



U.S. Merit Systems Protection Board

**Congressional
Budget
Justification
FY 2017**

**Prepared for
Committee on Appropriations**

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Table of Contents

| | |
|---|----------|
| Introduction | 1 |
| External Events impacting MSPB operations | 2 |
| FY 2017 Budget Request | 3 |
| Appropriation Language..... | 3 |
| Strategic Goals and Strategic Objectives..... | 3 |
| FY 2017 request by Object Class | 4 |
| Schedule O Object Classification..... | 9 |
| Schedule Q Employment Summary | 10 |
| About MSPB | 10 |
| MSPB Organization | 10 |
| Adjudication | 10 |
| Mediation Appeals Program | 11 |
| Merit Systems Studies and OPM Oversight | 12 |
| Management Support..... | 14 |
| Information Technology..... | 14 |
| Human Resources | 14 |
| Financial Management | 15 |
| Equal Employment Opportunity | 15 |
| Organization Chart..... | 16 |

The U.S. Merit Systems Protection Board Performance Budget Justification for Fiscal Year 2017

Introduction

The last two years have been challenging for the U.S. Merit Systems Protection Board (MSPB). A large percentage of MSPB's in Fiscal Year (FY) 2014 and FY 2015 was focused on adjudicating the more than 32,000 furlough appeals filed as a result of the sequestration cuts that were initiated in FY 2013. During the last two years, MSPB has made progress in reducing the number of pending cases at headquarters and the number of total pending appeals. As of December 2015, nearly 97% of the furlough appeals have been adjudicated. In doing so, in FY 2015, the regional and field offices processed a record number of nearly 25,400 initial and addendum appeals, and HQ staff processed 3,120 cases. However, further budget reductions due to the effect of resuming sequester cuts or reduced appropriations increases the likelihood that agencies will be compelled to take adverse personnel actions – such as furloughs or reductions-in-force - against their employees. Such a scenario could lead to large numbers of appeals being filed in the future.

Our proposed FY 2017 request of \$47,428,000¹ and 235 Full Time Equivalents (FTE) is \$593,000 (1.3%) more than the FY 2016 enacted level of \$46,835,000. This modest increase will fund the anticipated FY 2017 pay raise, as well as continue our efforts towards developing and maintaining the hosted planned data center migration and electronic adjudication projects addressing our informational technology (IT) infrastructure needs. MSPB is thankful for the appropriations it has received in the last several years and that Congress recognizes the unique challenges MSPB faced recently in adjudicating over 32,000 furlough appeals (more than 5 times MSPB's normal workload).

In general, MSPB resources are dedicated primarily to processing appeals from federal employees involving, among others, adverse actions, whistleblower claims and veterans issues. We estimate that in each of the next two years the administrative judges (AJs) will receive about 6,200 appeals and other cases in our regional and field offices; and Board members will receive approximately 1,100 cases at headquarters.

MSPB has no control as to the number of cases we receive from current and former employees, or over legislation, that may affect our jurisdiction and the manner in which we adjudicate appeals. Therefore, it is imperative MSPB receives the requested funds to maintain and train the adjudication staff so that the number of cases and processing times remain at a manageable level. Fully funding our request should ensure MSPB is able to attract and maintain staff at a time when approximately 20% of our current staff is eligible for retirement, including 30% of our administrative judges. Sufficient funds are also required to ensure our IT infrastructure is sound, secure and efficient, which will help to facilitate processing of appeals and reduce costs.

¹ This amount includes \$2.345 million for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund.

External Events Affecting MSPB Operations

There are several external matters that have occurred and may occur which have and could have an impact MSPB's operations in the next couple of years, which could then require additional resources.

The Veterans Access, Choice, and Accountability Act of 2014 has adversely affected the processing of cases involving non-Veterans Administration (VA) Senior Executive Service (SES) employee appeals, including whistleblowers, veterans, and retirees who have the right to file appeals with MSPB. Additionally, legislation recently passed in the House and Senate expands the VA SES appeals procedures to the rest of the Department's General Schedule employees (S. 1082; S. 1117; and H.R. 1994).² Chairman Susan Tsui Grundmann provided testimony to the Senate Committee on Veterans' Affairs on the potential effect this legislation will have on due process for these employees in relation to those provided generally to other Federal civil servants.³ As it relates to MSPB, the new legislation would require that MSPB AJs issue a decision within 45 days, without affording subsequent appeal to the Presidentially appointed and Senate confirmed MSPB Board Members, nor to the Court. The legislation also expands MSPB appeal rights to tens of thousands of medical personnel in the VA who do not currently have the right to appeal to MSPB. If this legislation became law, it would be extremely difficult for MSPB to meet the requirements of the new VA legislation without significant additional resources.

Additionally, we continue to experience work related to appeals and claims filed under the Whistleblower Protection Enhancement Act (WPEA). For example, in FY 2014, MSPB received 451 whistleblower retaliation claims. In FY 2015, MSPB received 583 whistleblower retaliation claims.

Although MSPB has adjudicated nearly all of the more than 32,400 furlough appeals filed in FY 2013, there has also been a longer-term impact on other non-furlough appeals. In short, processing and adjudicating the 32,000 furlough appeals has meant that other appeals to MSPB have been delayed in being adjudicated. Finally, as we have noted in our FY 2016 budget request, the flood of these furlough appeals put an unexpected strain on our IT infrastructure and case processing systems.

The WPEA provided additional rights to whistleblowers and others who engage in protected activity in the Federal Government. The law expanded the scope of protected disclosures, broadened MSPB's whistleblower jurisdiction, expanded options for granting corrective action, and permitted review of MSPB decisions by multiple Federal Courts of Appeals.⁴ These changes have increased the number of whistleblower cases filed with MSPB and increased the processing complexity of whistleblower cases.⁵ Many whistleblower cases are being resolved formally or informally at the Office of Special Counsel. The more complex and contentious cases that remain unresolved are often the cases filed with MSPB.

² Legislation recently introduced in the House (H.R. 4358) expands the VA SES provisions to all SES members across Government.

³ Chairman Grundmann's testimony is available on MSPB's website at www.mspb.gov.

⁴ The original two-year pilot for MSPB whistleblower decisions to be appealed to other circuit courts beyond the U.S. Court of Appeals for the Federal Circuit was extended for an additional three years by the All Circuit Review Extension Act (P.L. 113-170).

⁵ The number of whistleblower initial appeals filed in 2015 increased to 583 cases which was over 130 more whistleblower cases than were filed in 2014.

Thus, we still anticipate that the WPEA may lead to more and lengthier hearings in these cases and more addendum appeals.

FY 2017 Budget Request

Appropriation Language

For necessary expenses to carry out functions of the U.S. Merit Systems Protection Board pursuant to Reorganization Plan No. 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note), as amended, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, direct procurement of survey printing, and not to exceed \$2,000 for official reception and representation expenses, \$45,083,000, to remain available until September 30, 2018, and in addition not to exceed \$2,345,000, to remain available until September 30, 2018, for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts to be determined by the Merit Systems Protection Board.

Strategic Goals

Our FY 2017 Performance Budget Justification is structured on the basis of MSPB FY 2016– FY 2018 Strategic Plan. The agency’s performance goals cover the critical components of two strategic goals, and our performance measures support MSPB’s ability to manage and report performance over time. The strategic goals and objectives are:

Strategic Goal 1: Serve the public interest by protecting Merit System Principles and safeguarding the civil service from Prohibited Personnel Practices.

Strategic Objectives:

1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.

1B: Enforce timely compliance with MSPB decisions.

1C: Conduct objective, timely studies of the Federal merit systems and human capital management issues.

1D: Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, as appropriate.

Strategic Goal 2: Advance the public interest through education and promotion of stronger merit systems, adherence to Merit System Principles, and prevention of Prohibited Personnel Practices.

Strategic Objectives:

2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.

2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach.

2C: Advance the understanding of the concepts of merit, MSPs, and PPPs through the use of educational standards, materials, and guidance established by MSPB.

FY 2017 request by Object Class

Our proposed FY 2017 request of \$47,428,000 is \$593,000 (1.3%) more than the FY 2016 enacted level of \$46,835,000. With this level of funding, MSPB expects to continue to maintain quality services in support of the agency functions and meet the goals and objectives of the Strategic Plan. Our request includes inflationary adjustments common to most Federal agencies. With the requested amount, MSPB is prepared to undertake mission critical tasks in FY 2017 that will allow MSPB to achieve its strategic goals in an efficient and cost-effective manner. Major cost increases include \$498,000 to cover increased personnel costs to include the FY 2016 and FY 2017(anticipated) pay raises and increase in transit benefit costs, and \$15,000 for an expected increase to our Inter-agency agreement with the Bureau of Fiscal Services (BFS) for accounting services.

A discussion of our more significant changes from the FY 2016 President’s request follows:

Personnel Compensation & Benefits – an increase of \$498,000

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|------------|-------------------------------|------------------------------|------------------------------|---|
| 11 | Personnel Compensation | \$27,090 | \$27,483 | \$393 |
| 12 | Benefits | \$6,855 | \$6,960 | \$105 |

Approximately 78% of the agency’s funding is for personnel compensation and benefit costs, which make up the largest amount of our budget submission. Thus, any reduction in resources affects our ability to hire and maintain a highly qualified staff at the requested FTE level. Our request assumes a 1.6% pay increase in FY 2017.

Travel & Transportation of Persons – no increase requested

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|------------|------------------------------------|--------------------------------------|--------------------------------------|---|
| | | | | |
| 21 | Travel & Transportation of Persons | \$455 | \$455 | \$0 |

To meet our mission, AJs must frequently travel to hearing sites located a considerable distance from the various regional offices. Under the WPEA, the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. no longer has exclusive jurisdiction over appeals filed by whistleblowers, MSPB’s headquarters General Counsel attorneys may be required to travel to various Federal courts of appeals to represent the agency.

Transportation of Things – no increase requested

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|------------|--------------------------|--------------------------------------|--------------------------------------|---|
| | | | | |
| 22 | Transportation of Things | \$85 | \$85 | \$0 |

This category covers freight related costs and various courier services.

Rent, Communications, & Utilities – an increase of \$80,000

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|------------|----------------------------------|--------------------------------------|--------------------------------------|---|
| | | | | |
| 23 | Rent, Communications & Utilities | \$4,725 | \$4,805 | \$80 |

The agency makes rental payments to the General Services Administrations (GSA) for office space in our Washington Headquarters as well as all of our regional and field offices. Our request includes an increase of \$80,000 to cover expected increases in rent. The balance of our request for this object class will be for the Internet services, and mandated Managed Trusted Internet Protocol

services as well as other telecommunication services such as Voice Over Internet protocol and video conferencing.

Printing – no increase requested

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|-----|-------------|-----------------------|-----------------------|--|
| 24 | Printing | \$150 | \$150 | \$0 |

The Government Printing Office (GPO) has two printing programs (printing of case files and our Issues of Merit newsletters) specifically designed for MSPB.

Other Contractual Services – an increase of \$15,000

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|-----|----------------------------|-----------------------|-----------------------|--|
| 25 | Other Contractual Services | \$4,205 | \$4,220 | \$15 |

This object class includes the Agency’s Reimbursable Service Agreements (RSA) with BFS for accounting, purchasing, and travel-related services and our RSA with the Department of Agriculture Animal and Plant Health Inspections Service (APHIS) for personnel services. We are requesting \$15,000 for our RSA with BFS for additional accounting reports required under the Digital Accountability and Transparency Act.

Other RSAs included in this object class fund are Administrative Law Judges (agreements with the Coast Guard, Environmental Protection Agency, and Federal Trade Commission), as well as agreements with the National Archives and Records Administration for records management storage. This category includes court reporting services, employee training, ADP hardware and software maintenance renewals, license renewals for software, and the operation and maintenance of non-ADP equipment. Our request includes for ongoing costs for our planned conversion to 100% electronic processing system to improve the delivery and efficiency of our adjudication services.

IT Infrastructure

Additionally, MSPB requests \$275,000 for ongoing data hosting costs for our planned data center hosted offsite. The need for an offsite data center for MSPB was identified long ago, but was never fulfilled due to a lack of funds. This need became even more evident as MSPB's case volume increased due to the tens of thousands of furlough appeals. Furthermore, in July 2015, MSPB

experienced a major system outage during an operating system upgrade that resulted in a loss of the entire virtual server environment. As part of our recovery effort and restoration process, MSPB is currently assessing our IT systems with the assistance of a contractor. The findings from this assessment will require MSPB to incur additional costs to MSPB and support the need for a data center hosted offsite. The need will become even greater as MSPB converts to a 100% electronic adjudication (“e-Adjudication”). An offsite data center will provide better reliability by minimizing the system outages related to power and air conditioning issues that MSPB has experienced with the data center currently located at our headquarters location, provide the space and services for more capacity, scalability, and recovery, if and when needed.

The migration of MSPB’s data center from our headquarters building to a data center hosted offsite will be a complex project. The project will involve up-front costs (requested in our FY 2016 Congressional Budget Justification) for additional hardware and software licensing and the physical migration, as well as annual recurring costs for the leasing of the hosting center and payment for services. All MSPB business system application and database servers will need to be relocated to the new data center and duplicated at a disaster recovery site. MSPB’s virtual desktop infrastructure (VDI) will also have to be relocated. MSPB needs to design the network communication from the new data center to MSPB headquarters and each of the six regional and two field office locations and change our business applications to point to the new data center location (new IP addresses, domain names, etc.). MSPB will also need to consider relocating the web and Shoretel phone servers and determine how to remotely administer the network, servers, database and applications once they have been moved.

E-Adjudication will allow MSPB to process cases more efficiently and comply with Federal records management directives requiring that agencies convert records to electronic format. In an effort to accommodate the rapidly growing workloads and the new processing time requirements, MSPB needs to take advantage of the efficiencies that e-adjudication can provide. MSPB has piloted the concept of mandated electronic filing of appeals and pleadings by agencies and appellant representatives in two of our eight offices. Going forward, MSPB expects to mandate electronic filing in all eight of our offices as part of our effort to convert to e-adjudication. Although MSPB’s e-Adjudication initiative unfortunately suffered some delays due to the system outage in July 2015, MSPB has been able to reinvestigate those efforts.

The requests for funding for the hosted data center and e-adjudication project were submitted as part of our FY 2016 request. This FY 2017 request includes funds for the ongoing costs of hosting and maintaining the data center and recurring costs to maintain the e-adjudication system. Without adequate funds to make investments such as these in our present infrastructure, it will be difficult to improve and meet our mission.

Supplies & Materials – no increase requested

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|-----|----------------------|-----------------------|-----------------------|--|
| 26 | Supplies & Materials | \$190 | \$190 | \$0 |

Expenses for supplies and materials are not expected to increase in FY 2017.

Equipment – no increase requested

| MOC | Description | FY 2016 Enacted (000) | FY 2017 Request (000) | Increase (decrease) over FY 2016 (000) |
|-----|-------------|-----------------------|-----------------------|--|
| 31 | Equipment | \$735 | \$735 | \$0 |

As in the past, most of our equipment expenditures will be for replacing items due to breakdowns as well as equipment that have exceeded its useful life such as servers, laptops, copiers, printers, scanners, and video conferencing equipment. Additionally, this category also includes office furniture purchases.

Budget Schedules - Schedule O - Object Classification (In Thousands of Dollars)

| | FY 2015 Actuals | FY 2016 Enacted | FY 2017 Requested | Change |
|--|----------------------------|----------------------------|------------------------------|---------------|
| Direct obligations: | | | | |
| Personnel compensation | 22,954 | 27,090 | 27,483 | 393 |
| Civilian personnel benefits | 6,364 | 6,855 | 6,960 | 105 |
| Travel of persons | 280 | 455 | 455 | 0 |
| Transportation of things | 34 | 85 | 85 | 0 |
| Rental payments to GSA | 3,485 | 3,800 | 3,875 | 75 |
| Rental payments to others | 99 | 120 | 125 | 5 |
| Communications, utilities, and miscellaneous charges | 641 | 805 | 805 | 0 |
| Printing and reproduction | 50 | 150 | 150 | 0 |
| Other services | 1,110 | 2,040 | 2,040 | 0 |
| Other purchases of goods and services from Government accounts | 946 | 1,530 | 1,545 | 15 |
| Maintenance of facilities | 22 | 35 | 35 | 0 |
| Maintenance of equipment | 304 | 600 | 600 | 0 |
| Supplies & Materials | 114 | 190 | 190 | 0 |
| Equipment/Lease Improvements | <u>935</u> | <u>735</u> | <u>735</u> | <u>0</u> |
| Direct Obligations... | 37,338 | 44,490 | 45,083 | 593 |
| Reimbursable Obligations... | <u>2,345</u> | <u>2,345</u> | <u>2,345</u> | <u>0</u> |
| Total New Obligations... | \$39,683 | \$46,835 | \$47,428 | \$593 |

Additionally, for FY 15 actuals, MSPB incurred \$6,180,000 in obligations utilizing FY 14/15 carryover funds.

Schedule Q - Employment Summary

| | FY 2015 Actual | FY 2016 Enacted | FY 2017 Request | Change |
|--|-------------------|--------------------|--------------------|------------|
| Direct: | | | | |
| Civilian full-time equivalent employment | 205 | 233 | 220 | -13 |
| Reimbursable: | | | | |
| Civilian full-time equivalent employment | <u>15</u> | <u>15</u> | <u>15</u> | <u>0</u> |
| Total... | 220 | 248 | 235 | -13 |

About MSPB

MSPB has its origin in the Pendleton Act of 1883, which established the Civil Service Commission (CSC) and a merit-based employment system for the Federal Government. The Pendleton Act was passed after the assassination of President Garfield by a disgruntled Federal job seeker and grew out of the 19th century reform movement to curtail the excesses of political patronage in Government and ensure a stable highly qualified workforce to serve the public. Over time, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals. Concern over the inherent conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission; OPM to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority to oversee Federal labor-management relations. The CSRA also codified for the first time the values of the merit systems as the MSPs and defined the PPPs.

MSPB Organization

The **Board Members** include the Chairman, Vice Chairman, and Board Member. Board Members are appointed by the President, confirmed by the Senate, and serve overlapping, non-renewable 7-year terms. No more than two of the three Board Members can be from the same political party. The Board Members adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer of MSPB. The Office Directors report to the Chairman through the Executive Director. The agency has its headquarters in Washington, DC with six regional and two field offices located throughout the United States.

Adjudication

The majority of the cases brought to MSPB are appeals of adverse actions – that is, removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less. The next largest number of cases involves appeals of OPM and some agency determinations in retirement matters. Congress has given MSPB jurisdiction to hear cases and complaints filed under a variety of other laws to include the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 *et seq.*; the Veterans Employment Opportunity Act (VEOA), 5 U.S.C. § 3309 *et seq.*; the Whistleblower Protection Act (WPA), Pub. Law. No. 101-12, 103 Stat. 16; The Whistleblower Protection Enhancement Act of 2012 (WPEA), Pub. Law 112-199; The

Veterans Access, Choice and Accountability Act of 2014, Pub. Law 113-146; 5 U.S.C. § 4304; 5 U.S.C. § 7513; and those set out at 5 C.F.R. § 1201.3

Other types of actions that may be appealed to MSPB include: performance-based removals or reductions in grade; denials of within-grade salary increases; reduction-in-force actions; suitability determinations; OPM employment practices (the development and use of examinations, qualification standards, tests, and other measurement instruments); denials of restoration or reemployment rights; and certain terminations of probationary employees.

An appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An AJ in the office assures that the parties receive the due process procedures called for in the law and MSPB's regulations and, after providing a full opportunity to develop the record on all relevant matters, issues an initial decision. Unless a party files a PFR with MSPB, the initial decision becomes final 35 days after issuance. Any party, or OPM or the Office of Special Counsel, may petition the full Board in Washington to review the initial decision. The Board's decision on a PFR constitutes the final administrative action on the appeal.

In appellate cases, the Board's final decision, whether it is an initial decision of an AJ that has become final or the Board's decision on a PFR, may be appealed to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) or, in cases involving allegations of discrimination, to a U.S. district court or the Equal Employment Opportunity Commission. Cases involving allegations of reprisal for whistleblowing may be appealed to any of the numbered US. Circuit Courts of Appeal.

If a party believes that the other party is not complying with an MSPB order or MSPB-approved settlement agreement, the party can file a Petition for Enforcement with the regional or field office that issued the initial decision. If the AJ finds compliance, that constitutes an initial decision and the party may file a PFR with MSPB. If the AJ finds non-compliance, the case is referred to MSPB's General Counsel, who is charged with enforcing compliance.

In addition to adjudicating cases on the merits, MSPB also provides Alternative Dispute Resolution (ADR) services to assist parties in resolving the case. Use of these services is voluntary, provides the parties more control of the process and can result in effective resolution of a case. In addition, resolving a case through ADR procedures can save time and reduce costs to the appellant, agency, MSPB, and Government-wide associated with the more formal regulations and procedures involved with adjudication on the merits.

Mediation Appeals Program

The Mediation Appeals Program (MAP) offers the services of the agency's trained and certified mediators as an alternative to the formal appeal processes and procedures of MSPB's regulations. Mediators facilitate a discussion between the parties in a confidential setting to help them identify issues and barriers to agreement that will aid in resolving their disputes and settling the appeal quickly, economically, and to the benefit of all concerned. Unlike traditional mediation, MAP charges no fees. Both parties must agree to its use before the appeal will be accepted for the MAP process, and both must agree on its resolution before any settlement is concluded. Unlike the traditional appeal process, the parties control the result of the case under the skilled guidance of the mediator, who plays no role in deciding the appeal, should accord not be reached. Importantly,

because almost all mediations occur near the beginning of adjudication, MAP saves time and money for the Federal employees and agencies who resolve their cases through this process.

Because of these advantages, MAP has become a popular and successful program, as shown by the fact that a greater number of cases have been mediated almost each year since the program's inception. Moreover, while MAP had been settling approximately half the cases mediated (nearly 60% when those that settle after return to the traditional adjudication track are considered), in recent years the success rate in MAP alone has increased so that approximately two-thirds of the cases mediated are now being settled. Even where the case is resolved by an AJ's decision, the mediation process often helps sharpen the parties' focus on the matters truly in dispute and the resolution they seek. Moreover, based on the evaluations the parties are asked to complete at the end of each mediation, more than 95% of the participants have stated that they would use MAP again.

Merit Systems Studies and OPM Oversight

MSPB has the statutory responsibility to conduct studies of the civil service and other merit systems in the Executive Branch and submit the resulting reports to the President and Congress. The studies support strong and viable merit systems, which protect the public's interest in a high quality, professional workforce managed under the merit system principles and free from prohibited personnel practices. The studies are based on objective, independent research that assesses and evaluates Federal merit system policies, operations, and practice from a long-term perspective. This prospective function, in conjunction with the agency's adjudication of individual appeals and our authority to review human resource regulations, ensures that MSPB has the full legal authority necessary to oversee Federal merit systems at both the systemic and individual level.

MSPB studies address the variety of challenges facing the Federal Government in managing its workforce.

Reports Issued In FY 2015 and Q1 of FY 2016

- *Veterans' Employment Redress Laws in the Federal Civil Service* (November 2014). The Veterans Employment Opportunities Act of 1998 (VEOA) provides an avenue for veterans to seek redress for violations of their preference rights or right to consideration for certain vacancies. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides an avenue for redress for individuals who are discriminated against based on a military service obligation or denied their reemployment rights following such service. This report discusses the statutes and case law surrounding redress procedures under VEOA and USERRA and the important ways in which those two laws differ.
- *Fair and Open Competition for Federal Employment* (January 2015). The principle of fair and open competition for filling jobs is a longstanding and fundamental element of Federal merit systems. Changes in technology and policy, including a near-complete decentralization of Federal hiring authority and a proliferation of noncompetitive hiring authorities, have materially changed the nature and extent of job competitions. This report discusses the ideal and implementation of fair and open competition and explores whether changes to policy or practice may be needed.

- *Research Agenda 2015 - 2018* (February 2015). MSPB has a statutory responsibility to conduct objective, non-partisan studies that assess and evaluate Federal merit systems policies, operations, and practices. See 5 U.S.C. § 1204(a)(3). These Government-wide studies take a long-term perspective on merit and management of the Federal workforce and provide recommendations to the President, Congress, and Federal agencies on how to manage Federal employees in a way that is both principled and effective. The research agenda, developed with stakeholder input, addresses both continuing imperatives, such as achieving a workforce free of prohibited personnel practices, and contemporary issues, such as making the best possible use of advances in technology and the impact of policy changes on the Federal workforce. This document describes MSPB's Office of Policy and Evaluation's activities for a four-year research cycle and includes a list of topics for 2015-2018 making up the research agenda.
- *What is Due Process in Federal Civil Service Employment?* (May 2015). This report explains the interaction between the U.S. Constitution and adverse personnel actions in a merit-based civil service. It discusses the current civil service laws for adverse actions and the history behind their formation, and explains why the Constitution requires that any system to remove a public employee for cause must include: (1) An opportunity for the individual to know the charges and present a defense; and (2) the opportunity to appeal a removal decision before an impartial adjudicator. The report also contains an appendix that corrects some misperceptions people may have about how the current civil service operates.
- *Training and Development for the Senior Executive Service: A Necessary Investment* (December 2015). This report examines current practices on how career senior executives—who manage major programs and organizations and provide continuity during Presidential transitions—are trained and developed. Unfortunately, the review indicates that the “systematic development” envisioned in the Civil Service Reform Act of 1978 is more vision than reality. To that end, the report contains information to help agencies determine a development strategy that aligns with agency goals and resources and effectively addresses executives training needs. In addition, the report discusses common barriers to SES training and offers strategies to mitigate them.

Planned Survey Activity

- *Merit Principles Survey 2016*. MSPB last conducted its flagship survey, the Merit Principles Survey (MPS), in 2010. In mid-2016 MSPB will invite about 120,000 federal employees to respond to another installment of the MPS, which will provide data to support studies on topics such as freedom from prohibited personnel practices, sexual harassment in the federal workplace, dual career paths for supervisors and technical specialists, employment of persons with disabilities, employee engagement, the effectiveness of the HR workforce, and dealing with poor performers.

Reports Planned For Issuance in FY 2016

- *Merit System Principles Education*. Given MSPB’s mission to protect the merit system principles (MSPs) and promote an effective Federal workforce free of prohibited personnel practices (PPPs), MSPB can and should play a clear role in educating managers, human resources staff, and employees about the meaning and importance of the MSPs. Accordingly, the

report of this study will: (1) Assess how well Federal employees believe they are protected by the MSPs; (2) consolidate information on the MSPs to serve as a reference guide for supervisors and employees; and (3) evaluate and summarize current agency training practices regarding the MSPs and PPPs.

- *Neptotism*. It is a prohibited personnel practice to employ or advocate for the employment or advancement of a close relative. This report will discuss the extent to which employees perceive that nepotism is occurring and provide recommended steps to help agencies, the U.S. Office of Personnel Management, supervisors, and employees to reduce instances of nepotism.

Management Support

Information Technology

MSPB's primary mission is to provide for independent adjudication of appeals of personnel actions for Federal employees. Generally, at least half or more of the appeals filed with the agency are from *pro se* appellants -- employees representing themselves. Pro se appellants do not generally have equal knowledge of the case filing process or equal access to the information available, especially if they are stationed overseas. Yet, they are expected to file an appeal and to respond to orders in a timely manner or risk having their cases dismissed. MSPB's electronic filing system, e-Appeal Online, allows Federal agencies and employees instant access to filings and issuances through the internet as soon as they are uploaded. Parties who file electronically can also receive acknowledgement orders from the agency by e-mail instantaneously, rather than through the regular mail.

The agency has also implemented an agency-wide, electronic Case Management System (CMS). The system is used to process and track each initial appeal and PFR filed with the agency. CMS has also been integrated with MSPB's e-Appeal, document management, and document assembly systems to allow our Administrative Judges and Attorneys to more efficiently create legal documents that are pre-populated with case data. In addition, MSPB has implemented an agency-wide, web-based office calendar system to make staff aware of scheduled events, such as hearings, leave, and outreach.

Human Resources

MSPB contracts with the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) for selected human resources administrative and operational services through an interagency agreement. The agreement is developed between the two agencies and monitored within the Financial and Administrative Services Division, which is located in headquarters. The services listed in the agreement are not meant to be all-inclusive and the two agencies work together in a mutually cooperative manner to handle HR issues that arise that may not be specifically addressed in the interagency agreement.

MSPB contracts with Federal Occupational Health (FOH), a service unit within the U.S. Department of Health and Human Services' Program Support center, to provide basic occupational health services to all of its employees throughout the country. In addition, the agency contracts with FOH to offer all of its employee's access to an employee assistance program (EAP). The EAP assists the agency in addressing productivity issues by providing both prevention and intervention

for employee problems, which ultimately improves employee health and functioning, as well as workplace performance. MSPB's agreement with FOH provides for a comprehensive EAP, delivering short-term, problem-focused counseling and a variety of services. While many health and wellness activities and accommodations are not equally available to each MSPB employee with respect to workplace or onsite availability of services, the agency does strive to ensure that each employee understands that it fully supports a healthy and safe work place for all employees.

Financial Management

MSPB has initiated cross-servicing agreements with BFS for its accounting, financial auditing, purchasing, and travel-related services and support. BFS has processed our administrative payments and prepared our accounting reports since FY 2002. MSPB has received an unqualified opinion on its audits since the agency has been subject to audits of its financial statements.

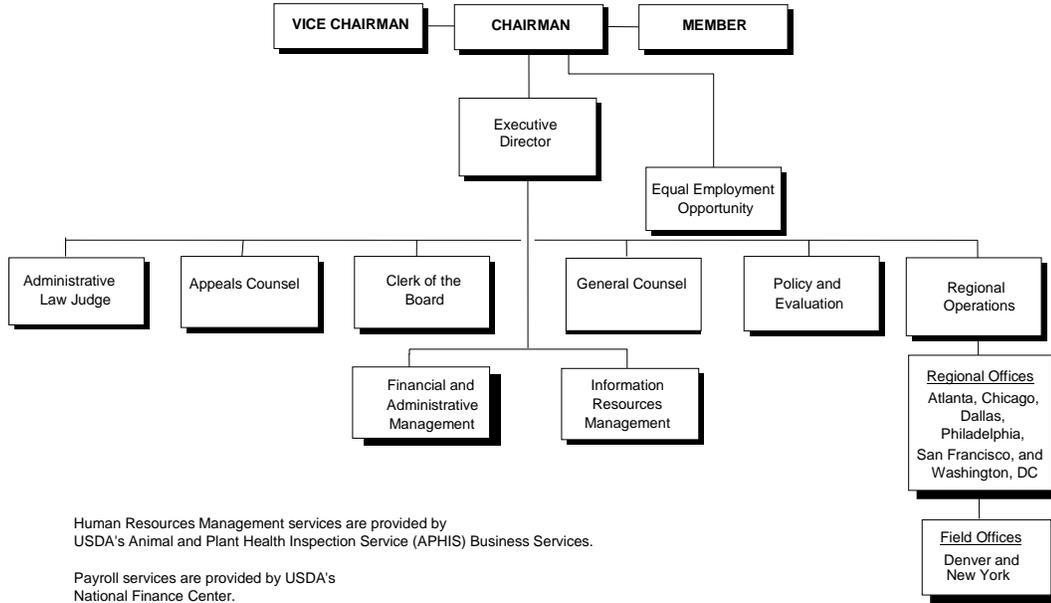
The agency also has an agreement in place with APHIS for personnel services and the USDA National Finance Center (NFC) for processing of payroll and payroll-related activities including earnings and leave statements, W-2 information, and debt management. Our cross-servicing relationships with these organizations have provided MSPB with timely responses and more accurate processing of information from larger pools of knowledgeable staff than would be possible with smaller in-house staff. APHIS, BFS and NFC have the resources to stay current with the latest technologies so they can provide these services more efficiently and economically.

Equal Employment Opportunity

The Office of Equal Employment Opportunity (OEEO) plans, implements, and evaluates MSPB's affirmative employment programs and initiatives, advises senior executives, managers and supervisors about these programs and initiatives and provides all employees training on rights and remedies available under anti-discrimination laws and whistleblower protection laws. OEEO provides counseling, complaint and alternative dispute resolution processes to current and former MSPB employees and applicants for employment who allege employment discrimination. OEEO provides similar processes to individuals who allege disability discrimination in their access to MSPB programs and activities. The office evaluates and reports MSPB's complaints data and workforce demographics by occupation and grade to the Congress, the Equal Employment Opportunity Commission, the OPM and other external stakeholders. OEEO also works with MSPB employees to provide Special Emphasis Observance Programs and the biennial Unity Day Program to promote the value of diversity and inclusiveness in achieving the agency's mission.

Organization Chart

U.S. Merit Systems Protection Board



Human Resources Management services are provided by USDA's Animal and Plant Health Inspection Service (APHIS) Business Services.

Payroll services are provided by USDA's National Finance Center.

Accounting services are provided by the Department of the Treasury's Bureau of Fiscal Services.