

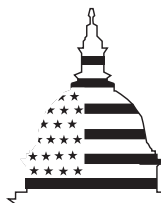
GAO

Report to the Honorable F. James
Sensenbrenner, Jr., House of
Representatives

April 2007

DHS IMMIGRATION ATTORNEYS

Workload Analysis and Workforce Planning Efforts Lack Data and Documentation



GAO

Accountability * Integrity * Reliability



Highlights of [GAO-07-206](#), a report to the Honorable F. James Sensenbrenner, Jr., House of Representatives

Why GAO Did This Study

The legal staff of key Department of Homeland Security (DHS) components—Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP)—perform important immigration enforcement, inspection, and service functions. This report addresses the actions ICE, USCIS, and CBP legal offices are taking to identify attorney needs, determine where those attorneys should be deployed, and address staffing shortfalls. To conduct its work, GAO interviewed component senior legal office officials in headquarters and regional offices and reviewed available documentation on staffing.

What GAO Recommends

GAO is recommending that ICE's legal office fully document its plans for incorporating additional workforce data and enhancing its workforce tracking system; USCIS's legal office document its plans for implementing a workload tracking system; and all three legal offices document their attorney workforce planning processes. DHS generally agreed with four of the five recommendations. CBP's legal office disagreed with the recommendation to document its attorney workforce planning efforts. It believes that the core workforce planning principles discussed in this report are inapplicable to small offices such as its office. GAO believes that these planning principles are appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-07-206.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard Stana at (202) 512-8777 or stanar@gao.gov.

DHS IMMIGRATION ATTORNEYS

Workload Analysis and Workforce Planning Efforts Lack Data and Documentation

What GAO Found

GAO's prior work on strategic workforce planning states that staffing decisions should be based on valid and reliable data. However, ICE and USCIS's legal offices do not currently have such data available, though efforts are under way to obtain the data. Moreover, GAO's standards for internal controls in the federal government call for clear documentation, but none of the three legal offices have fully documented the processes, procedures, and data they use in their workforce planning decisions.

ICE legal officials acknowledged that while an approach is in place for identifying attorney staffing needs, more data are needed to improve their attorney staffing decisions to help ensure that a sufficient number of attorneys are available to handle rising caseloads. ICE's legal office has relied primarily on its professional judgment to set a staffing ratio between attorneys and immigration judges. It also uses a workload system that tracks, for instance, the number of cases prepared. But attorney time, and other metrics, are not tracked. The legal office is working to incorporate these and other data into its existing system by December 2007. ICE's legal office has not yet fully documented its plans for enhancing its workload system by discussing how it intends to measure its progress or report the results of its efforts. Without such documentation, the office may not be able to effectively monitor its progress in meeting its goals related to this effort. Nor has the office documented its overall attorney workforce planning process, making it difficult for the office to validate its staffing decisions.

USCIS officials acknowledged that its attorney workforce planning approach is based on estimates of workload data, such as the number of legal actions filed against USCIS, and that it is not possible to reliably determine attorney needs or anticipate shortfalls based on these estimates. Officials stated that DHS has not been in a position to support a request for additional attorneys for USCIS, because USCIS lacks sufficiently reliable data. These officials said that they coordinate with other USCIS offices to acquire additional legal resources. Efforts to implement a comprehensive workload system are to be completed by the end of fiscal year 2007, but the legal office has not yet documented its (1) plans for implementing this system describing goals, milestones, and other elements or (2) attorney workforce planning process. Thus, the office may not have reasonable assurance that its personnel are implementing workforce planning efforts as intended.

CBP legal officials reported implementing a successful approach for assessing staffing needs by analyzing workload statistics, soliciting feedback from CBP program offices on their legal needs, and estimating the time attorneys need to complete their work. Using this method, the Chief Counsel said that the legal office has not experienced staffing shortfalls and has met rising workloads by obtaining funding to hire additional attorneys. However, CBP's legal office lacks documentation of its attorney staffing process, making it difficult to review and validate the success of its approach.

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Abbreviations

CBP	Customs and Border Protection
CCTS	Chief Counsel Tracking System
DHS	Department of Homeland Security
EOIR	Executive Office for Immigration Review
GEMS	General Counsel Electronic Management System
ICE	Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
OCC	Office of Chief Counsel
OPM	Office of Personnel Management
USCIS	U.S. Citizenship and Immigration Services

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United States Government Accountability Office
Washington, DC 20548

April 17, 2007

The Honorable F. James Sensenbrenner, Jr.
House of Representatives

Dear Mr. Sensenbrenner:

The federal government's immigration enforcement responsibilities encompass many legal functions, including those related to the removal of aliens illegally present in the United States and the investigation of those who engage in fraud. Immigration legal functions also pertain to determining the admissibility of aliens during inspections at ports of entry, and providing legal review and advice related to the adjudication of millions of immigration benefit applications and petitions (including naturalization and permanent resident applications) filed each year.

Attorneys within three of the Department of Homeland Security's (DHS) components play important roles in carrying out immigration functions. Although each component's legal office reports to the DHS General Counsel, their attorneys provide legal advice and services to the components in which they are located. These components—U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and U.S. Customs and Border Protection (CBP)—and their attorney roles on immigration matters are as follows:

- ICE is responsible for, among other things, enforcement of immigration law. Attorneys within ICE's Office of the Principal Legal Advisor prepare legal opinions on immigration cases, prosecute cases in immigration court, and provide legal advice and support to other personnel in DHS and the Department of Justice.¹ In this role, the Office of the Principal Legal Advisor supports the three components' work to remove aliens illegally present in the United States, enforce immigration law in the workplace, and prosecute alien smugglers and human traffickers.

¹ICE attorneys also provide advice on administrative issues and appear in administrative hearings before the U.S. Equal Employment Opportunity Commission and the Merit Systems Protection Board. They also respond to attorney grievances. In addition, selected ICE attorneys serve as Special Assistant United States Attorneys in both criminal and civil matters.

-
- USCIS is primarily responsible for processing applications for immigration benefits such as applications for nonimmigrant visas, permanent residence, U.S. citizenship, and asylum.² USCIS attorneys, through its Office of Chief Counsel, provide legal support to the agency's program offices. This legal support includes, among other responsibilities, providing legal advice on immigration and administrative issues,³ providing litigation support to the Department of Justice—in its role as lead counsel—in defending lawsuits brought against USCIS in federal court, and representing USCIS in visa petition proceedings before the Department of Justice's Board of Immigration Appeals.⁴
 - CBP employs attorneys who, through CBP's Office of Chief Counsel, provide legal support, training, and guidance to CBP personnel, review proposed legislation, support the Department of Justice in civil or criminal judicial actions involving CBP, and represent CBP in administrative matters.⁵

Immigration-related court litigation has steadily increased over the last several years. For example, between fiscal years 2000 and 2005, the number of civil cases prosecuted by ICE attorneys in immigration courts increased almost 39 percent, from about 381,000 to 531,000 cases.⁶ Moreover, according to statistics maintained by the Department of Justice's Executive Office for Immigration Review, between fiscal years 2001 and 2005, the number of visa petition appeals filed escalated almost 250 percent, from 1,129 to 3,950, increasing USCIS attorneys' work in representing the agency before the Department of Justice's Board of Immigration Appeals. Although CBP attorneys do not play as prominent a

²A nonimmigrant is a person, not a citizen or national of the United States, seeking to enter the United States temporarily for a specific reason, such as business or pleasure.

³USCIS attorneys represent USCIS in administrative hearings before the U.S. Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, and labor arbitrators.

⁴The Department of Justice's Board of Immigration Appeals primarily conducts appellate reviews of immigration judge decisions but also hears appeals of certain decisions made by DHS district directors or other immigration officials.

⁵CBP attorneys represent CBP in administrative hearings before the U.S. Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, and labor arbitrators.

⁶GAO, *Executive Office for Immigration Review: Caseload Performance Reporting Needs Improvement*, [GAO-06-771](#) (Washington, D.C.: Aug. 11, 2006).

role in supporting immigration litigation as do ICE and USCIS attorneys, its Office of Chief Counsel's workload statistics reflected a 15 percent increase in its aggregate workload between fiscal years 2004 and 2005.

In your former capacity as Chairman of the House Committee on the Judiciary, you requested that we conduct a study of these components' attorney workforce planning processes. You also expressed concerns about DHS's human capital management with respect to whether staffing levels for attorneys responsible for providing legal services in support of immigration activities within DHS have kept pace with increasing caseloads.

In this report, we discuss what actions ICE, USCIS, and CBP legal components have taken or plan to take to identify attorney needs, determine where those attorneys should be deployed, and address staffing shortfalls.⁷ Our report addresses ICE, USCIS, and CBP actions related to workforce planning for attorney staffing from the formal allocation of attorneys among these three DHS components (May 6, 2004) through the end of the most recent fiscal year (September 30, 2006).

To determine what actions ICE, USCIS, and CBP have taken or plan to take to identify their attorney needs, determine where to deploy those attorneys, and to address staffing shortfalls, we principally relied on interviews with knowledgeable officials from their legal offices. For ICE, we met with the Principal Legal Advisor and representatives from his headquarters and Arlington offices. For USCIS, we met with the Office of Chief Counsel's Deputy Chief Counsel, Chief of Staff, and other headquarters staff as well as the Regional and Deputy Regional Counsel for the eastern region. We also met with an official from USCIS's eastern regional program (operational) office. For CBP, we met with the Chief Counsel, the Deputy Chief Counsel, and representatives from the Houston office. We met with representatives from ICE's Arlington legal office, USCIS's eastern region legal office, and CBP's Houston legal office because these officials were knowledgeable about the field office role in their agency's attorney workforce staffing process. In addition, we examined available documentation from the DHS components we reviewed, including staffing requests prepared for budget justifications, statistics on ICE's and CBP's workload, and 2004 organizational

⁷A shortfall is the difference between the number of attorneys an agency is authorized and the number the agency determines it needs.

assessments of ICE's and USCIS's legal offices. We also obtained and analyzed information on alien detention costs DHS incurred during fiscal year 2006 to assess the impact on DHS that ICE's legal office told us occurs when ICE attorneys request delays in hearings. We determined that information related to ICE's workload, specifically, the number of national security cases ICE attorneys handled prior to and after September 11, 2001, and alien detention costs were sufficiently reliable for purposes of this report.⁸ We based this decision on an assessment of the policies and procedures ICE uses for collecting and maintaining this information. We also compared the components' workforce planning processes to core workforce planning principles outlined in our past work on strategic human capital management and the Office of Personnel Management's (OPM) guidance on human capital.⁹

We conducted our work from July 2006 through March 2007 in accordance with generally accepted government auditing standards.

Results in Brief

Our prior work on strategic workforce planning states that staffing decisions, including needs assessments and deployment decisions, should be based on valid and reliable data;¹⁰ however, ICE and USCIS's legal offices do not currently have such data available, though efforts are under way to address this challenge. Our prior work has also identified that written policies and procedures—including clearly defined, well-documented, transparent, and consistently applied criteria—are necessary to developing human capital approaches that enable the sustained contributions of skilled staff. Moreover, our standards for internal controls in the federal government state that clear documentation should be readily available for examination. Although ICE, USCIS, and CBP's legal offices reported having procedures in place that are intended to determine the

⁸We did not conduct a data reliability assessment of workload data for CBP because documentation was not available to validate its workforce planning process. In addition, we did not conduct a data reliability assessment of workload data for USCIS because USCIS has not yet fully implemented a system to generate comprehensive workload data.

⁹GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: December 2003); GAO, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: March 2002); GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders*, [GAO/OCG-00-14G](#) (Washington, D.C.: September 2000); and OPM, *Strategic Human Resources Management: Aligning with the Mission*, (Washington, D.C.: September 1999).

¹⁰See [GAO-02-373SP](#), p. 23.

number of attorneys needed, to deploy attorneys where they are needed most, and to address attorney staffing shortfalls, none of these three legal offices have fully documented their processes, procedures, and the data they use in these workforce planning decisions. Without documented plans and procedures, it will be difficult for the legal offices to review and validate their staffing decisions or for others to independently assess the legal offices' workforce planning efforts. This is particularly important to help ensure that sufficient legal resources are available to meet organizational goals related to immigration enforcement, inspection, and service functions—particularly in light of rising legal workloads in all three offices. Furthermore, without documentation, the legal offices may not have and be able to provide reasonable assurance that they are consistently applying their staffing process, implementing their workforce planning efforts as intended, or sustaining their efforts over time. An analysis of each legal office's approach to workforce planning, and efforts under way to address challenges, follows:

- Officials from ICE's legal office acknowledged that while an approach is in place for identifying attorney staffing needs, more data are needed to improve their attorney staffing decisions. ICE's legal office has relied primarily on its professional judgment to establish a staffing ratio between attorneys and immigration judges. This ratio, historically based on two attorneys for each immigration court judge, reflects the legal office's judgment of how the office's workloads translate into an appropriate number of attorneys needed, and where they should be deployed. The staffing ratio approach may not always ensure that attorney resources are allocated where they are most needed because it does not take into account the length of time needed to complete each case. To help determine its staffing needs, the legal office supplements this approach with a workload tracking system that measures, for instance, the number of hearings attended. However, the system does not track other information such as the time it takes attorneys to conduct their work activities. Thus, ICE's legal office lacks comprehensive data that it can rely on for making staffing decisions. Officials from ICE's legal office also reported that the office faces staffing shortfalls as caseloads rise, resulting in delayed court proceedings, increased detention costs, and other effects. Officials from the legal office stated that they are working to incorporate additional data into the office's existing workload tracking system by December 2007, to better manage the attorney staffing process. Although ICE's legal office reports having ways to measure its progress in making enhancements to its workload tracking system and in reporting the results of its progress, the office has not yet documented its performance measures or mechanisms for reporting on the status of

its efforts. Without such documentation, ICE's legal office may not be in a position to effectively monitor its progress in meeting its goals related to this effort or provide reasonable assurance that its enhancements are being implemented as intended.

- USCIS legal officials stated that its attorney workforce planning approach is based on estimates of workload data, such as the number of legal actions filed against USCIS. These officials acknowledged that it is not possible to reliably determine USCIS attorney needs or anticipate shortfalls based on these estimates, since other workload activities, such as the provision of legal advice to USCIS's program offices, are not included. As a consequence, lacking sufficiently reliable data, these officials stated that DHS has not been in a position to request additional attorneys for USCIS. Instead, to address some staffing needs, USCIS officials said that they have coordinated with other USCIS offices to acquire additional legal resources. For example, the legal office officials told us that they meet at least quarterly with USCIS program office officials to discuss converting vacant positions within the program office into attorney positions, to help offset shortfalls. Although this approach has resulted in the acquisition of new attorney positions, USCIS legal officials told us they remain understaffed. Efforts to implement a more comprehensive workload data management system to improve the staffing process are to be completed by the end of fiscal year 2007, officials stated, but USCIS's legal office has not yet documented its plans for implementing this system. Without such documentation, the legal office may not have reasonable assurance that its personnel are implementing the system as intended.
- Officials in CBP's legal office reported that the office has developed and implemented a successful approach for determining how many attorneys the legal office needs to conduct its work, where to geographically locate these attorneys, and to anticipate and address shortfalls before they occur. They said that this approach involves analyzing workload statistics, soliciting feedback from CBP program offices on their legal service needs, and estimating the time attorneys need to complete their work. Using this method, the Chief Counsel said that the legal office has not experienced staffing shortfalls and has met rising workloads by obtaining funding from the CBP Commissioner to hire additional attorneys.

In this report, we make recommendations to the Secretary of Homeland Security to document (1) ICE's plan for measuring its progress in making enhancements to its workload tracking system and for reporting on the

results of its efforts; (2) USCIS's plans for implementing a data management system to help ensure that the system is implemented as intended; and (3) attorney workforce planning processes for each component's legal offices to assist these offices in better managing their staffing process for effectively achieving the legal offices' goals.

We provided a draft of this report to DHS for review and comment. In commenting on this report, DHS generally agreed with four of our five recommendations. However, CBP's legal office disagreed with our recommendation that it needs to develop documentation that clearly describes its criteria, methodology, analysis, data, and the personnel responsible for conducting workforce planning efforts. CBP's legal office commented that while workforce planning principles included in our exposure draft, *A Model of Strategic Human Capital Management*, may be useful to managing large-scale federal operations, it believes the principles are inapplicable to small offices such as CBP's legal office, which has nearly 200 attorneys.¹¹ We disagree. We believe that the core planning principles discussed in this report are appropriate for all workforce planning efforts, including those conducted by CBP's legal office. Furthermore, as previously stated, our standards for internal control in the federal government require that significant events be clearly documented and that the documentation be readily available for examination by an independent entity. A copy of DHS's letter commenting on the report is presented in appendix II.

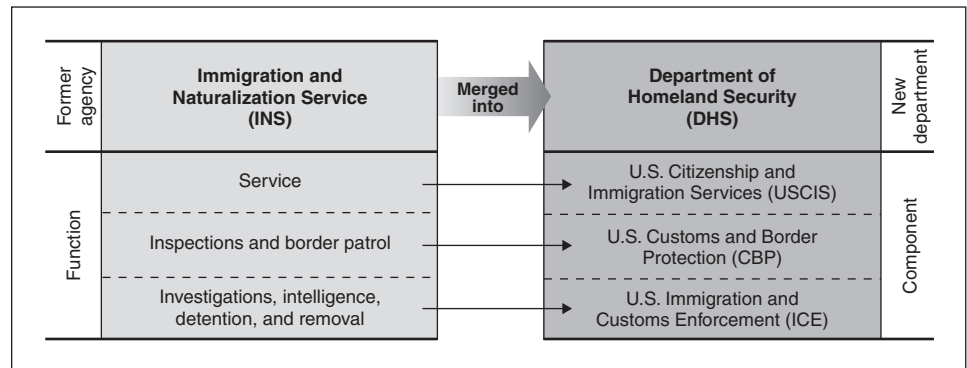
¹¹See [GAO-02-373SP](#).

Background

Transition of Legacy Agencies into DHS and Legacy Attorney Staffing Allocations

The Homeland Security Act of 2002 created DHS, bringing together 22 agencies and programs responsible for key aspects of homeland security including immigration enforcement and service-related functions.¹² A legacy agency—the former Immigration and Naturalization Service (INS)—was among the 22 agencies brought together within DHS.¹³ As a result of this merger, responsibility for immigration enforcement, inspection, and service-related functions was transferred to three components within DHS—ICE, USCIS, and CBP. Figure 1 shows the transfer of former INS immigration enforcement and service-related functions into DHS.

Figure 1: Transfer of Immigration Functions from Former INS into DHS



Source: GAO analysis of DHS data.

Before DHS became operational, on March 1, 2003, managers of the former INS's Office of the General Counsel identified the proportion of its 710 attorneys to allocate among the legal offices within ICE, USCIS, and CBP, according to DHS officials. DHS officials also told us that the former INS's Office of the General Counsel made these decisions based upon its judgment of the anticipated need each component would have for

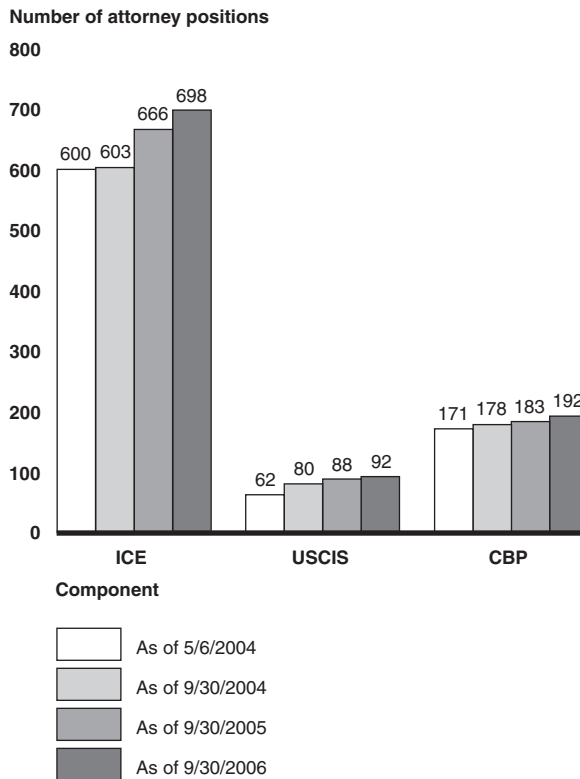
¹²Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. Two other legacy agencies, the former U.S. Customs Service (USCS) and the Department of Agriculture's Animal and Plant Health Inspection Service, were also merged into DHS, and responsibility for their customs investigations and enforcement and inspection functions were transferred to ICE and CBP. However, these functions do not relate to immigration.

¹³Prior to the merger, INS was part of the Department of Justice.

providing immigration legal services and available attorney work hours. As such, INS's managers determined that ICE should receive an allocation of 600 attorney positions for its Office of Principal Legal Advisor, USCIS should receive 62 attorney positions for its Office of Chief Counsel, and CBP should receive 48 attorney positions for its Office of Chief Counsel. On May 6, 2004, the DHS General Counsel issued a memorandum formalizing INS's decisions.¹⁴ CBP's Chief Counsel also told us that when DHS became operational, his office (formerly the Office of Chief Counsel in the legacy U.S. Customs Service) had 123 attorney positions. With the allocation of 48 positions from the former INS General Counsel's office, CBP's legal office had a total of 171 attorney positions. Since May 6, 2004, then, the three legal offices have obtained additional resources through other action, such as the annual budget process. Figure 2 shows the number of attorney positions that were funded at ICE, USCIS, and CBP's legal offices for the fiscal years ending September 30, 2004, to September 30, 2006.

¹⁴The Office of General Counsel is responsible for directing the activities of DHS's legal offices. However, DHS officials told us that its Office of General Counsel does not play a role in determining the component's attorney resource needs as part of the budget process.

Figure 2: Number of Attorney Positions Funded at ICE, USCIS, and CBP for the Fiscal Years Ending September 30, 2004, 2005, and 2006



Source: ICE, USCIS, and CBP's legal offices.

Organization and Funding for Components' Legal Resources within DHS

ICE's legal office is led by a Principal Legal Advisor who is assisted by a Deputy. The legal office is organized into 12 divisions. Eleven of these divisions, such as Commercial and Administrative Law, Enforcement Law, and National Security Law, are located in the headquarters office in Washington, D.C. Officials from the legal office told us that as of September 30, 2006, 119 of the office's 698 attorneys are located in headquarters. They also said that as of September 30, 2006, the largest division, Field Operations, has 579 attorneys located in 51 field offices throughout the United States. This division is headed by a Director with assistance from 26 Chief Counsels.

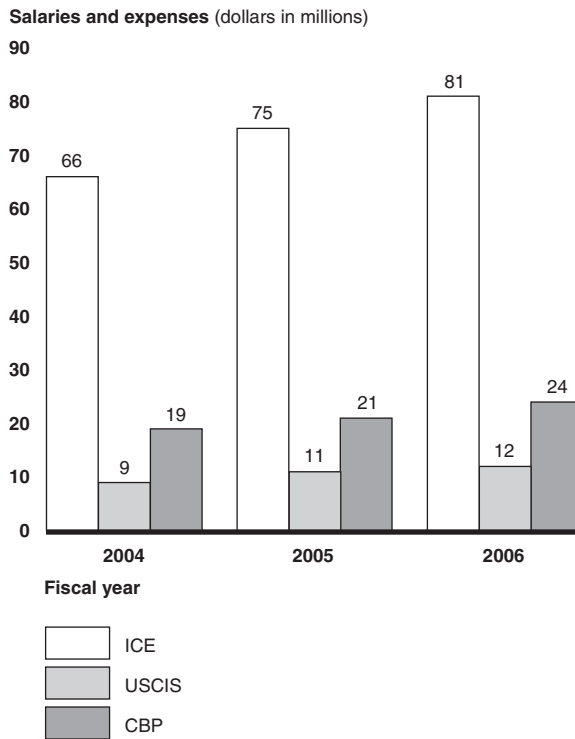
USCIS's legal office is led by a Chief Counsel who is assisted by a Deputy Chief Counsel. As of September 30, 2006, the office's 92 attorneys are located in USCIS's headquarters offices in Washington, D.C., and its three

regional offices throughout the United States in proximity to USCIS's program offices. Each regional office is managed by a Regional Counsel. Officials in the legal office said that 38 USCIS attorneys are located in its headquarters offices, 21 attorneys are located in the Eastern Region, 16 in the Central Region, and 17 in the Western Region.

CBP's legal office is led by a Chief Counsel with support from a Deputy Chief Counsel. At the end of fiscal year 2006, CBP's 192 attorneys were located in offices throughout the United States in close proximity to CBP's program offices. For example, the legal office's officials reported that approximately 40 attorneys were located in headquarters offices in Washington, D.C., at the end of fiscal year 2006, with the remainder located in 27 field offices. The field offices are managed by Associate and Assistant Chief Counsels.

Figure 3 illustrates funds provided to ICE, USCIS, and CBP legal offices for their attorneys' salaries and expenses for each of the fiscal years 2004–2006.

Figure 3: Funding Provided to ICE, USCIS, and CBP for Attorneys' Salaries and Expenses for Fiscal Years 2004-2006



Source: ICE, USCIS, and CBP's legal offices.

Guidance on Strategic Workforce Planning

Strategic workforce planning helps ensure that an organization has the staff with the necessary skills and competencies to accomplish its strategic goals. Since 2001, we have reported strategic human capital management as an area with a high risk of vulnerability to fraud, waste, abuse, and mismanagement. In January 2007, we reported that significant opportunities remain to improve strategic human capital management in the federal government to respond to current and emerging 21st century challenges.¹⁵ For example, we reported that DHS's human capital systems require continued attention to help prevent waste and ensure that DHS can allocate its resources efficiently and effectively.

¹⁵GAO, *High-Risk Series: An Update*, [GAO-07-310](#) (Washington, D.C.: January 2007), pp. 6, 39, and 45.

We have also issued various policy statements and guidance reinforcing the importance of sound human capital management and workforce planning. Our human capital guidance states that the success of the workforce planning process that an agency uses can be judged by its results—how well it helps the agency attain its mission and strategic goals—not by the type of process used.¹⁶ The guidance also highlights eight critical success factors in strategic human capital management, including making data-driven human capital decisions and targeted investments in people.¹⁷ To make data-driven human capital decisions, the guidance states that staffing decisions, including needs assessments and deployment decisions, should be based on valid and reliable data. Furthermore, the guidance states that to make targeted investments in people, organizations should clearly document the methodology underlying their human capital approaches. We have identified these factors, among others, as critical to managing human capital approaches that facilitate sustained workforce contributions.

Additional guidance we issued on strategic workforce planning outlines key principles for effective workforce planning. These principles include (1) involving management, employees, and other stakeholders in the workforce planning process; (2) determining critical skills and competencies needed to achieve results; (3) developing workforce strategies to address shortfalls and the deployment of staff; (4) building the capabilities needed to address administrative and other requirements important in supporting workforce strategies; and (5) evaluating and revising these workforce strategies.¹⁸

OPM has also issued strategic workforce planning guidance to help agencies manage their human capital resources more strategically.¹⁹ The guidance recommends agencies analyze their workforce, conduct competency assessments and analysis, and compare workforce needs against available skills. Along with OPM, we have encouraged agencies to consider all available flexibilities under current authorities in pursuing solutions to long-standing human capital problems. In addition, our

¹⁶See GAO-04-39, p. 2.

¹⁷See GAO-02-373SP, pp. 8-9.

¹⁸See GAO-04-39, pp. 2-3.

¹⁹OPM, *Key Components of a Strategic Human Capital Plan* (Washington, D.C.: September 2005).

guidance outlines strategies for deploying staff in the face of finite resources.²⁰

DHS Components Are Taking Steps to Improve Workforce Planning for the Attorney Staffing Process, but Need Better Data Related to Work Activities

Officials at ICE, USCIS, and CBP reported using a range of approaches to determine their staffing needs, deploy attorneys to locations where they are needed most, and anticipate and address attorney shortfalls. However, none of the components' approaches have been documented and no mechanisms exist for validating attorney staffing decisions. Both ICE and USCIS officials acknowledged that they do not have reliable workload data to determine their staffing needs, make allocation decisions, and identify staffing shortfalls, but report taking actions to obtain more and better data. Despite not having the data needed to reliably determine staffing shortfalls, ICE and USCIS's legal offices said that current staffing levels are insufficient for conducting their work. CBP's legal office told us that through its workforce management practices it is able to anticipate shortfalls and develop strategies to avoid them such as securing funding for additional attorneys before any shortfalls occur.

ICE Lacks Data Needed to Reliably Determine Its Overall Attorney Staffing Needs, but Is Taking Action to Collect Such Data

Officials from ICE's legal office reported having an approach to staff attorneys and identify staffing shortfalls; acknowledging that the methodology for this approach lacks sufficient data and is not documented, they plan to collect and incorporate workload data into staffing decisions. To determine how many immigration attorneys are needed for its work, where those attorneys are to be deployed, and how staffing shortfalls are to be addressed, ICE's legal office primarily relies on the number of immigration judges who preside over immigration courts throughout the country. Specifically, the legal office's officials make their attorney staffing decisions by establishing a ratio of the number of attorneys needed per judge—an approach developed before the inception of DHS by the legacy INS General Counsel's office. Officials in ICE's legal office said that this approach was, and is currently, based on management's professional judgment of how their office's workload translates into the appropriate number of attorneys needed, as well as where they should be deployed. The ratio is, therefore, used as the basis for the legal office's decisions to request additional attorneys through the

²⁰See [GAO/OCG-00-14G](#), p. 19.

annual budget process.²¹ Officials in ICE’s legal office also told us that for particularly complex, sensitive, or high-profile cases, such as those involving national security, they supplement the ratio approach by considering the staffing needs of each of its offices and the historical and current workload related to these types of cases that are assigned to each office to help them make staffing decisions. Using this approach, the legal office reported that it allocated 61 attorneys during fiscal year 2006 to 25 of its field offices to handle these types of cases.

Officials in ICE’s legal office told us that they have historically decided that they should assign two attorneys to handle the office’s immigration workload for every immigration judge—and this forms the basis of the ratio approach that has been used. These officials also told us that this decision was based on the assumption that because immigration judges hear cases 7 to 8 hours each day, one attorney would always need to be in court and another would be needed to complete other related matters such as case preparation, legal research, or provide legal advice to ICE offices. Officials in the legal office also stated that this decision was based upon factors that were related to the workload that existed at the time the ratio was established. They said that the staffing ratio approach is based on professional judgment and historical experience and takes into consideration some workload data maintained by the immigration courts, such as the number of appeals stemming from immigration judge decisions.²² However, other workload metrics, such as the time attorneys spend researching and preparing for cases are not considered when making these decisions because ICE’s legal office does not yet have systems fully in place to track these data, according to its officials. Consequently, the staffing ratio approach is not based on comprehensive workload data, nor is it grounded in reliable workload data. For example, one assumption built into the current staffing ratio is that each ICE attorney conducts the same amount of work for every immigration judge.

²¹Officials from ICE’s legal office said that the majority of their attorneys litigate in immigration courts and provide advice to ICE employees and that their staffing decisions related to these attorneys are based on the ratio of attorneys to immigration judges. However, they also told us that staffing decisions for headquarters attorneys responsible for providing legal services related to ethics or administrative law are conducted by establishing a ratio of attorneys to ICE program clients. Officials from ICE’s legal office said that these attorney-to-client ratios are determined by reviewing workload estimates and benchmarking those ratios with other executive branch legal programs such as those at the Departments of Justice and Treasury.

²²When an appeal is filed related to an immigration judge’s decision, ICE attorneys are responsible for litigating the case before the Board of Immigration Appeals.

However, this may not always be the case, given that differences exist in the volume and complexity of cases, which could mean that different numbers of attorneys are needed.

The legal office's staffing ratio approach to making decisions about attorney staffing has not been fully successful in helping the agency avoid staffing shortfalls. Officials from ICE's legal office reported to Congress in February 2006 that they faced attorney staffing shortfalls due to rising caseloads, increased complexity in cases, and an expansion of the agency's mission into areas such as customs law. They told us that they continue to face shortfalls because recent increases in both the number and the complexity of immigration cases have led to increases in the number of cases handled by a judge and in the amount of time required for case preparation work—all of which has a bearing on attorney staffing and workloads. These officials also told us that as a result of increased workloads they often request delays in court proceedings to obtain sufficient time to prepare for cases, but have no data to quantify the number of delays requested. Moreover, they said that these delays result in increased costs for DHS when the cases involve aliens placed in agency custody. For example, they stated that each day the hearing was delayed costs DHS approximately an additional \$100 for housing an alien in fiscal year 2006. In addition, officials from ICE's legal office said that an increase in case complexity and an expansion of the office's responsibilities, such as providing legal advice regarding customs-related enforcement matters, also requires additional resources to perform legal work outside of court.²³ Officials from ICE's legal office told us, for instance, that prosecution of aliens who pose a threat to national security—particularly time-consuming cases—has increased from about 50 cases per year before September 11, 2001, to approximately 700 cases in fiscal year 2006. The legal office officials told us that it had 4 attorneys in headquarters handling national security cases before September 11, 2001, and 13 attorneys in headquarters handling such cases in fiscal year 2006. The legal office reported taking action to address existing attorney shortfalls by requesting funding for additional attorneys through the annual budget process. For example, the legal office requested funding for 193 additional attorney positions in fiscal year 2006 as part of its fiscal year 2007 budget request—positions that were ultimately funded for half of fiscal year 2007 as part of DHS's fiscal

²³In its 2006 budget request, ICE's legal office reported that it regularly provides advice to its field offices on customs-related enforcement matters, including cargo search and seizure related issues.

year 2007 appropriation. To avoid future shortfalls, officials from ICE's legal office said that they are currently working to increase coordination with the Justice Department's Executive Office for Immigration Review (EOIR), which administers the immigration courts, to anticipate the placement of new immigration judges or the transfer of existing judges from one location to another. The legal office officials said that because a key data element for their workforce planning methodology is the number and location of immigration judges, increased coordination with EOIR will allow the legal office to better anticipate its attorney needs at various locations around the country.

Despite these actions, the shortfalls that have arisen as a result of these changing conditions have, according to officials from ICE's legal office, affected the agency's ability to carry out its mission. For example, the legal office officials said that because they currently face staffing shortfalls, they are unable to respond in a timely manner when an alien requests a change of venue—that is, a request to move the alien's case from one court to another court. They also said that if they cannot respond to a change of venue and explain why such a request should not be granted, it is likely that a larger percentage of these requests will be granted. According to officials from ICE's legal office, aliens not in agency custody who are granted their request to change venue often do not appear for their hearings and remain in the country illegally. Furthermore, they said that the government may incur unnecessary detention and transportation costs when such unopposed requests are granted to detained aliens.

Questions about the effectiveness of the legal office's staffing ratio as a reliable or sufficient means of ensuring that its attorney staffing needs can be met, and shortfalls averted, are not new. In 2004, a business consulting firm hired to analyze the legal office's staffing process concluded that the premise of the ratio approach was no longer valid in light of rising caseloads and an increasing client base. The consulting firm also concluded that the premise of the ratio was not valid because the legal office had experienced a growth in the number of attorneys who performed management tasks and these attorneys were not included in the calculation of the ratio. Officials from ICE's legal office stated that although the consulting firm's report to the office's senior management underscored a need to improve its attorney staffing process by incorporating more workload data, they intend to continue using the ratio approach for determining attorney needs and making allocation decisions until they can collect such data.

ICE Reports Taking Action to
Collect Data to Improve
Workforce Planning

Our prior work on strategic workforce planning states that staffing decisions, including needs assessments and deployment decisions, should be based on valid and reliable data.²⁴ Without basing its attorney needs assessments as well as its deployment decisions on comprehensive workload data that are valid and reliable, officials from ICE's legal office cannot ensure that the ratio approach accurately determines the number of attorneys the office needs, where they should be deployed, and any shortfalls they may face.

ICE's legal office has taken some action to improve the decision-making process for attorney staffing. For example, officials from the legal office said that in preparation of their fiscal year 2007 budget request, they adjusted their target attorney-to-judge ratio from 2:1 to 2.5:1 in an effort to reflect the need for additional attorneys as caseloads increase. This effort, however, was based, as in the past, primarily on professional judgment rather than comprehensive workload statistics.

ICE's legal office has also taken steps to enhance its workload data collection efforts. Officials from this office reported that they deployed a General Counsel Electronic Management System (GEMS) nationwide, in fiscal year 2005, to organize and track information on immigration cases and other workload projects. It also tracks workload measures, such as the number of hearings attended. ICE legal officials also said that they are also working on several enhancements to GEMS that the office plans to implement during fiscal year 2007 that will help to improve its workforce planning efforts. In 2002, ICE established a Knowledge Management Division that, among other things, is responsible for ensuring that these enhancements are implemented. Table 1 describes these enhancements and the office's timeline for implementing them.

²⁴See [GAO-02-373SP](#), p. 23.

Table 1: ICE's Planned Enhancements to GEMS That It Reports Will Provide Additional Data to Assist in Its Workforce Planning Efforts

Planned enhancement	Description of enhancement planned	Planned implementation date
Time accounting	To provide ICE's legal office with the capacity to track time its attorneys spend on their work by activity.	December 2007
Performance management	To provide ICE's legal office with the ability to extract information from data captured in GEMS to generate performance measures that are intended to describe how well the legal office is meeting its mission goals, whether they are on track for meeting their performance targets, and whether their current resources are sufficient to meet those goals. To identify those cases that require the most resources. To identify workload trends, which will assist ICE's legal office in predicting future workloads and outcomes.	June/July 2007
Knowledge management	To provide ICE's attorneys with the ability to readily identify and extract information about a case or project that is similar to other cases or projects other attorneys may be working on.	August 2007

Source: ICE's legal office.

Officials in the legal office told us that they also established a working group to analyze the legal office's processes and to determine measures that would best describe the office's workload. They also reported establishing a division that will be responsible for, among other things, evaluating and validating the additional workload measures captured by GEMS. According to the legal office's deployment plan for these enhancements, some of the workload measures that the office plans to collect will include the number of cases by type and location as well as the time attorneys spend on these cases. This plan also outlines how the legal office plans to incorporate these workload measures in its future attorney workforce planning decisions. For example, it states that officials from the legal office will determine an average amount of time attorneys spend on each type of case by reviewing and analyzing the number of hours attorneys spend on these cases at each field office. As a result, this average will provide senior management with an indication of the number of attorneys needed to handle its projected caseload at all of its field offices. However, ICE's legal office has not fully documented its plans for enhancing GEMS. Although the Chief from the legal office's Knowledge Management Division told us that he measures his office's progress in implementing GEMS enhancements by using project milestones and orally reports to the Principal Legal Advisor on these issues almost daily, the office's planning documentation does not address these issues. Specifically, the documentation does not state how the legal office intends

ICE Lacks Documentation for
Validating Its Attorney
Workforce Planning Decisions

to measure its progress in making these enhancements or to report the results of its efforts.

Industry best practices on information technology management stress the importance of effective planning.²⁵ Inherent in such planning is the development and use of program management plans that specify performance measures and reporting mechanisms. Furthermore, our standards for internal control in the federal government call for clear documentation.²⁶ Such documentation could help ensure better accountability, replication, and consistency. By not documenting performance measures or mechanisms for reporting on the status of its efforts to enhance GEMS, ICE's legal office may not be in a position to effectively monitor its progress in meeting its goals related to this effort.

ICE's legal office has not documented its methodology or the role of its staff responsible for determining its attorney needs, identifying and addressing related shortfalls, or deploying attorneys where they are needed. Our principles on strategic workforce planning state that the methodology underlying staffing decisions should be well documented.²⁷ Our standards for internal control in the federal government also recognize the need for clear documentation.²⁸ Without documentation, it may be difficult for ICE's legal office to review and validate the decision-making process or for others to independently assess the legal office's efforts. Furthermore, if the legal office's rationale for its staffing decisions, including factors it considered when establishing and changing the ratio, is not documented, the legal office and its stakeholders may not have and be able to provide assurance that its staffing processes are being consistently applied or sustained over time.

²⁵GAO, *Near-Term Effort to Automate Paper-Based Immigration Files Needs Planning Improvements*, [GAO-06-375](#) (Washington, D.C.: March 2006), p. 14.

²⁶GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3](#) (Washington, D.C.: November 1999), p. 15.

²⁷See [GAO-02-373SP](#), p.25.

²⁸See [GAO/AIMD-00-21.3.1](#), p. 15

USCIS Acknowledges It Lacks Data Needed to Determine Attorney Staffing Needs, but Efforts Are Under Way to Address the Problem

Officials with USCIS's legal office stated that they need additional attorneys to meet current workload demands and that they work with USCIS program offices to acquire additional attorneys. Acknowledging that the office has not fully implemented a system to reliably determine its attorney staffing needs, make allocation decisions, or anticipate and fully address staffing shortfalls, they reported that they have efforts under way to resolve these issues. Officials in USCIS's legal office said that despite its need for additional attorneys to meet its current workload demands, USCIS's legal office does not have comprehensive workload data to support requests for additional attorney resources.

USCIS's legal office reported that its approach to managing workforce planning decisions generally relies on professional judgment. For example, it said that as part of the annual budget process, senior legal managers discuss attorney needs and where attorneys should be geographically located. They also told us that these managers consider two inputs as part of this process. First, they said that they consider workload estimates by analyzing spreadsheets that the legal office personnel generate by recording certain workload activities, such as the total number of legal actions filed against USCIS. However, these officials said that this method generates incomplete workload data, since other workload activities, such as the provision of legal advice to program offices, are not included on the spreadsheets. Thus, the officials said that these workload estimates may not be reliable indicators of actual workload activities. Second, they said the managers use feedback the legal office solicits from USCIS program offices to help them assess their attorney needs and determine where to allocate attorneys. This feedback includes information about recurring legal issues or the need for a particular field office to have an attorney on-site. Officials in USCIS's legal office acknowledged that there is no fully implemented system in place, as of February 2007, to track all of its attorneys' workload such as the amount of time attorneys spend completing their workload activities or the total volume of work the office faces. Our prior work on strategic workforce planning has shown that staffing decisions, including needs assessments and deployment decisions, should be based on valid and reliable data.²⁹ While professional judgment is an important and valuable element of any decision-making process, without valid and reliable data, it will be difficult for officials in USCIS's legal office to ensure that their approach provides a reasonable

²⁹See [GAO-02-373SP](#), p.23.

determination of the number of attorneys they need, where they should be deployed, or any shortfalls they may face.

Officials in USCIS's legal office report that it has and is taking action to obtain additional workload data to improve the reliability of its staffing decisions, including how it identifies shortfalls, and to support future budget requests. In 2003, to facilitate the transition from legacy INS to USCIS, USCIS's legal office hired an independent consulting firm to assess the office's staffing resources and solicit feedback from USCIS program offices on their legal needs, among other things. In March 2004, the consulting firm reported to USCIS's legal office on the results of its assessment.³⁰ Officials in USCIS's legal office said they used the information from this assessment to help determine the legal needs of USCIS program offices and identify areas for improving how the office provides legal services. In response to the assessment's recommendations, USCIS's legal office's staff told us that they plan to fully implement a data management system that will capture all of its work activities by the end of fiscal year 2007 and that USCIS began efforts to implement this system by purchasing software for it in October 2006. USCIS legal office staff told us this new system will allow them to capture comprehensive workload data such as the volume of legal advice requested and provided, attorney hours spent on different types of requests (e.g., legal advice or training), and the number of pending visa petition appeals, among other things. They said they plan to adjust their methodology for determining attorney staffing needs, making allocation decisions, and identifying staffing shortfalls by considering additional data on workload activities and the time attorneys spend on these activities. They also said they plan to use these data as support for future budget requests for additional attorneys and as key inputs for an attorney allocation model they expect to develop and put in place 1 year after the data management system has been fully implemented.

The USCIS legal office's Chief of Staff orally reviewed with us the office's goals, major milestones, work tasks, and monitoring efforts associated with implementing this system. He told us that the office had, among other things, completed its design of the functionality requirements for the system and resolved security issues for installing the software on USCIS's network in January 2007. He also said that the office had installed

³⁰IBM, *Detailed Organizational Assessment Briefing: Office of the Chief Counsel, US Citizenship and Immigration Services, Department of Homeland Security* (March 2004).

USCIS’s Legal Office
Coordinates with Other USCIS
Offices to Remedy Some
Attorney Staffing Shortfalls
throughout USCIS

software and conducted tests to ensure it was working properly on each attorney’s computer in February 2007 and plans to spend the rest of the fiscal year entering data, such as requests for legal advice, into the system. However, USCIS’s legal office has not documented its plans for implementing this system. Industry best practices stress the importance of effective planning. Inherent in such planning are the development and use of program management plans that define, among other things, program goals and major milestones, delineate work tasks and products and the associated schedules and resources for achieving them, and specify performance measures and reporting mechanisms.³¹ By not documenting its plans, USCIS’s legal office may not have provided and be able to provide reasonable assurance that it is implementing its plans as intended to effectively achieve its goals.

To address attorney staffing shortfalls, USCIS’s legal office has a strategy in place—but an acknowledged lack of reliable data on workload requirements limits the strategy’s effectiveness in reducing shortfalls. According to staff in the legal office, on at least a quarterly basis, officials meet with the leadership of USCIS’s program offices to discuss, on a case-by-case basis, converting vacant positions within the program offices into attorney positions as a way to help offset shortfalls. USCIS’s legal office told us these discussions focus on five factors: (1) the legal staff resources the program office believes it needs to achieve its mission, (2) the number of attorneys and program staff present at the geographic location of the vacant position, (3) the perceived need to have an attorney on-site to address legal issues, (4) estimates of the number of pending visa appeals at the location, and (5) the quality and volume of decisions being made at the location. Once these discussions have concluded, USCIS’s legal office said the program office decides whether having the support of an additional attorney would better help the program office achieve its goals than would hiring an additional program staff member. USCIS’s legal office staff said if the program office decides in favor of hiring an additional attorney, the legal office will work with the program office to recruit and hire an attorney to fill the vacant position.

Officials in USCIS’s legal office said that, depending on the agreements reached with the program office, the salary and related expenses for the newly converted attorney position can be funded entirely by the program office. Alternatively, these officials stated that both the program and legal

³¹See [GAO-06-375](#), p. 14.

offices could contribute funding to cover the salary and other expenses associated with the position. USCIS's legal office said it has obtained 10 additional attorney positions through this process since 2004 (app. I provides additional details on these positions). Although USCIS attorneys say these additional attorney positions have helped the legal office meet some of its workload demands, they still feel that they are understaffed because they are unable to meet current workload demands.

Two concerns exist with USCIS's approach to managing its staffing shortfalls. First, as previously discussed, USCIS legal officials acknowledged that the attorney workload estimates on which its decisions about shortfalls are based may not be reliable because comprehensive workload data are not collected and analyzed; such data would allow USCIS's legal office to reliably identify shortfalls for the office as a whole. Second, USCIS's legal office has not documented policies and procedures that identify the staff responsible for managing such shortfalls and for assessing its attorney needs, deploying its attorneys, and identifying shortfalls. In addition, the legal office has not documented its approach for these staffing processes. As stated earlier, our prior work on strategic workforce planning and our standards for internal control in the federal government have stressed the need for clearly documenting significant events.³² Without documented plans and procedures, USCIS's legal office may not be consistently evaluating the factors it considers important when assessing attorney needs, determining where attorneys should be located, or converting program office positions into attorney positions over time. Furthermore, without such documentation, it will be difficult for USCIS's legal office to review and validate its decision-making process or for others to independently assess the legal office's workforce planning efforts.

Although USCIS's legal office reported that it has been working to implement better workload tracking procedures, until these efforts are completed and fully documented, it cannot reliably determine its staffing needs and related shortfalls or take action to fully address such shortfalls. USCIS legal office officials also said that when the office was initially created, they did not anticipate that defending lawsuits brought against USCIS in federal court would constitute the majority of their workload, limiting their ability to provide sufficient legal advice to USCIS program offices. Thus, the legal office remains at risk of not being able to meet its

³²See [GAO/AIMD-00-21.3.1](#), p. 15, and [GAO-02-373SP](#), p. 25.

mission goals. For example, officials told us that when an attorney visits a field office that does not usually have an attorney on-site, the visiting attorney is generally confronted with lines of program staff waiting to seek legal advice at his/her office door. USCIS attorneys also told us that by not being able to provide adequate legal training to program staff on changes in immigration law, policy, and related proceedings, USCIS is at risk of making incorrect decisions related to benefit adjudications. USCIS's program officials also confirmed the legal office's position by telling us that they do not get as much legal support as they would like. For instance, the program officials said that additional legal support is needed to improve the quality of the program offices' adjudication decisions, particularly denials. The program officials also said that without adequate legal support, the agency remains vulnerable to an increasing number of appeals and adverse decisions that could have been avoided through proper legal review.

CBP Reports Implementing a Successful Attorney Workforce Staffing Approach, but Lacks Documentation for Validating Its Decisions

CBP's legal office reported that it has an approach in place to determine its attorney staffing needs, deploy attorneys to locations where they are needed, and anticipate attorney shortfalls, although the approach has not been documented and no documentation exists for validating CBP's attorney staffing decisions. The office told us that its methodology for this approach consists of analyzing (1) workload statistics, (2) feedback from CBP program officers regarding the legal needs of those offices, and (3) estimates of the time it takes attorneys to conduct their activities. After completing this analysis, the legal office's senior management said that they apply their professional judgment to make attorney staffing decisions.

CBP's legal office said that it uses workload statistics from its Chief Counsel Tracking System (CCTS) to determine the frequency and level of service its attorneys are asked to provide throughout the year.³³ CCTS captures data on the type and volume of workload activities conducted by its attorneys, such as the number of legal training courses conducted by

³³The Chief Counsel Tracking System is an automated system that maintains data on legal matters handled by CBP's legal office. The Deputy Chief Counsel told us that, as a general rule, the legal office's attorneys are responsible for opening cases in the Chief Counsel Tracking System only if they take more than 30 minutes to complete. The legal office's personnel can access this system to obtain data on the status of a case or to obtain information about the office's workload. Officials in the legal office told us that this system has been in place for more than 20 years, as it was originally maintained by the legacy agency, U.S. Customs Service, Office of Chief Counsel, but that technology enhancements have been made over the years.

attorneys for Border Patrol agents and the number of times CBP attorneys provide advice to Border Patrol personnel on land use issues. Officials in the legal office said that they conduct workload evaluations of these statistics by analyzing the number of cases opened, number of cases closed, and case types, by attorney and office location, to help inform attorney staffing decisions. The legal office officials said they also review statistics in CCTS on a quarterly basis to look for trends in work areas. Furthermore, they said that such an analysis helps the office anticipate attorney needs in specific work areas as well as assist in highlighting locations where attorneys may need to be deployed. For example, they stated that when DHS was established, approximately 9,000 employees assigned to field offices located along the southern border of the United States were transferred to CBP from the former INS. Officials from CBP's legal office said that they reviewed statistics in CCTS to help them determine the amount and type of legal work generated by CBP employees with comparable responsibilities. In turn, they said that this helped the legal office decide to create four new field offices for attorneys in Texas—Laredo, McAllen, Del Rio, and Marfa—and to place additional attorneys in El Paso, Texas, and Tucson, Arizona. The legal office also said that it conducts workload evaluations throughout the year, as needed, by holding discussions among the executive staff to ensure that each headquarters and field client is afforded an appropriate level of legal expertise.³⁴ The Chief Counsel stated that he talks with his five Associate Chief Counsels in the field almost daily, focusing on issues such as the staff's approach to completing their work, issues to be resolved when a case becomes increasingly complex, workload priorities, and any workload surges occurring in particular issue areas or at specific locations to help inform staffing decisions. Officials in the legal office also stated that it compares the experience and skills of its attorneys with the legal needs of its clients when determining in which location attorneys might best be placed.

Officials from CBP's legal office told us that another key input in their staffing decisions involves the feedback they solicit from CBP program officers to learn what current and projected legal services the program offices require. For example, they told us that Border Patrol program officers told the legal office's staff that its need for legal services would increase because CBP plans to place an additional 2,500 Border Patrol agents along the southern U.S. border in fiscal year 2007. As a result, the

³⁴CBP's legal office's executive staff consists of the Chief Counsel, Deputy Chief Counsel, three headquarters Associate Chief Counsels and five Associate Chief Counsels in the field.

Chief Counsel reported obtaining funding for 15 additional attorneys based on a ratio of 6 additional Chief Counsel attorneys being needed for each 1,000 newly added Border Patrol agents. The Chief Counsel told us that he developed this ratio using his professional judgment and actual case data from over 3½ years of providing legal support to the Border Patrol program officials in CBP. He said that in developing this ratio he also considered workforce statistics on the number of (1) litigation cases related to border patrol activities, (2) administrative proceedings, (3) employee hearings, and (4) the Border Patrol's requests for advice. He also said that these statistics provided him with an indication of the volume of work stemming from border patrol activities and the number of attorneys needed to efficiently manage the work his office does for the Border Patrol component of CBP.

Officials in CBP's legal office told us that another key data element involved in attorney staffing decisions is estimates of the time it takes attorneys to complete their work. The Chief Counsel said that he makes such estimates relying upon his own experience and professional judgment. The legal office officials said that CCTS does not maintain information on the time it takes attorneys to complete their work, although they considered incorporating such a component into the system in 1999. They said that they decided not to incorporate such a component into CCTS because the benefits of having a component to capture data on the time it takes attorneys to conduct their activities would not exceed the costs of developing and implementing the component. The Chief Counsel told us that there was no available documentation of the analysis supporting this decision.

CBP Reports that Staffing Shortfalls Have Been Avoided

CBP's Chief Counsel told us that as a result of his current workload management practices, his office is able to avoid staffing shortfalls by securing funding to acquire additional resources before any shortfalls occur—although documentation is not available to validate this conclusion. He also said that this approach allows CBP's attorney offices to fulfill workload priorities, meet the legal service needs throughout the agency, and attain performance targets such as addressing litigation and administrative hearing issues by court-imposed deadlines. He stated that when he determines a need for additional resources, he will work directly with CBP's Office of Finance and CBP's Commissioner to obtain funding to acquire these resources. For example, in fiscal year 2005, the Chief Counsel obtained funding to hire 23 additional attorneys to assist in addressing anticipated increases in the office's workload. The Chief Counsel made his funding request after conducting workload evaluations of CCTS data and determining that his office's workload was steadily

CBP Does Not Have Written Policies and Procedures for Its Attorney Staffing Process

increasing in a number of areas. In a memo to CBP's Commissioner related to this request, the Chief Counsel explained that he would need additional attorneys to (1) address the increasing number of administrative hearings, (2) provide litigation support to the Department of Justice, and (3) provide legal advice and training to CBP program offices.

CBP's legal office does not have any written policies and procedures that describe the criteria, methodology, analyses, data, and staff responsible for assessing its attorney needs, determining where to deploy its attorneys, and anticipating and addressing staffing shortfalls before they occur. Although the legal office maintains internal memorandums that document its requests for additional staffing, the memorandums provided to us include general information about the legal office's increased workload in various areas, and do not explain how the legal office determined its staffing needs or shortfalls.

Our prior work on strategic workforce planning has identified the need for such written policies and procedures.³⁵ Moreover, our standards for internal control in the federal government calls for clear documentation of policies and procedures that is readily available for examination.³⁶ Without documented policies and procedures, there is no institutional record of the legal office's actions. Therefore, it may be difficult to review and validate the decision-making process for effective management oversight. Effective management oversight is important for ensuring sound stewardship and accountability of resources. Moreover, without documented policies and procedures, CBP's legal office may not be able to ensure that its staff consistently applies criteria it has established, implements procedures as intended, or sustains those efforts over time.

Conclusions

Since its inception, DHS and its components have performed an important role in providing a range of law enforcement, immigration inspection, and benefits adjudication services that help to protect the United States against potential terrorist actions and address other problems arising from illegal immigration. To achieve its mission in these areas, it is important that DHS be able to manage its human capital needs to ensure that skilled personnel are available when needed. The hundreds of staff attorneys who litigate in immigration courts, and provide other legal services to support

³⁵See [GAO-02-373SP](#), p.25.

³⁶See [GAO/AIMD-00-21.3.1](#), p. 20.

immigration enforcement, inspection, and benefit service missions are a key part of DHS's workforce.

Although each component's legal office has developed its own approach to attorney workforce planning, there are opportunities for ICE and USCIS to enhance their planning processes to help ensure that sufficient legal staff are available to litigate immigration cases and perform other necessary legal services. ICE and USCIS report having an insufficient number of attorneys to cope with rising caseloads. More reliable, accurate data on a variety of attorney workload measures could better position officials in anticipating staffing needs—and in presenting a well-founded case to Congress for appropriate resource levels. ICE and USCIS legal officials acknowledged that their attorney staffing processes have not always afforded a reliable basis for determining how many attorneys are needed to manage workloads, how legal workloads can be managed to avert shortfalls, and how best to deploy available attorney staff to ensure they are placed where most needed. Both components are taking steps to address this problem—but their efforts to implement new workload tracking systems or improve data collection on workforce activities have not been completed. Data-driven workload tracking and data collection efforts are necessary to help the legal offices ensure that they are in a position to anticipate and justify requests for appropriate resources needed to meet mission goals related to immigration enforcement, inspection, and service functions, and to make sound and reliable staffing decisions.

With respect to ICE, its legal office has not documented performance measures or mechanisms for reporting on the status of its enhancements to its workload tracking system (the General Counsel Electronic Management System). Thus, the legal office may not be able to provide reasonable assurance that its enhancements are being implemented as intended. Nor may ICE's legal office be able to effectively monitor its progress in making these enhancements. Moreover, ICE has not documented its methodology for conducting workforce planning efforts, the personnel responsible for conducting such efforts, and its rationale for making staffing decisions including any factors it considered in making those decisions. Without documentation of this methodology and a rationale for making staffing decisions, it will be difficult for the legal office to effectively monitor the results of its staffing decisions or for the results to be independently validated. Furthermore, without clearly documenting the personnel responsible for conducting workforce planning efforts, it may not be possible for the legal office to monitor or ensure accountability.

USCIS also faces challenges associated with its attorney workload tracking system. Although USCIS legal office's Chief of Staff indicated that his office has goals, major milestones, work tasks, and monitoring efforts associated with implementing this system, there is no written documentation associated with any of these elements. Without clearly documenting program goals, major milestones, work tasks, products (such as the time accounting system), and the associated schedules and resources for achieving them, it may not be possible to effectively implement this system as intended or on schedule. In addition, as with ICE, USCIS's legal office has not documented performance measures or mechanisms for reporting on the status of its workload tracking system. Thus, the agency may not be able to provide reasonable assurance that its enhancements are being implemented as intended or be able to effectively monitor its progress in making these enhancements. Further, as noted for ICE, USCIS has not documented its approach for conducting workforce planning efforts or the personnel responsible for conducting such efforts.

While CBP appears to be managing its attorney workforce planning needs successfully, and has avoided attorney staffing shortfalls, it too lacks formal written documentation that clearly describes the core components of its workforce planning efforts—criteria, methodology, analysis, data, and the personnel responsible for these efforts. Without this documentation, CBP's planning process cannot be independently validated.

Recommendations for Executive Action

To strengthen the workforce planning efforts needed to achieve the legal offices' goals, we recommend that the Secretary of the Department of Homeland Security direct the General Counsel to take the following five actions:

With respect to ICE's Office of the Principal Legal Advisor:

- document an implementation plan for measuring progress in making enhancements to the General Counsel Electronic Management System and to report on the results of efforts to enhance the system and
- develop documentation that clearly defines its methodology for conducting workforce planning efforts, the personnel responsible for conducting such efforts to enhance accountability, and its rationale for making staffing decisions, including any factors it considered in making those decisions.

With respect to USCIS's Office of Chief Counsel:

- document the office's plans for implementing a workforce data management system that clearly explains the goals of such an effort, major milestones, work tasks and products and the associated schedules and resources for achieving them, as well as performance measures and reporting mechanisms associated with the effort and
- develop documentation that clearly describes its approach and the personnel responsible for conducting workforce planning efforts related to (1) using workforce data and other information related to time attorneys spend completing their work activities to develop needs assessments and deploy staffing resources where they are needed most, and (2) identifying and addressing staffing shortfalls to enhance accountability over staffing decisions.

With respect to CBP's Office of Chief Counsel:

- develop documentation that clearly describes its criteria, methodology, analysis, data, and the personnel responsible for workforce planning efforts related to (1) using workforce data and other information related to time attorneys spend completing their work activities to develop needs assessments and deploy staffing resources where they are needed most, and (2) anticipating or addressing staffing shortfalls to enhance accountability over staffing decisions.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. DHS provided written comments on March 23, 2007, which are presented in appendix II. In commenting on the draft report, DHS reported that it generally concurred with four of our recommendations, but disagreed with the fifth.

ICE's legal office agreed with the intent of our first recommendation that it document an implementation plan for measuring progress in making enhancements to the General Counsel Electronic Management System and to report on the results of efforts to enhance the system. The legal office commented that ICE's Office of the Chief Information Officer maintains documentation on the General Counsel Electronic Management System's life-cycle management process that includes documents such as early design description documents, flowcharts of the office processes affected by the General Counsel Electronic Management System, recommended

office procedures for implementation, and planned enhancements description documents.

We reviewed documents, such as the planned enhancements description documents, relevant to this issue prior to sending our draft report to DHS for comment. At that time, these documents did not contain information on how ICE planned to measure its progress in making enhancements to the General Counsel Electronic Management System or how ICE planned to report on the results of its efforts to enhance the system. However, after we provided our draft report to DHS for comment, ICE's legal office drafted a task order to contract with a software developer to assist in making enhancements to its General Counsel Electronic Management System. As part of this task order, the legal office included a listing of key milestones for system enhancements, including information on measuring progress in making such enhancements. The legal office also included documentation in this task order that clearly articulates how, when, and to whom a status report on the results of efforts to enhance the system should be communicated. We believe these actions address the intent of the recommendation and will assist ICE's legal office in effectively monitoring its progress in meeting its goals related to this effort and in obtaining reasonable assurance that its enhancements are being implemented as intended.

ICE's legal office also agreed with our second recommendation, that it develop documentation that clearly defines its methodology for conducting workforce planning efforts, the personnel responsible for conducting such efforts, and its rationale for making staffing decisions, including any factors it considered in making those decisions. We believe such documentation is necessary to assist ICE's legal office in reviewing and validating its workforce planning decisions and in obtaining reasonable assurance that its staffing processes are consistently applied and sustained over time.

In addition, ICE's legal office took issue with our finding that its staffing ratio of attorneys to immigration judges is not based on comprehensive workload data or grounded in reliable workload data. The legal office cited that the ratio was developed within an analytical framework based on workload data of the number of active cases, the number of cases received, and the time it took to complete a case in immigration court. However, as we discussed earlier in this report, officials from ICE's legal office acknowledged that their approach for staffing attorneys and identifying shortfalls lacks sufficient workload data, such as the time attorneys spend researching and preparing for cases, because the office does not yet have systems fully in place to track these data, although

efforts are under way to collect such data. Thus, the ratio is not based on comprehensive workload data. Furthermore, as we discussed earlier in this report, the consulting firm the legal office hired to analyze its staffing process concluded that the premise of the ratio approach was no longer valid in light of rising caseloads and an increasing client base. The consulting firm also concluded that the premise of the ratio was not valid because the legal office had experienced a growth in the number of attorneys who performed management tasks and these attorneys were not included in the calculation of the ratio. Once comprehensive and reliable workload data are available, the legal office should be in a position to appropriately modify the ratio to assist in future workforce planning efforts.

USCIS's legal office agreed with our third recommendation, that it document the office's plans for implementing a workforce data management system that clearly explains the goals of such an effort, major milestones, work tasks and products, and the associated schedules and resources for achieving them, as well as performance measures and reporting mechanisms for the effort. The legal office also noted that it intends to take action to address this recommendation.

USCIS's legal office noted that it generally agreed with our fourth recommendation, that it develop documentation that clearly describes its approach and the personnel responsible for conducting workforce planning efforts. The legal office indicated that once it has identified and captured workload data, it will be in a better position to determine the type and volume of legal services requested by its clients as well as whether current attorney levels are sufficient to address the legal needs of the agency.

CBP's legal office did not agree with our fifth recommendation, to develop documentation that clearly describes its criteria, methodology, analysis, data, and the personnel responsible for conducting workforce planning efforts. The legal office commented that it had provided us with documentation of its workload data and excerpts from its Attorney Practice Guide that describes the function and use of its Chief Counsel Tracking System (CCTS), an automated system for maintaining workload data. While this documentation does provide information on workload data for the office, our conclusions and recommendation are based on the fact that it does not describe or identify the legal office's methodology for how it systematically analyzes and summarizes this information to determine the number of attorneys the legal office needs and where to deploy those attorneys. In addition, the legal office commented that it had

provided us with copies of two internal memorandums relating to addressing staffing shortfalls. However, these memorandums provide general information about the legal office's increased workload in various areas, and do not explain how the legal office determined its staffing needs or shortfalls. On the basis of the legal office's comments, we added a discussion to this report to clarify the information included in these memorandums.

Although we agree with CBP's legal office that the degree to which it documents its workforce planning efforts is a management decision, we believe that documentation should be sufficient to allow management decisions to be validated by independent review. On the basis of our audit, we concluded that additional documentation was needed to enhance the transparency of the legal office's decision-making process. Such documentation could also be used by the legal office's management to track its workforce planning efforts over time and make continuous improvements as appropriate. Furthermore, as previously stated, our standards for internal control in the federal government require that significant events be clearly documented and that the documentation be readily available for examination by an independent entity. Appropriate documentation is an internal control activity that helps ensure that management's directives are carried out as intended. Such documentation is critical in creating an institutional record in the event of staffing changes to help sustain workforce planning procedures over time.

In addition, CBP's legal office commented that while workforce planning principles included in our exposure draft, *A Model of Strategic Human Capital Management*, may be useful to managing large-scale federal operations, it believes the principles are inapplicable to small offices such as CBP's legal office, which has nearly 200 attorneys.³⁷ We disagree. We believe that the core planning principles, critical success factors, and fundamental ideas discussed in this report, such as having workforce planning approaches with clearly defined, well-documented, transparent, and consistently applied criteria for making human capital investments, are appropriate for all workforce planning efforts, including those conducted by CBP's legal office.

DHS also provided technical comments, which we incorporated as appropriate.

³⁷See [GAO-02-373SP](#).

We plan no further distribution of this report until 30 days after the date of this report. At that time, we will send copies to selected Congressional Committees; the Director of the Office of Management and Budget; and other interested parties. We will also make copies available to others on request. In addition, the report will be available on GAO's Web site at <http://www.gao.gov>.

If your office or staff have any questions concerning this report, please contact me at (202) 512-8777 or by e-mail at stanar@gao.gov. Other GAO contacts and key contributors to this report are listed in appendix III.



Richard M. Stana
Director, Homeland Security and Justice Issues

Appendix I: USCIS Program Office Positions Converted to Attorney Positions

To help address legal needs of the United States Customs and Immigration Service (USCIS) program offices, the USCIS Office of Chief Counsel (OCC) told us that its staff meets with the leadership of USCIS's program offices, at least quarterly, to discuss converting vacant positions in the program offices to OCC attorney positions. As a result, the USCIS OCC reports that it has obtained 10 attorney positions through this process since fiscal year 2004. Table 2 illustrates the number of program office positions that USCIS converted to attorney positions for fiscal years 2004 through 2006 by program office.

Table 2: USCIS Program Office Positions Converted to Attorney Positions for Fiscal Years 2004-2006 by Program Office

Originating program office	Number of converted positions
Domestic Operations ^a	4
National Security Records and Verification ^b	3
Office of the Chief Information Officer ^c	1
Security and Investigations ^d	1
Transformation ^e	1
Total	10

Source: USCIS data.

^aUSCIS Domestic Operations is responsible for processing and adjudicating applications, petitions, and related fees and for providing benefit decisions to customers.

^bThe National Security and Records and Verification program office is responsible for establishing policies and procedures related to the management of alien files and related records; developing, coordinating, and leading the national anti-fraud operations for USCIS; overseeing policies and procedures pertaining to background checks on applicants and petitioners; and providing verification information to federal, state, and local benefit-granting agencies.

^cThe Office of the Chief Information Officer is responsible for providing leadership in the delivery of innovative, reliable, and responsive information technology services to USCIS and its customers.

^dThe Office of Security and Investigations is responsible for overseeing continuity of operations planning and implementation, securing communications and document storage, providing security awareness training, and implementing agencywide physical and facility security programs.

^eThe Transformation Office is responsible for developing, coordinating, prioritizing, and managing plans and initiatives for improving USCIS business processes and technology.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

March 23, 2007

Mr. Richard M. Stana
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Stana:

RE: Draft Report GAO-07-206, DHS Immigration Attorneys: Workload Analysis and Workforce Planning Efforts Lack Data and Documentation (GAO Job Code 440521)

The Department of Homeland Security (DHS), including officials within Immigration and Custom Enforcement (ICE), Citizenship and Immigration Services (USCIS), and Custom and Border Protection (CBP), appreciate the opportunity to review and comment on the draft report referenced above. The Government Accountability Office (GAO) makes five recommendations which regard or affect DHS components.

Recommendation 1: *ICE's Office of the Principal Legal Advisor (OPLA) document an implementation plan for measuring progress in making enhancements to the General Counsel Electronic Management System and to report on the results of efforts to enhance the system.*

OPLA agrees with the intent of the recommendation, and believes it is currently being addressed. OPLA's General Counsel Electronic Management System (GEMS) has historically been very well documented, and it will continue to be so. Significant planning and documentation has gone into the implementation of GEMS, which included the development of a business case and timeline and a project plan summary. Currently, GEMS captures a large amount of data, but admittedly it has a limited capacity to translate that data into meaningful metrics. Future GEMS enhancements, in combination with new software, will allow OPLA to obtain the metrics needed to allocate attorneys properly.

The GEMS system has a paper trail of documentation from the ICE System Life-Cycle Management Process (SLM). This documentation goes back 10 years from the outset of the system concept and is stored in the ICE Enterprise Library System (ELMS), which is not part of any documentation managed by OPLA. In fact, ELMS is managed by ICE Office of the Chief Information Officer (OCIO), and the GEMS Technical Lead for project management, who is within the OCIO's office. The GEMS SLM documentation includes all required documentation, including a project plan and historical and current (works in progress) documentation. The historical documentation includes, among other things, the GEMS business case and concept of operations; early design description documents and interconnectivity planning charts; flowcharts

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of office processes affected by GEMS and recommended office procedures for implementation; version description documents, functional requirement documents, system design documents, the implementation plan, and test plan. Current documents being managed in the ELMS that relate to the implementation and current enhancement processes include independent test analysis, release readiness plan, notices of intent to release, approval certifications, release descriptions, test plans and reports from those plans, planning review approval, requirements review, development test plans, and current version description documents that contain information on planned enhancements.

To further develop, document, and leverage GEMS, OPLA has contracted with a software developer to design and develop performance management software. That software will be tools-based, off-the-shelf and customizable. The developer is currently developing this software and its implementation plans for this enhancement. When completed, these plans will include milestones for testing both the capabilities of product and deployment in the pilot phases. OPLA will then be able to develop detailed procedures for any needed changes. OPLA reiterates, however, that it already has in place significant documentation to account for and to plan for its attorney needs and to document divisional shortfalls regarding all aspects of its program. In addition, the GEMS project has met and in many cases exceeded the reporting and planning requirements in both the SLM and the GAO cited report of March 2006 (GAO-06-375).

Recommendation 2: *ICE's Office of the Principal Legal Advisor develop documentation that clearly defines its methodology for conducting workforce planning efforts, the personnel responsible for conducting such efforts to enhance accountability, and its rationale for making staffing decisions including any factors it considered in making those decisions.*

OPLA agrees in part with the recommendation. However, OPLA disagrees in part with the conclusion that the traditional staffing ratio of attorneys to immigration judges is neither based on comprehensive workload data nor grounded in reliable workload data. The ratio was developed within an analytical framework based on workload data of the number of active cases, the number of cases received, and the time it took to complete a case in immigration court. The report expresses concern that there are factors that affect allocation of work based upon the number and complexity of cases scheduled each day that are not taken into account in the historic staffing ratio. Regardless of case complexity, however, the time that a single immigration judge is allotted to hear any number of cases within a given time frame is finite. Of course, the historic formula does not address changes over time in the volume and complexity of cases, which may require more time to prepare and litigate. The attorney-to-judge ratio has provided staffing levels that are sufficient to accommodate the basic requirements of client representation in immigration court. Continued data collection will further quantify any need for additional resources to address increased case complexity and the other demands placed on ICE attorneys, in addition to their immigration work.

Future GEMS enhancements will allow OPLA to implement fully this GAO recommendation. For instance, enhancements will permit time expenditures to be captured and analyzed. Once the enhanced software is functional and metrics are captured, members of OPLA's Lean Six Sigma Group on Metrics, as well as its Knowledge Management Division and Strategic Review

Division (which will soon merge into a new division called the Strategic Management Division), will analyze the data to ensure that correct data for workload decision making is captured. At first, the reviews will be more frequent to ensure that the software is functioning properly and that users are properly trained. OPLA anticipates this to be done on a weekly basis for the first six months, and then on at least a monthly basis. OPLA leadership will receive detailed reports on usage and data generated. Careful training and frequent monitoring will ensure the integrity of data collected. Some of the metrics used for future allocation of resources will include further refinements of the types of cases litigated and their locations. For example, based on measurements by locations, GEMS enhancements will capture the number of hours each office needs to spend on each type of case to achieve desired results compared to the amount of attorneys on staff in an average workweek. This time measurement will include the time expended preparing the case, litigating the case in immigration court, writing any appeal briefs, and assisting with any federal court litigation. Future GEMS enhancements will compare how many hours each office is spending on each type of case. By comparing the time spent on each type of case, OPLA will be able to establish an average time-per-case. By capturing these statistics, OPLA leadership will determine how many attorneys are needed to handle the projected caseload in the various locations.

Recommendation 3: *USCIS's Office of Chief Counsel document the office's plans for implementing a workforce data management system that clearly explains the goals of such an effort, major milestones, work tasks and products and the associated schedules and resources for achieving them, as well as performance measures and reporting mechanisms with the effort.*

USCIS agrees with the recommendation. USCIS's Office of the Chief Counsel (USCIS-OCC) understands the need to document more fully the implementation efforts of its workforce data management system: Time Matters. USCIS-OCC intends to outline the major milestones associated with the remaining implementation of Time Matters to include timeframes for additional training and drafting and issuance of the Standard Operating Procedure. They are aware that successful implementation of Time Matters includes obtaining and reviewing performance measures of the system as implementation efforts proceed, to include post implementation assessments.

Recommendation 4: *USCIS's Office of Chief Counsel develop documentation that clearly describes its approach and the personnel responsible for conducting workforce planning efforts related to (1) using workforce data and other information related to time attorneys spend completing their work activities to develop needs assessments and deploy staffing resources where they are needed most, and (2) identifying and addressing staffing shortfalls to enhance accountability over staffing decisions.*

USCIS generally agrees with the recommendation. USCIS-OCC's workforce planning efforts include the implementation of its data workforce management system, Time Matters, to capture and measure the various legal services provided by its attorney staff throughout the country. Once this data is routinely captured through Time Matters, USCIS-OCC management will have the capability of using the system to identify the type and amount of workload each attorney and each office or division is performing. Once workload is captured and identified, this data will

allow USCIS-OCC management to determine better the type and amount of legal services requested by the client in a particular office or region, as well as whether the number of staff attorneys assigned is adequate to cover the legal needs of the agency client.

Recommendation 5: *CBP's Office of Chief Counsel develop documentation that clearly describes its criteria, methodology, analysis, data and the personnel responsible for conducting workforce planning efforts related to (1) using workforce data and other information related to time attorneys spend completing their work activities to develop needs assessments and deploy staffing resources where they are needed most, and (2) anticipating or addressing staffing shortfalls to enhance accountability over staffing decisions.*

CBP Office of Chief Counsel (OCC) respectfully disagrees with the recommendation of GAO for several reasons. First, GAO's report is incorrect when it states that OCC's approach to determining its staffing needs "has not been documented and no documentation exists for validating CBP's attorney staffing decisions." OCC provided GAO with workload data covering several years, by subject and office. The data were compiled from the Chief Counsel Tracking System (CCTS), which the report accurately describes as an automated system that maintains data on legal matters handled by OCC. OCC also provided GAO with a copy of the chapter in OCC's Attorney Practice Guide that explains in detail the function and use of CCTS. Second, OCC provided GAO with copies of two internal memoranda, and related unfunded request forms, that clearly describe and document in detail OCC's criteria, methodology, analysis, data, and personnel responsible for assessing and deploying staffing resources where and when needed most. Moreover, OCC provided examples of the methodology OCC uses to anticipate and address staffing shortfalls. These documents also demonstrate that OCC's staffing decisions are not reduced to pure formula application. Rather, OCC also relies on the professional judgment of its senior management to use the data available to arrive at sound decisions regarding staffing allocation.

While GAO's report is incorrect when it states that OCC's approach to determining its staffing needs has not been documented, OCC readily admits that it has not reduced every facet of its workforce planning decision-making process to written policy. Indeed, OCC has not had a need to do so. OCC respectfully disagrees that the workforce planning documentation requirements of large organizations must be categorically applied to a subordinate office of the small size and scale of OCC. GAO cites the "need for such policies and procedures" as attributable to GAO-02-373SP, an Exposure Draft of a document entitled "A Model of Strategic Human Capital Management." While the principles articulated in that model may be useful to managing the vast majority of large-scale federal operations, OCC believes the principles of that model are inapplicable to small offices as they are too broad to be applied to a mission support office of the relatively small size of OCC. OCC believes that its management and resource allocation methodology is fairly standard for a legal office of its size and, as described in the draft report, is consistent with the "key principles for effective workforce planning" referenced on Page 11 of the draft report. OCC has not committed these straight-forward, common sense approaches to written policies and procedures because it has not had need to do so.

While OCC's client, CBP, has 42,000-plus employees and quite reasonably commits many policies and procedures to writing to manage such a large workforce, OCC is an organization of approximately 200 people with a small executive staff that communicates on a daily basis and readily understands how the organization is managed. Moreover, as is noted on Page 11 of the report, GAO's "human capital guidance states that the success of the workforce planning process that an agency uses can be judged by its results – how well it helps the agency attain its mission and strategic goals – not by the type of process used." OCC workforce planning and resource allocation is driven by these results-oriented, not process-oriented, considerations. As the GAO report states on Page 28, "CBP appears to be managing its attorney workforce planning needs successfully." OCC believes the success of its office must be measured not by process or paperwork but by results – the performance of its mission to provide legal advice and representation to the CBP client and its nationwide program offices. OCC believes that the work of its office, and the prudence of its staffing allocation methodology, is reflected in the satisfaction of CBP's program offices, from the Commissioner to the field offices, with the legal services and representation provided by OCC.

We have provided technical comments separately and believe that their inclusion will enhance the accuracy of the report. Thank you again for the opportunity to comment on this draft report.

Sincerely,



Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact:

Richard M. Stana (202) 512-8777

Acknowledgments:

In addition to the contact named above, Debra B. Sebastian, Assistant Director; Amy L. Bernstein; R. Rochelle Burns; Frances A. Cook; Jennifer A. Gregory; Wilfred B. Holloway; and Paul G. Revesz made key contributions to this report.

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