



SOCIAL SECURITY

MEMORANDUM

Date: August 21, 2012

Refer To:

To: The Commissioner

From: Inspector General

Subject: Quick Response Evaluation: Office of Disability Adjudication and Review's Process for Scheduling Hearings When Cases are in "Ready to Schedule" Status (A-08-12-21293)

The attached final quick response evaluation presents the results of our review. Our objectives were to identify (1) trends regarding cases that were ready to schedule for hearings at selected Office of Disability Adjudication and Review hearing offices and (2) obstacles that impacted hearing offices' ability to schedule hearings.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

Patrick P. O'Carroll, Jr.

Attachment

QUICK RESPONSE EVALUATION

*Office of Disability Adjudication and
Review's Process for Scheduling
Hearings When Cases are in
"Ready to Schedule" Status*

A-08-12-21293



August 2012

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

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OBJECTIVE

Our objectives were to identify (1) trends regarding cases that were ready to schedule for hearings at selected Office of Disability Adjudication and Review (ODAR) hearing offices and (2) obstacles that impacted hearing offices' ability to schedule hearings.

BACKGROUND

ODAR administers the hearings and appeals program for the Social Security Administration (SSA) by operating 164 hearing offices and related remote sites as well as 5 National Hearing Centers. Approximately 1,500 administrative law judges (ALJ) conduct hearings and issue decisions.

The hearing process begins when a claimant files a hearing request¹ after a State disability determination services office denies his/her disability claim. After receiving this request, hearing office staff input relevant information into the Case Processing and Management System (CPMS). Hearing office staff then prioritizes the case, assigns it to an ALJ, and completes pre-hearing case development. Once staff develops a case, they contact required hearing participants, work with the ALJ to set the hearing's date and time, and reserve the hearing location.

In a January 17, 2012 email, the Commissioner of SSA requested that we determine why some ready to schedule (RTS) cases remained unscheduled. The Commissioner also requested we review the role work-at-home days (Flexiplace) play in case scheduling and report on any office dynamics that are of concern in terms of effective service.

To accomplish our objectives, we selected 11 hearing offices to identify trends regarding cases that were ready to schedule for hearings. We selected 7 hearing offices with a high number (average of 190 or more) of RTS cases per ALJ as of December 30, 2011. To provide a balanced review, we also selected 2 hearing offices with a median average (about 57 RTS cases) per ALJ and 2 offices with a low average (about 5 RTS cases) per ALJ.

For the hearing offices selected, we reviewed data on cases scheduled and hearings held by ALJs. We also interviewed hearing office schedulers and hearing office directors (HOD) at each office to identify obstacles they faced when scheduling cases for hearings. See Appendix B for additional information about our scope and methodology.

¹ Request for Hearing by Administrative Law Judge (SSA Form HA-501).

Results of Review

Of the 11 hearing offices we contacted, 8 experienced an increase in RTS cases from April 2011 through March 2012. Hearing office staff cited various reasons for this increase. For example, staff at several hearing offices attributed the increase to their development of additional cases for hearings so they would have a larger inventory from which to select when scheduling conflicts occurred. Staff at other hearing offices attributed the increase to expanded service areas and a greater number of disability filings. In contrast, three hearing offices experienced a decrease in RTS cases. Hearing office staff attributed the decrease to transferring cases to other hearing offices, modifying their scheduling procedures, and spending less time developing cases.

Hearing office staff cited various obstacles that impacted their ability to timely schedule hearings. Most notably, staff cited claimant representative² availability as the greatest obstacle they faced when scheduling hearings. To a lesser degree, hearing office staff cited ALJ availability as another key obstacle that caused scheduling difficulties. Other less cited obstacles included availability of medical and vocational experts, hearing rooms, and video conferencing (VTC) equipment. Hearing office staff also reported difficulties when scheduling hearings for incarcerated claimants.

We acknowledge that accommodating the schedules and preferences of multiple hearing participants is difficult and cumbersome. However, based on our review of 11 hearing offices, we believe ODAR can take additional steps to address some of the key obstacles hearing office staff face when scheduling hearings. To improve the timeliness of hearings, we encourage ODAR to consider limiting the number of times it offers claimant representatives specific dates and times before scheduling a hearing. In addition, we encourage ODAR to analyze hearing office and ALJ performance data to determine whether it should take additional steps to address key obstacles hearing office staff face during the scheduling process. Specifically, we believe ODAR should encourage hearing offices to better coordinate hearing dates and rooms among its ALJs.³ We also encourage ODAR to consider limiting ALJs' use of Flexiplace to once a week, where appropriate. Furthermore, we encourage ODAR to reexamine its policy of allowing ALJs to transfer to another hearing office soon after meeting their 90-day service requirement.

MOST HEARING OFFICES EXPERIENCED AN INCREASE IN RTS CASES

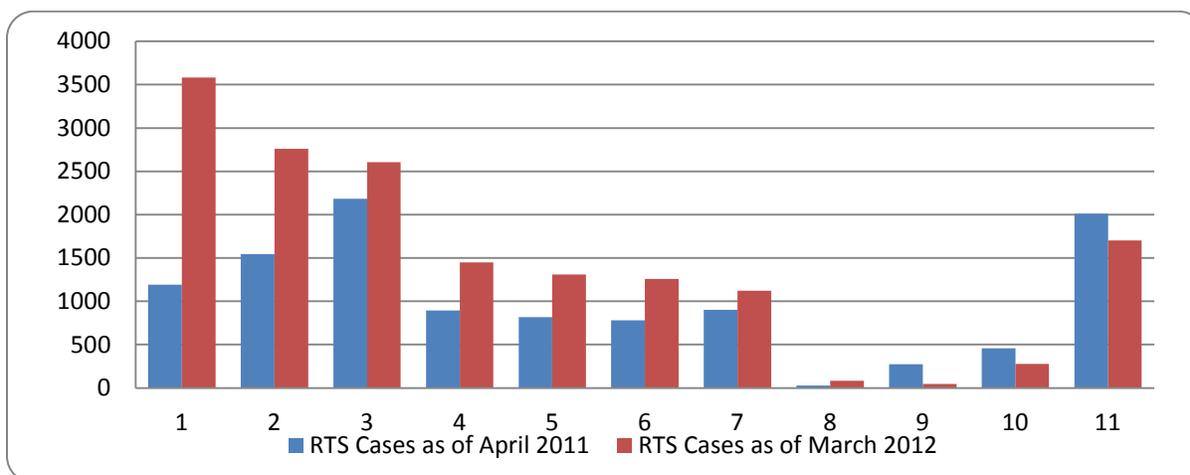
Based on our review of ODAR data, we determined that 8 of the 11 hearing offices experienced an increase in RTS cases, as shown in Figure 1. In fact, six of the eight hearing offices increased by more than 50 percent. The largest increase was

² For purposes of this report, we use the term claimant representative to primarily refer to legal representation (attorneys and law firms).

³ Unless SSA exercises its authority to set the time and place for a hearing before an ALJ, the ALJ sets the time and place for the hearing. SSA, HALLEX I-2-3-10 (May 24, 2011).

2,392 cases and the smallest was 57, with an average increase of 728 cases. In contrast, 3 of the 11 offices experienced a decrease in RTS cases, as shown in Figure 1. The largest decrease was 309 cases and the smallest was 179, with an average decrease of 239 cases.

Figure 1: Hearing Office Increase/Decrease in RTS Cases



Source: CPMS data on April 30, 2012.

Reasons for the Increase and Decrease in RTS Cases

Hearing office staff cited various reasons for the increase in RTS cases. For example, staff at several hearing offices told us they developed additional RTS cases so they would have a larger inventory of cases from which to select when scheduling conflicts occurred. In fact, one HOD told us her staff met twice a month to prepare additional cases for hearings. Staff at other hearing offices attributed the increase to expanded service areas. For example, staff at the hearing office that experienced the largest increase told us their RTS cases almost tripled when their service area expanded. Staff at other hearing offices attributed the increase in RTS cases to a greater number of disability filings. Hearing office staff stated that current economic conditions and the aging baby boomer generation caused the increase in disability filings.

Hearing office staff cited several reasons for the decrease in RTS cases. For example, the hearing office that experienced the largest decrease transferred 500 cases to another hearing office, thereby reducing its RTS caseload. Staff at another office attributed the decrease to modifications in its scheduling procedures. Although the office still scheduled hearings from some cases in RTS status, staff told us they primarily scheduled cases in the Unassigned ALJ Review Pre-Hearing (UNAP) status. Staff told us that scheduling cases from UNAP facilitated scheduling because they coordinated with all hearing participants before ALJ assignment. Hearing office staff also reported that the Verbatim Hearing Reporter pilot program impacted their ability to schedule cases for hearings because they also served as hearing reporters.

Schedulers told us the added responsibility complicated their scheduling duties because they had less time to contact or respond to messages from hearing participants.

OBSTACLES THAT IMPACTED HEARING OFFICES' ABILITY TO SCHEDULE HEARINGS

Hearing office staff cited various obstacles that impacted their ability to schedule hearings. Most notably, hearing office staff cited claimant representative availability as the greatest obstacle in the scheduling process. To a lesser degree, hearing office staff cited ALJ availability as another key obstacle that caused scheduling difficulties. Other, less cited, obstacles included availability of medical and vocational experts, hearing rooms, and VTC equipment. Hearing office staff also reported difficulties when scheduling hearings for incarcerated claimants.

Claimant Representative Availability

Hearing office staff cited claimant representative availability as the greatest obstacle to scheduling hearings. About two-thirds of hearing office staff we interviewed ranked claimant representative availability as either the first or second most important obstacle to scheduling hearings.

SSA policy requires that hearings be held as soon as possible and instructs hearing office staff to ascertain claimant representatives' availability before scheduling a hearing.⁴ Similarly, attorneys have an ethical obligation to make reasonable efforts to expedite cases consistent with their clients' interests.⁵ However, hearing office staff expressed concerns that some claimant representatives did not always appear to work in their clients' best interests. For example, hearing office staff reported that some claimant representatives caused scheduling difficulties when they consistently declined hearings on specific days. In fact, hearing office staff told us that some claimant representatives had standing policies to refuse hearings on Mondays and Fridays. Furthermore, one scheduler told us that two claimant representatives only accepted hearings on Tuesdays and Thursdays.

Hearing office staff also reported that some claimant representatives requested multiple postponements, which caused hearing delays for other developed cases. For example, one HOD told us his staff continually rescheduled cases, some as many as eight times. A scheduler stated that some claimant representatives accepted too many cases and then told hearing office staff they could not accept hearing dates because they were not prepared. One HOD told us that, to help improve the timeliness of hearings, she instructed her staff to schedule cases for hearings after they offered claimant representatives two hearing dates. She stated that claimant representatives must request a postponement from the respective ALJ if they cannot attend the hearing.

⁴ SSA, HALLEX I-2-3-10 (May 24, 2011).

⁵ MODEL RULES OF PROFESSIONAL CONDUCT R. 3.2 (2010).

In addition, hearing office staff reported that some claimant representatives caused scheduling difficulties because they did not have enough staff to represent their clients. For example, one HOD reported that a claimant representative (who represented a large percentage of claimants in her office) had few available days for hearings, which made scheduling difficult. In addition, one HOD told us that some claimant representatives scheduled hearings at the same time in different offices. Another HOD told us that one law firm represented many claimants with aged cases, and the firm was never available for hearings. He stated the claimant representative was difficult to contact and he had to leave messages over half the time. To improve the timeliness of hearings, we encourage ODAR to consider limiting the number of times they offer claimant representatives specific dates and times before scheduling a hearing.

Below are anecdotal comments some staff at the 11 hearing offices we contacted reported about scheduling hearings with claimant representatives.

- One HOD told us that claimant representatives “run the show.” That is, claimant representatives generally determined when her hearing office scheduled hearings. The HOD stated that one large law firm informed her it was not available for hearings in July.
- A scheduler reported that some claimant representatives declined hearing dates because the limited number of proposed hearings was not worth their time.
- One scheduler told us that a claimant representative had a 2-month trial and then went on several vacations when the trial ended. The scheduler said she could not schedule hearings for 12 of the claimant representative’s cases during that time.
- A scheduler reported that a claimant representative declined a hearing date for a remand case⁶ and told her that “remands did not need to be heard that fast.”

ALJ Availability

Hearing office staff cited ALJ availability as the second greatest obstacle to scheduling hearings. Specifically, about half of the hearing office staff we interviewed ranked ALJ availability as either the first or second most important obstacle to scheduling hearings.

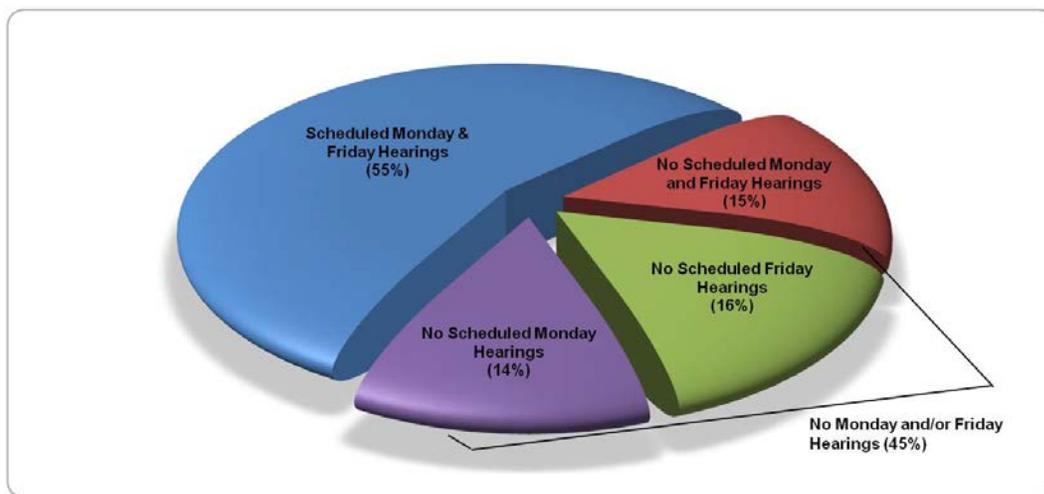
SSA policy allows ALJs to set the time and place for hearings.⁷ However, hearing office staff reported that scheduling difficulties occurred when ALJs primarily scheduled hearings during the middle of the week, which increased competition for hearing dates and rooms and often presented scheduling conflicts with other hearing participants. As shown in Figure 2, 45 percent of ALJs did not schedule hearings on Mondays, Fridays, or both. Hearing office staff reported that some ALJs prepared for hearings on

⁶ Remands occur when an appellate or district court returns a case to an ALJ for further administrative action.

⁷ SSA, HALLEX I-2-3-10 (May 24, 2011).

Mondays and finalized decisions on Fridays to meet weekly and monthly ODAR goals. One hearing office created a scheduling calendar to better coordinate hearing dates and rooms among its ALJs. To improve the timeliness of hearings, we believe ODAR should encourage hearing offices to better coordinate hearing dates and rooms among its ALJs.

Figure 2: ALJ Monday/Friday Scheduling Trends



Source: Office of the Inspector General analysis of ODAR scheduling data.

The agreement between SSA and the ALJ union guarantees that ALJs may work at home (Flexiplace) for a minimum of 4 days per month.⁸ The agreement provides this flexibility as long as ALJs schedule no more than 2 consecutive Flexiplace workdays in a workweek. However, staff from several hearing offices reported scheduling difficulties when ALJs worked at home twice a week because they were not available for hearings 2 days each week (about 40 percent of the time). In fact, one HOD told us that at least two hearing rooms were generally available, but she could not schedule hearings in these rooms because ALJs were working at home. Although over 60 percent of the ALJs we reviewed used Flexiplace, hearing office staff reported that working at home once a week generally did not cause scheduling issues. To address scheduling difficulties, one hearing office (that previously permitted ALJs to work at home twice a week) began limiting Flexiplace to no more than 4 days a month. As such, we encourage ODAR to analyze hearing office and ALJ performance data to determine whether they should limit ALJs' use of Flexiplace to once a week, where appropriate.

In addition, SSA policy permits ALJs to request reassignment to another hearing office once they have completed their 90-day service requirement.⁹ However, staff from several hearing offices told us this policy created scheduling difficulties because some newly appointed ALJs requested a transfer soon after meeting their service

⁸ *International Federation of Professional and Technical Engineers Term Agreement*, Article 15, § 3-F (2001).

⁹ 5 C.F.R. § 330.502 (2012).

requirement. One HOD told us this issue was his greatest obstacle to scheduling cases for hearings. In fact, he reported that nine ALJs transferred to another hearing office in 2011. Another HOD reported that five ALJs in her office transferred in summer 2011. In both hearing offices, staff cancelled scheduled hearings for these ALJs. Although staff reported they rescheduled these hearings, the process often caused hearing delays for the rescheduled claimants as well as delays for RTS cases ODAR could have scheduled for those available hearing times. As such, we encourage ODAR to reexamine its policy of allowing ALJs to transfer to another hearing office soon after meeting their 90-day service requirement.

Below are anecdotal comments some staff at the 11 hearing offices we contacted reported about scheduling hearings with ALJs.

- One HOD told us that four ALJs in her office needed “performance assistance or termination.” The HOD reported that these ALJs were inflexible and processed fewer cases (on average) than other ALJs in the hearing office. In fact, hearing office management stopped scheduling hearings for one ALJ so she could complete some of her backlogged cases. The HOD also reported that another ALJ held numerous supplemental hearings because she routinely scheduled consecutive 45-minute hearings and generally could not finish in the allotted time. According to the HOD, the ALJ knew this was a problem but refused to change her policy.
- A scheduler told us that one ALJ only scheduled hearings on Tuesdays, Wednesdays, or Thursdays. The ALJ also only scheduled hearings in two of the seven hearing rooms. Such specific standing orders reduced the ALJs availability and caused hearing participants to compete for fewer hearing rooms and dates.
- A scheduler reported that one ALJ told him not to schedule Friday afternoon hearings because he wanted to avoid rush-hour traffic.
- A scheduler reported that one ALJ disliked being called when she worked at home and did not consistently respond to scheduling questions.

Other Obstacles That Impacted Hearing Offices’ Ability to Schedule Hearings

Hearing office personnel cited several other obstacles that impacted their ability to schedule hearings. Specifically, about one-third of hearing office staff cited availability of medical and vocational experts as an obstacle to scheduling hearings. Hearing office staff told us they encountered scheduling issues because of the small pool of available experts and the competition among surrounding hearing offices that were trying to schedule from the same limited pool of experts. They told us scheduling is further complicated when ALJs require experts to appear in person, request medical specialists (for example, cardiologists), or refuse to use certain experts. For example, one ALJ stated in his standing orders that he does not use (name omitted) or (name omitted) for vocational expert testimony or (name omitted) for medical testimony.

Hearing office staff also reported that hearing room availability created scheduling difficulties when there were more ALJs than hearing rooms. For example, staff in 1 hearing office reported 12 ALJs on staff with only 6 available hearing rooms. To maximize hearing room use, one hearing office created a rotation calendar where it assigned days and rooms to each ALJ before scheduling cases for hearings. Hearing office staff also reported similar scheduling issues because of limited VTC equipment. For example, staff reported they had difficulty scheduling cases for VTC hearings with the National Hearing Center because ALJs used the VTC equipped hearing rooms for in-person hearings. Several hearing office staff told us they could schedule more hearings if they had additional VTC equipment.

Furthermore, hearing office personnel reported difficulties in scheduling hearings for incarcerated claimants' cases. Staff told us they experienced such difficulties because prisoners often moved to different facilities, and not all facilities had VTC equipment. As such, these cases remained in RTS status for a significant amount of time. For example, one scheduler reported that one case remained in RTS status for 928 days until the claimant waived his right to a 20-day hearing notice.¹⁰ While these cases represent a small percentage of RTS cases, hearing office personnel told us they were some of the oldest cases.

¹⁰ 20 C.F.R. § 404.938 (2010).

Matters for Consideration

We support ODAR's goal of holding hearings as soon as possible after a claimant files a hearing request. We also acknowledge that trying to accommodate the schedules and preferences of multiple hearing participants is a cumbersome process. However, based on our review of 11 hearing offices, we believe ODAR can take additional steps to address some of the key obstacles staff face during the scheduling process, thus improving the timeliness of hearings.

While we believe ODAR should make every effort to accommodate claimant representatives' schedules, we also believe these representatives should not have such a strong influence in the scheduling process. Specifically, we do not believe it is in the claimant's best interest when their representatives consistently decline hearing dates or request multiple postponements. We believe allowing claimant representatives such broad discretion complicates the scheduling process. To improve the timeliness of hearings, we encourage ODAR to consider limiting the number of times it offers claimant representatives specific dates and times before scheduling a hearing.

In addition, while ODAR policy allows ALJs to set the time and place for hearings, some policies and practices created scheduling difficulties. Specifically, hearing office staff reported that scheduling difficulties occurred when ALJs did not routinely schedule hearings on Mondays, Fridays, or both; used Flexiplace more than once a week; or transferred to another hearing office soon after meeting their service requirement. As such, we encourage ODAR to analyze hearing office and ALJ performance data to determine whether it should take additional steps to address key obstacles hearing office staff face during the scheduling process. Specifically, we believe ODAR should encourage hearing offices to better coordinate hearing dates and rooms among its ALJs. We also encourage ODAR to consider limiting ALJs use of Flexiplace to once a week, where appropriate. Furthermore, we encourage ODAR to reexamine its policy of allowing ALJs to transfer to another hearing office soon after meeting their 90-day service requirement.

In response to our draft report, SSA stated it will use the information provided in the report to assist it in effectively managing hearing workloads.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – OIG Contacts and Staff Acknowledgments

Acronyms

ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
CPMS	Case Processing and Management System
HALLEX	Hearings, Appeals and Litigation Law Manual
HOD	Hearing Office Director
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
RTS	Ready to Schedule
SSA	Social Security Administration
UNAP	Unassigned ALJ Review Pre-Hearing
VTC	Video Conferencing

Scope and Methodology

To achieve our objectives, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals and Litigation Law manual. We also reviewed prior SSA Office of the Inspector General reports.
- Determined the volume of cases in the "Ready to Schedule" (RTS) status as of December 30, 2011, using information in ODAR's Case Processing and Management System. We then ranked hearing offices by RTS cases per administrative law judge (ALJ).
- Identified hearing office times using the public use data file NETSTAT report for January 2012, which is the average time (in months) from the hearing request date until a hearing is held for claims pending in ODAR's hearing offices.
- Selected 11 hearing offices to identify trends regarding cases that were ready to schedule for hearings. We selected 7 hearing offices with a high number (average of 190 or more) of RTS cases per ALJ (as of December 30, 2011) and had an average hearing office time of at least 10 months. To provide a balanced review, we also selected 2 hearing offices with a median average (about 57 RTS cases) per ALJ and 2 offices with a low average (about 5 cases) per ALJ. The hearing offices selected were Akron, Ohio; Baltimore, Maryland; Charleston, West Virginia; Charlotte, North Carolina; Downey, California; Grand Rapids, Michigan; Greensboro, North Carolina; Houston-Bissonnet, Texas; Oklahoma City, Oklahoma; Seven Fields, Pennsylvania; and Tallahassee, Florida.
- Analyzed ODAR data for cases scheduled and hearings held for the period October 1 through December 30, 2011.
- Interviewed Hearing Office Directors and hearing office staff assigned to schedule hearings (schedulers).

We limited our scope to analyzing ODAR scheduling information and determined the data to be sufficiently reliable given the evaluation objectives. We performed our review from March through June 2012 in Birmingham, Alabama; Charlotte and Greensboro, North Carolina; and Oklahoma City, Oklahoma. The principle entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted our review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

OIG Contacts and Staff Acknowledgments

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Acknowledgments

In addition to those named above:

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Josh Torres, Program Analyst

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