(973,430)**	**(840,433)**
Obligated balance, net, end of period:	**$ 32,060,824**	**$ 22,972,285**
Net Outlays:		
Gross outlays	272,465,179	256,477,197
Offsetting collections	(211,226)	(216,802)
Net Outlays	**$ 272,253,953**	**$ 256,260,395**

The accompanying footnotes are an integral part of these financial statements

NOTES TO PRINCIPAL STATEMENTS

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within the NLRB's jurisdiction). The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP charges before administrative law judges, whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the books and records of the NLRB in accordance with accounting principles generally accepted in the United States of America (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, Financial Reporting Requirements, revised as of September 29, 2010. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the federal government. While the statements have been prepared from the books and records of the NLRB in accordance with GAAP for federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency net position. Agency assets include both entity assets — those which are available for use by the agency—and non-entity assets —those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). Effective for period beginning after September 30, 2008, the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for additional information.

The Statement of Net Cost presents the gross costs of programs less earned revenue to arrive at the net cost of operations for both programs and for the Agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget, dated August 2010.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA) as the entity to establish GAAP for the federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the U.S. Government Standard General Ledger at the transaction level.

The FY 2012 Budget of the United States (also known as the President's Budget) with actual numbers for FY 2010 was not published at the time that these financial statements were issued. The President's Budget is expected to be published in February 2011 and will be available from the United States Government Printing Office. There are no differences in the actual amounts for FY 2009 that have been reported in the FY 2011 Budget of the United States and the actual numbers that appear in the FY 2009 Statement of Budgetary Resources.

OMB financial statement reporting guidelines for FY 2010 require the presentation of comparative financial statements for all of the principal financial statements. The NLRB is presenting comparative FY 2010 financial statements for the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources, and these statements have been prepared in accordance with generally accepted accounting principles.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so. The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

Representation Cases are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA. The NLRB must also determine which employees are properly included in the bargaining unit, conduct the election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election and, if the election is determined to have been fairly conducted, to certify its results.

ULP Cases are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case law that has been developed by the Board and the federal courts.

C. Budgets and Budgetary Accounting

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the U.S. Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end are expired. At the end of the fifth year, all amounts not expended are canceled. All revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority or other budgetary resources and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time of purchase. Assets and liabilities, which do not consume current budgetary resources, are not reported, and only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

Transactions are recorded on an accrual accounting basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

D. Financing Sources

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses (primarily salaries and benefits, occupancy, travel, and contractual service costs).

For accounting purposes, appropriations are recognized as financing sources (appropriations used) at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

E. Fund Balance with the Treasury

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by the Treasury. The agency's records are reconciled with those of Treasury. The fund balances with the Treasury are primarily appropriated funds that are available to pay current liabilities and to finance authorized purchases. Funds with the Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures. In addition, funds held with the Treasury also include escrow funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for further explanation.

See Note 2 for additional information on Fund Balance with Treasury.

F. Fiduciary Activities

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal Government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal Government must uphold. Fiduciary cash and other assets are not assets of the Federal Government. Beginning in FY 2009, fiduciary activities will no longer be recognized on the proprietary financial statements, but they are required to be reported on schedules in the notes to the financial statements. (see SFFAS No. 31, Accounting for Fiduciary Activities).

The fiduciary funds collected by NLRB and held in escrow accounts with the Treasury are funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB invests funds in federal government securities for backpay that are held in the escrow account at Treasury. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 3, Fiduciary Activities.

The federal government securities include Treasury market-based securities issued by the Federal Investment Branch of the Bureau of the Public Debt. Market-based securities are Treasury securities that are not traded on any securities exchange, but mirror the prices of marketable securities with similar terms.

It is expected that Investments will be held until maturity; therefore they are valued at cost and adjusted for amortization of discounts, if applicable. The discounts are recognized as adjustments to interest income, utilizing the straight-line method of amortization for short-term securities (i.e., bills). Investments, redemptions, and reinvestments are controlled and processed by the Department of the Treasury.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

See Note 3 for additional information on Fiduciary Activities.

G. Advances

Advances consist of amounts advanced by the NLRB for the transit subsidy program, United States Postal Service for penalty mail and for commercial payment systems for postage.

See Note 4 for additional information on the Advances.

H. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable primarily consists of health benefit premiums due the NLRB from Agency employees. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year end.

See Note 5 for additional information on Accounts Receivable.

I. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, computer hardware and software. The Agency has no real property.

General property, plant and equipment with a cost of $15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is five to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Internal Use Software. Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the acquisition cost is $100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The estimated useful life is two to five years for calculating amortization of software using the straight-line method.

Internal Use Software in Development. Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account described above. The NLRB is currently undertaking a major software development project called the Next Generation Case Management System (NXGen) that will replace a number of case tracking systems with one enterprise-wide system. NXGen will support the President's Management Agenda, such as for e-Gov, E-Filing, e-FOIA, and public Web-based access to NLRB data. This project has been a multiple year undertaking in which a large portion of the system will be rolled out in FY 2011. The overall cost of this project is expected to exceed $14 million.

See Note 6 for additional information on General Property, Plant and Equipment, Net.

J. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets.

See Note 9 for additional information on Non-Entity Assets.

K. Liabilities

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities for which an appropriation has not been enacted are therefore classified as Liabilities Not Covered by Budgetary Resources and there is no certainty that the appropriation will be enacted. Also, liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

L. Liabilities Not Covered by Budgetary Resources

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

Intragovernmental
The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2010 and 2009, respectively.

Federal Employees Workers' Compensation Program.
The Federal Employees Workers' Compensation Program (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is generally a two- to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

The NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis (because of the small number of claimants) to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 80 and 84 years for male and female, respectively.

See Notes 8 and 10 for additional information on the FECA liability.

Other
Accrued annual leave represents the amount of annual leave earned by the NLRB employees but not yet taken.

See Notes 8 and 10 for additional information on Annual Leave.

M. Contingencies

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

See Note 16 for additional information on Contingencies.

N. Unexpended Appropriations

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

O. Annual, Sick, and Other Leave

Annual and Sick Leave Program.
Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

See Note 10 for additional information on Annual Leave.

P. Life Insurance and Retirement Plans

Most of NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs.
The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most of the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer's share of Medicare. The maximum amount of base pay that an employee participating in FERS may contribute is $16,500 in calendar year (CY) 2011 to this plan. Employees belonging to CSRS may also contribute up to $16,500 of their salary in CY 2011 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2011 is $5,500. For CY 2011, the regular and catch-up contributions may not exceed $22,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with Statement of Federal Financial Accounting Standards (SFFAS) No. 5, Accounting for Liabilities of the Federal Government, included in the NLRB's financial statements as an imputed financing source. Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 5, Accounting for Liabilities of the Federal Government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

In FY 2010, the NLRB, utilizing OPM provided cost factors, recognized $9,546,185 of pension expenses, $9,901,409 of post-retirement health benefits expenses, and $28,822 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of $19,476,416 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM.

See Note 13 for additional information

Q. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA). Regarding NLRB's building lease, the GSA entered into a lease agreement for the NLRB's rental of building space. The NLRB pays GSA a standard level users charge for the annual rental. The standard level users charge approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, so it does not record GSA-owned properties. The real property leases are for NLRB's Headquarters and Regional Offices and the personal property leases are for GSA cars.

See Note 12 for additional information on Operating Leases.

R. Net Position

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations since inception.

S. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

T. Tax Status

The NLRB, as an independent Board of the Executive Branch, a federal agency, is not subject to federal, state, or local income taxes, and, accordingly, no provision for income tax is recorded.

U. Comparative Data

Comparative data for the prior year have been presented for the principal financial statements and their related notes.

V. Subsequent Events

Subsequent events and transactions occurring after September 30, 2010 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.

NOTE 2. FUND BALANCE WITH TREASURY

Treasury performs cash management activities for all federal agencies. The net activity represents Fund Balance with Treasury. The Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2010 and September 30, 2009 consists of the following:

Fund Balance with Treasury by Fund Type:

(in thousands)	General Funds	Escrow Funds	Total Fund Balance with Treasury
FY 2010 Entity Assests	$ 36,537		$ 36,537
Non-Entity Assests		139	139
Total		$ 139	$ 36,676
FY 2009 Entity Assests	$ 27,144		$ 27,144
Non-Entity Assests		151	151
Total	$ 27,144	$ 151	$ 27,295

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations. The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts.

Status of Fund Balance with Treasury as of September 30, 2010 and September 30, 2009 consists of the following:

Fund Balance with Treasury by Availability:

(in thousands)	FY 2010	FY 2009
Unobligated Balance		
Available	$ 1,404	$ 337
Unavailable	3,072	3,835
Obligated balance not yet disbursed	32,061	22,972
Non-budgetary fund balance with Treasury	139	151
Totals	$ 36,676	$ 27,295

NOTE 3. FIDUCIARY ACTIVITIES

Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1 F, Fiduciary Activities, for further explanation.

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury or invests the funds that are authorized by the Regional Compliance Officers and other management officials in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of Public Debt.

There exists a signed MOU between the NLRB and the U.S. Treasury (Treasury) establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

Schedule of Fiduciary Activity
As of September 30, 2010 and 2009

(in thousands)	FY 2010	FY 2009
Fiduciary net assets, beginning of the year	$ 3,871	$ 7,338
Fiduciary revenues	12,367	15,388
Investment earnings	1	7
Disbursements to and on the behalf of beneficiaries	(13,460)	(18,862)
Increase (Decrease) in fiduciary net assets	$ (1,092)	$ (3,467)
Fiduciary net assets, end of year	**$ 2,779**	**$ 3,871**

Fiduciary Net Assets
As of September 30, 2010 and 2009

(in thousands)	FY 2010	FY 2009
Fiduciary Assets		
Cash and cash equivalents	$ 2,779	$ 1,487
Investments		2,384
Fiduciary Liabilities		
Less: Liabilities	–	–
Total Fiduciary net assets	**$ 2,779**	**$ 3,871**

NOTE 4. ADVANCES

Intragovernmental

Intragovernmental Advances to the United States Postal Service (USPS) for September 30, 2010 was $ 23,336 and $ 261,437 for September 30, 2009. The remainder of the balance for FY 2009 was with the Department of Transportation for the transit subsidy.

NOTE 5. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES FOR DOUBTFUL ACCOUNTS

The FY 2010 intragovernmental accounts receivable is zero and the FY 2009 amount was also zero:

(in thousands)	FY 2010	FY 2009
With the public		
Accounts receivable	$ 97	$ 38
Allowance doubtful accounts	(4)	(2)
Accounts receivable-net	**$ 93**	**$ 36**

NOTE 6.
GENERAL PROPERTY, PLANT AND EQUIPMENT, NET

General property, plant and equipment consist of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

Depreciation expense for the years ended September 30, 2010 and September 30, 2009 was $3,298,900 and $1,211,053 (in dollars), respectively.

(in thousands) FY 2010	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	$ 2,395	$ 1,839	$ 556
Internal Use Software	15,929	6,181	9,748
Internal Use Software in Development	2,045	-	2,045
Totals	**$ 20,369**	**$ 8,020**	**$ 12,349**

(in thousands) FY 2009	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	$ 1,854	$ 1,543	$ 311
Internal Use Software	5,038	3,178	1,860
Internal Use Software in Development	8,009	-	8,009
Totals	**$ 14,901**	**$ 4,721**	**$ 10,180**

NOTE 7.
INTRAGOVERNMENTAL ACCOUNTS PAYABLE

These accounts payables are with our federal trading partners of whom the largest amounts are with the General Services Administration (GSA).

NOTE 8.
LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents amounts collected from the public for court costs, freedom of information requests and other miscellaneous amounts that must be transferred to the Treasury.

The composition of liabilities not covered by budgetary resources as of September 30, 2010 and September 30, 2009, is as follows:

(in thousands)	FY 2010	FY 2009
Intragovernmental:		
FECA-Unfunded	$ 642	$ 785
Total Intragovernmental	$ 642	$ 785
Estimated Future – FECA	1,747	2,511
Accrued Annual Leave	15,065	14,692
Total Liabilities not covered by budgetary resources	17,454	17,988
Total Liabilities covered by budgetary resources	23,705	16,880
Total Liabilities	**$ 41,159**	**$ 34,868**

NOTE 9. NON-ENTITY ASSETS

Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court costs and freedom of information requests that must be transferred to the Treasury.

The composition of non-entity assets as of September 30, 2010 and September 30, 2009, is as follows:

(in thousands)	FY 2010	FY 2009
Non-entity assets		
Fund Balance with Treasury	$ 139	$ 151
Entity assets	$ 49,003	$ 37,637
Total Assets	**$ 49,142**	**$ 37,788**

NOTE 10. CUMULATIVE RESULTS OF OPERATIONS

(in thousands)	FY 2010	FY 2009
FECA paid by DOL	$ (226)	$ (305)
FECA – Unfunded	(642)	(785)
Estimated Future FECA	(1,747)	(2,511)
Accrued Annual Leave	(15,065)	(14,692)
General Property, Plant & Equipment, Net	12,349	10,180
Other	320	341
Cumulative Results of Operations	**$ (5,011)**	**$ (7,772)**

NOTE 11. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB provided administrative law judges' services to other federal entities. There is no exchange revenue with the public.

(in thousands)	FY 2010	FY 2009
Resolve Representation Cases		
Intragovernmental Costs	$ 9,635	$ 8,839
Costs with the Public	38,841	36,529
Total Net Cost - Resolve Representation Cases	**$ 48,476**	**$ 45,368**
Resolve Unfair Labor Practices		
Intragovernmental Costs	$ 48,753	$ 44,720
Costs with the Public	198,830	186,697
Total Net Cost - Resolve Unfair Labor Practices	**$ 247,583**	**$ 231,417**
Other		
Intragovernmental Costs	$ 59	$ 133
Less: Intragovernmental Earned Revenue	59	133
Total Net Cost - Other	**–**	**–**
Net Cost of Operations	**$ 296,059**	**$ 276,785**

NOTE 12. OPERATING LEASES

GSA Real Property. Most of NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or another federal agency or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2011 through FY 2015.

Rental expenses for operating leases as of September 30, 2010 were $27,365,763 for Agency lease space and $2,381,725 for Agency building security. For FY 2009 the operating lease costs were $27,793,326 and the Agency building security portion was $2,260,673.

Fiscal Year (in thousands)	**GSA Real Property**
2011	$ 28,052
2012	28,753
2013	29,472
2014	30,209
2015	30,964
Total Future Lease Costs	**$ 147,450**

NOTE 13. IMPUTED FINANCING

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2010 and 2009 consisted of:

(in thousands)	FY 2010	FY 2009
Office of Personnel Management:		
Pension expenses	$ 9,546	$ 7,086
Federal employees health benefits	9,901	9,166
Federal employees group life insurance program	29	28
Total Imputed Financing	**$19,476**	**$16,280**

NOTE 14. APPROPRIATIONS RECEIVED

The NLRB received $283,400,000 and $262,595,000 in warrants for the fiscal years ended September 30, 2010 and 2009, respectively. The amount shown on the Statement of Budgetary Resources under caption "Permanently not available" for FY 2010 was the cancelled appropriation for FY 2005 for the amount of $1,753,478. For FY 2009, the total amount was $1,000,514 for the cancelled appropriation for FY 2004.

NOTE 15. STATEMENT OF BUDGETARY RESOURCES

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal Government. The total Budgetary Resources of $287,002,747 as of September 30, 2010 and $267,262,453 as of September 30, 2009, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The NLRB's unobligated balance available at September 30, 2010 was $1,403,931 and at September 30, 2009 was $336,774.

Apportionment Categories of Obligations Incurred. NLRB's obligations incurred as of September 30, 2010 and September 30, 2009 by apportionment Category A and B is shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. Beginning in FY 2010, OMB agreed that it was not necessary for NLRB to separate its information technology funding and therefore all obligations incurred were from one funding category.

(in thousands)	Apportioned		Not Subject to Apportionment
FY 2010	**Category A**	**Category B**	**Total**
Obligations Incurred:			
Direct	$ 282,468	–	$ 282,468
Reimbursable	59	–	59
Total Obligations Incurred	**$ 282,527**	**–**	**$ 282,527**

(in thousands)	Apportioned		Not Subject to Apportionment
FY 2009	**Category A**	**Category B**	**Total**
Obligations Incurred:			
Direct	$ 248,686	$ 14,272	$ 262,958
Reimbursable	133		133
Total Obligations Incurred	**$ 248,819**	**$ 14,272**	**$ 263,091**

NOTE 16. CONTINGENCIES

The NLRB is involved in various lawsuits incidental to its operations. In regard to one case involving an NLRB employee, there is a reasonable possibility of an unfavorable outcome and fees may be in excess of $100,000 but not more than $200,000. While the ultimate outcome of these matters is not presently determinable, it is the opinion of management that the resolution of outstanding claims will not have a materially adverse effect on the financial position of the NLRB.

NOTE 17.
RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

For the Month Ended September 30, 2010 and 2009

(in thousands)	FY 2010	FY 2009
Resources Used to Finance Activities		
Current Year Gross Obligations	**$ 282,527**	**$ 263,091**
Budgetary Resources from Offsetting Collections:		
Spending Authority from Offsetting Collections		
Earned		–
Collected	(211)	(217)
Recoveries of Prior Year Unpaid Obligations	(973)	(840)
Other Financing Resources:		
Imputed Financing Sources	19,476	16,280
Total Resources Used to Finance Activity	$ 300,819	$ 278,314
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations:		
Change in Undelivered Orders	(1,999)	(1,970)
Current Year Capitalized Purchases	(5,468)	(2,481)
Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect:		
Other Financing Sources Not in the Budget	(19,476)	(16,280)
Costs without Current Year Budgetary Effect:		
Depreciation and Amortization	3,299	1,211
Future Funded Expenses	229	859
Imputed costs	19,476	16,280
Bad Debt Expense	8	2
Other Expenses Not Requiring Budgetary Resources	(829)	850
Net Cost of Operations	**$ 296,059**	**$ 276,785**

APPENDIX

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

To: David Berry, Inspector General

From: Wilma B. Liebman, Chairman WBL
Lafe Solomon, Acting General Counsel LS

Date: December 7, 2010

Re: Response to Draft Management Letter of Carmichael Brasher Tuvell & Company on Audit of National Labor Relations Board's Fiscal Year 2010 Financial Statements (OIG-F-15-11-01a) (the "Draft Management Letter")

We are pleased to have this opportunity to respond to the Draft Management Letter which you provided to us on November 29, 2010.

As we have previously expressed, and as reflected in the Draft Management Letter, we take seriously the finding of significant deficiency in internal control. This memorandum sets forth our response to the specific recommendations contained in the Draft Management Letter.

The recommendations are clustered around four discreet issues and one more generalized concern. Issues Numbers 2 and 4 involve non-compliance with proper recording and bona fide needs rules for certain court reporting contracts and training expenses. The recommendations to address these issues are for the Agency to de-obligate the funds (except for the court reporting amounts actually used in FY2010) and record obligations for the FY2011 requirements against FY2011 funds as they occur. These issues have been referred to the Comptroller General for a merits determination and we will defer formulating a course of action until that decision is received.

Issues Numbers 3 and 5 involve Antideficiency Act violations relating to a personal services contract and to certain OEEO program food expenses. We are in agreement with the recommendations. Currently we are drafting an appropriate report in accordance with OMB guidance.

Issue Number 1 involves the finding of significant deficiency in internal control. The four recommendations—particularly the recommendation to create a new Chief Financial Officer position outside of the Department of Administration—implicate fundamental structural issues for the Agency. Before taking any action, we plan to undertake a comprehensive review of the Agency's financial management structure, including the possible engagement of outside experts. To that end, we have made initial contact with the National Academy of Public Administration for possible consulting assistance.

We appreciate both your efforts and the work of Carmichael Brasher Tuvell & Company to bring these important issues to our attention. We remain committed to making changes as necessary or appropriate to ensure a properly controlled financial environment for the Agency.

Cc: The Board
Director of Administration
Chief Information Officer