

privacy@mspb.gov

MSPB Federal Register

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MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice and request for comments

The U.S. Merit Systems Protection Board (MSPB), as part of its continuing effort to reduce paperwork and respondent burden, intends to request approval of a new information collection from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

MSPB is submitting this Information Collection Request (ICR), entitled

Accommodation Request Form, OMB Control No. 3124-0NEW, for approval in accordance with Federal regulations, and is requesting public comments. This collection was developed as part of MSPB's effort to streamline the process for collecting information from employees and applicants to MSPB, as well as participants in MSPB functions (parties and/or participants in MSPB appeals, respondents to surveys, and all other individuals engaged in activity conducted by the MSPB), who seek a reasonable accommodation in order for MSPB to carry out its functions with respect to these individuals. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: Consideration will be given to all comments received by March 17, 2025.

ADDRESSES: Submit comments by using only one of the following methods:

(1) Email. Submit comments to privacy@mspb.gov.

(2) Mail. Submit comments to

D. Fon Muttamara, Chief Privacy Officer,

Office of the Clerk of the Board,

U.S. Merit Systems Protection Board,

1615 M Street NW, Washington, DC 20419.

MSPB's website (www.mspb.gov) and will include any personal information you provide. Therefore, submitting this information makes it public.

FOR FURTHER INFORMATION CONTACT:

D. Fon Muttamara, Chief Privacy Officer, at privacy@mspb.gov or (202) 653–7200.

You may submit written questions to the Office of the Clerk of the Board by any of the following methods: by email to privacy@mspb.gov or by mail to

Clerk of the Board, U.S. Merit Systems

Protection Board, 1615 M Street NW,

Washington, DC 20419.

Please include “OMB Control No. 3124–0NEW” with your questions.

SUPPLEMENTARY INFORMATION:

In accordance with title V of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, and title VII of the Civil Rights Act of 1964 (Civil Rights Act), as amended, MSPB is seeking approval of a new information collection for MSPB’s reasonable accommodation process, including MSPB’s Accommodation Request Form and a script for participants in MSPB programs to submit accommodation requests. The proposed information collection activity covers MSPB’s collection, maintenance, and use of records on applicants for employment, employees, and participants in MSPB programs who request or receive reasonable accommodations or other appropriate modifications from MSPB for disability, medical, pregnancy related, or religious reasons.

Title V of the Rehabilitation Act of 1973, as amended, prohibits

discrimination in services and employment on the basis of disability; title VII of the Civil Rights Act of 1964, in relevant part, prohibits discrimination on the basis of religion; the Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy. Each Act, along with the Pregnant Workers Fairness Act, requires employers to provide reasonable accommodations, respectively, related to an employee’s disability, pregnancy related condition, or religious beliefs, that conflict with work requirements, unless the accommodation would cause the employer an undue hardship footnote 1 {1Pregnancy includes current pregnancy; past pregnancy; potential pregnancy; medical condition(s) related to pregnancy or childbirth including breastfeeding/lactation; having or choosing not to have an abortion; and birth control (contraception). } In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. MSPB considers the following factors, where applicable, when adjudicating reasonable accommodations requests received:

- (1) Description of the accommodations requested by applicants for employment or employees seeking modification or adjustments;
- (2) description of the medical conditions or pregnancy-related conditions that impact the ability to apply for employment or for employees to carry out work-related duties and functions;

- (3) description of bodily functions impacted by the disabling medical or pregnancy-related conditions;
- (4) description of treatment, medication, or other mitigating factors used to treat the disabling medical conditions;
- (5) description of the sincerely held religious beliefs that conflict with a work requirement; and
- (6) supporting documentation (e.g., medical records, doctor's notes, documentation regarding religious beliefs, etc.) for the request.

Reasonable accommodations on the basis of disability typically fall into the following categories:

- (1) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a position;
- (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position;
- (3) modifications or adjustments that enable a qualified employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly-situated employees without disabilities; and
- (4) modifications to agency operating procedures to enable a qualified individual with a disability full access to agency functions. In some instances, individuals may request modification to their workspace, schedule, duties, or other requirements for documented medical reasons that may not qualify as a disability but may necessitate an appropriate modification to workplace policies and practices.

MSPB's Office of Equal Employment Opportunity is responsible for processing requests for reasonable accommodations from applicants for employment at MSPB and MSPB employees who seek an accommodation due to a disability, medical, pregnancy related, or religious reasons as well as processing requests based on documented medical reasons that may not qualify as a disability but that may necessitate an appropriate modification to workplace policies and practices. For participants in MSPB programs who are not applicants for employment or MSPB employees, MSPB's Accessibility Program Manager, within the Office of

Information Resources Management, is responsible for processing these requests.

The request and any related records provided to support the request, any evaluation conducted internally or by a third party under contract with MSPB, the decision regarding whether to grant or deny a request, and the details and conditions of the reasonable accommodation are all included in this collection.

Title: Information Collection

Submission for MSPB's Reasonable Accommodation Request.

OMB Number: 3124-0NEW.

Type of Information Collection: This will be a new information collection.

ICR Status: MSPB intends to request approval of a new information collection from OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Abstract of Proposed Collection:

This collection is part of MSPB's compliance efforts to collect information to facilitate adjudication of reasonable accommodations requests by employees of or applicants to the MSPB, and by participants in MSPB programs, e.g., parties to appeals, respondents to surveys, etc. See The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR part 1605 (Guidelines on Discrimination Because of Religion); 29 CFR part 1614 (Federal Sector Equal Employment Opportunity); 29 CFR part 1630 (Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act); E.O. 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); and E.O. 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010); The Pregnant Workers Fairness Act (effective June 27, 2023). Responses to any collection of information under this ICR are voluntary.

Affected Public:

Individuals and Households;

Businesses and

Organizations.

Estimated Total Number of

Respondents: 90.

Estimated Frequency of Responses:

Once per request.

Estimated Total Average Number of

Responses for Each Respondent: 1.

Estimated Total Annual Burden

Hours: 70

Estimated Total Cost: \$2,653.

Comments: Comments should be submitted as indicated in the ADDRESSES caption above.

Comments are solicited to: (a) evaluate whether the collection of information is necessary for the proper performance of the functions of MSPB, including whether the information shall have practical utility; (b) evaluate the accuracy of MSPB's estimate of the burden of the collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; (d) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate the estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Gina K. Grippando,
Clerk of the Board.

[FR Doc. 2025-00956 Filed 1-15-25; 8:45 am]

BILLING CODE 7400-01-P

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. Equal Employment Opportunity Commission

29 CFR Part 1636

RIN 3046-AB30.

. PART 1636—PREGNANT WORKERS FAIRNESS ACT

....

This Commenter notes that the MSPB is in no position to do any thing at this juncture in doing so at this point in time as the MSPB to include Clerk of the Board has committed in its structure the most blatant of PPPS – and documented this in the Federal Register – circa November 2024 –

not to mention that the MSPB has no PLAN – no strategic Plan as shall be shown. Ms. Gina K. Grippando Clerk of the Board, it would appear has “has appointed one of her former co-workers – if not her former supervisor from the FLRB (Federal Labor Relations Board (who at the time of appointment remained on the FLRB to the MSPB – to the MSPB Performance Review Board a PPP documented which the MSPB documented in the Federal Register – at stake – such Agency is not so “independent” as to escape a institutional PPP – and there is more:

TITLE 5 – ADMINISTRATIVE PERSONNEL

Chapter I – Office of Personnel Management

Subchapter B – Civil Service Regulations

Part 430 – Performance Management

Subpart C – Managing Senior Executive Performance

§ 430.311 Performance Review Boards (PRBs).

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) Membership.

- (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to consider diversity and inclusion in establishing their PRBs.
- (2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.
- (3) When appraising a career appointee's performance or recommending a career appointee for a performance-based pay adjustment or performance award, more than one-half of the PRB's members must be SES career appointees.
- (4) The agency must publish notice of PRB appointments in the FEDERAL REGISTER before service begins.

(b) Functions.

- (1) Each PRB must consider agency performance as communicated by the oversight official through the performance appraisal guidelines when reviewing and evaluating the initial summary rating, any senior executive's response, and any higher-level official's findings and recommendations on the initial summary rating or the results of an alternative review. The PRB may conduct any further review needed to make its recommendations. The PRB may not review an initial summary rating to which the executive has not been given the opportunity to respond in writing, including through the use of automated systems.
- (2) The PRB must make a written recommendation, including through the use of automated systems, to the appointing authority about each senior executive's annual summary rating, performance-based pay adjustment, and performance award.
- (3) PRB members may not take part in any PRB deliberations involving their own appraisals, performance-based pay adjustments, and performance awards.

This commenter notes that such wording regarding PRBs is no longer applicable in light of President Trump’s recent executive orders – Indeed, President Trump is ordering executive agencies to revisit their specific SeS positions. That said, where does one go for redress – knowing that President Trump fired a number of Inspector Generals, is this where to go in the MSPB – well – hermetically-sealed?

INSPECTOR GENERAL

How To File an IG Complaint with the Merit Systems Protection Board

Anyone who suspects that any member of the Merit Systems Protection Board (MSPB) staff has committed fraud, waste, abuse, gross mismanagement or engaged in conduct that presents a substantial and specific danger to public health or safety involving MSPB programs or activities should contact the MSPB Office of the General Counsel (OGC). The OGC is charged with performing the investigative functions for the Merit Systems Protection Board as required by the Inspector General Act of 1978 (the IG Act), [Chapter 4](#) of Title 5 of the United States Code.

Complaints may be made in person, or by mail, telephone, or email. Please refer to the following contact information:

In Person and Postal Mail:	U. S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419
Telephone:	(888) 841-1308 (Toll-free Hotline – Voice Mail only)
e-mail:	inspector.general@mspb.gov

When filing a complaint, a Complainant should convey as much detail as possible on the matter, including the identity of the person(s) alleged to have engaged in the prohibited activity; a sufficient description of the alleged activity or conduct; when and where the activity or incident occurred; and why the informant or complainant believes that the activity or conduct constitutes fraud, waste, abuse, gross mismanagement or a substantial and specific danger to public health or safety. The identity of and contact information for other witnesses would also be helpful.

NOTE: The IG complaint process should not be used in place of established statutory, administrative, or regulatory procedures applicable to discrimination complaints, grievances, or appeals of

The Merit Systems Protection Board makes the case for PPPs- takes the cake- why PPPs exist.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board (MSPB) is publishing the names of the current members of its Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4) and 5 CFR 430.311. Laura M. Alborno, MSPB, serves as Chair of the PRB. Susan M. Swafford, MSPB; Gina K. Grippando, MSPB; and David S. Eddy III, Federal Labor Relations Authority, serve as members of the PRB.

Gina K. Grippando,
Clerk of the Board.

[FR Doc. 2024-24936 Filed 10-25-24; 8:45 am]

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in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The Confirmatory Order is available in ADAMS under Accession No.

investigation (OI Case No. 3-2023-003). The purpose of the investigation was to determine whether Glow Rhino was in compliance with NRC's regulatory requirements related to Glow Rhino's possession and distribution of products containing radioactive material.

Based on the conclusions of the investigation, the NRC issued two apparent violations that were documented in an NRC letter, dated April 11, 2024,

(Agencywide Documents Access and Management System (ADAMS) Accession No. ML24102A272). The NRC letter identified two apparent violations of Title 10 of the *Code of Federal Regulations* (40 CFR) 20.2.14(a)(1)(i).

Delegation to make Prohibited Personnel Practices – is this the case?

Title 5 United States Code § 302. Delegation of authority

- (a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.
- (b) In addition to the authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him--
 - (1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency; and
 - (2) by section 3702 of title 44 to authorize the publication of advertisements, notices, or proposals.

CREDIT(S)

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 379; Pub.L. 94-183, § 2(1), Dec. 31, 1975, 89 Stat. 1057.)

Federal Acquisition Regulation FAR Subpart 7.5 Inherently Governmental Functions

7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors

7.502 Applicability

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personnel services contracts issued under statutory authority.

7.503 Policy.

- (a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following are a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

... (2) the control of prosecutions and performing to performance of adjudicatory functions, other than those relating to arbitration or other methods of alternate dispute resolution.

...(10) The approval of position descriptions and performance standards for Federal employees

Memorandum of Understanding
Between the U.S. Merit Systems Protection Board
and
Federally Employed Women

PREAMBLE

The U.S. Merit Systems Protection Board values the contributions of all of its employees and strives to create a diverse, well-qualified workforce and become a model employer. This document establishes an agreement between the parties specified below for mutual benefit and support. The parties enter into this agreement freely and without reservation.

I. PARTIES

The U.S. Merit Systems Protection Board (MSPB) and Federally Employed Women (FEW) have established this Memorandum of Understanding (MOU).

II. BACKGROUND

MSPB is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and conducting merit systems studies. In addition, MSPB, reviews the significant actions of the Office of Personnel Management to assess the degree to which those actions may affect merit.

MSPB strives to achieve and maintain a diverse, well-qualified workforce and an inclusive workplace environment, free of discrimination. MSPB also seeks to serve our stakeholders in a manner that demonstrates the merit principles.

Federally Employed Women (FEW) is a private, non-profit organization that works to end sex discrimination and support the advancement of women in the Federal civil service by:

- * Encouraging diversity and equity in the workplace;
- * Enhancing career opportunities:
- * Establishing and maintaining relationships with organizations to advocate for the fair application of laws, policies, procedures, and practices;
- * Improving the quality of life for women by influencing legislative actions:
- * Committing to maintain a unified and diverse membership; and
- * Providing opportunities for professional growth.

III. PURPOSE

The purpose of this MOU is to document a commitment to engage in and sustain a partnership between MSPB and FEW. It provides the framework to identify issues of mutual interest and help develop and implement solutions to promote equal access to employment and career advancement opportunities, and improved workplace quality of life for MSPB's workforce, as well as furthering the missions of MSPB and FEW.

III. PURPOSE

The purpose of this MOU is to document a commitment to engage in and sustain a partnership between MSPB and FEW. It provides the framework to identify issues of mutual interest and help develop and implement solutions to promote equal access to employment and career advancement opportunities, and improved workplace quality of life for MSPB's workforce, as well as furthering the missions of MSPB and FEW.

IV. OBJECTIVES AND RESPONSIBILITIES

The objectives of this MOU shall be to coordinate and facilitate activities that are responsive to the needs of MSPB's mission and its employees and that are responsive to FEW's mission. In this regard, FEW shall make recommendations to MSPB on initiatives and address issues, such as recruitment, onboarding, training, career development, advancement and retention of MSPB's workforce, in addition to advising on MSPB's mission-related goals, when appropriate. In fulfilling the objectives of this MOU, MSPB and FEW agree to participate of this MOU, MSPB and FEW to participate in and be responsible for the following:

A. MSPB will:

- 1) Assign to MSPB's Office of Equal Employment Opportunity (OEEEO), the responsibility of managing the MOU with FEW.
- 2) Notify MSPB employees and the public regarding the MOU with FEW.
- 3) Solicit input from FEW, as appropriate, to develop workplace plans, such as recommendations for improving representation at the entry, mid and upper levels, including supervisory managerial and executive levels.
- 4) Solicit input from FEW, as appropriate, regarding MSPB mission-related plans, (e.g., changes to policies and procedures, development of research plans).
- 5) Provide information to MSPB employees and FEW regarding opportunities, such as recruitment and outreach events, internships, and developmental assignments within MSPB.
- 6) Announce and promote opportunities for MSPB employees to participate in FEW activities and/or receive training and developmental opportunities, (e.g., attendance at training and/or conferences, developmental details, coaching, and mentoring).
- 7) Support FEW by participating in the National Training Program, (e.g., by providing information on FEW and their events to MSPB employees, participating as a presenter, mentor, etc,) as well as FEW chapter training programs, to the extent feasible.
- 8) Participate in ongoing discussions with FEW to assess progress in building and maintaining a meaningful partnership.

B. FEW will:

- 1) Advise its internal and external affiliates about our MOU, and enlist their participation and on the implementation of this MOU.

- 2) Assist MSPB in disseminating information to FEW members to provide feedback when MSPB is considering initiatives affecting Federal employees.
- 3) Assist MSPB in fostering partnerships with other organizations (e.g., other employee affinity groups) for purposes of networking, outreach and recruitment.
- 4) Assist MSPB in its recruitment by helping advertise MSPB vacancy announcements, when appropriate.
- 5) Assist MSPB with efforts to identify potential barriers and employment rates within MSPB that are below expectations when compared to civilian and relevant lab force data.
- 6) Recommend speakers on diversity, inclusion and EEO for internal programs (e.g. special emphasis programs and Unity Day).
- 7) Provide assistance to and MSPB policies and programs that further the mission and objectives of mutual interest to this MOU.
- 8) Participate in ongoing discussions to assess programs in building and maintaining a meaningful partnership.

V. COSTS AND IMPLEMENTION PROCEDURES

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VII. DISCLOSURE INFORMATION

Subject to the Freedom of Information Act (5 U.S.C. 552) decisions of disclosures of information to the public regarding projects and programs initiated by this MOU will be made following consultations by the parties to the MOU.

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The following signatures serve to execute the forgoing MOU between the MSPB and FEW.

U.S. MERIT SYSTEMS PROTECTION BOARD

-s-Susan Tsui Grundmann, Chairman U.S. Merit Systems Protection Board

-s-Jerry Beat Director Office of Equal Employment Opportunity U.S. Merit Systems Protection Board

FEDERALLY EMPLOYED WOMEN

-s-Sue Webster, National President Federally Employed Women



Contact: Jerry Beat (202) 254-4405
TDD/Videophone Users:
Please Call Via Relay

FOR IMMEDIATE RELEASE
May 17, 2011

U.S. MERIT SYSTEMS PROTECTION BOARD (MSPB) SIGNS MEMORANDUM OF UNDERSTANDING (MOU) WITH FEDERALLY EMPLOYED WOMEN (FEW)



On May 17, 2011, MSPB Chairman Susan Grundmann, FEW President Sue Webster, and the Director of Equal Employment Opportunity signed a memorandum of understanding for a collaborative partnership. This MOU will enhance the sharing of information and expertise between MSPB and FEW so that both entities better achieve their goals. For example, MSPB will solicit input from FEW on MSPB mission-related plans (e.g., changes to policies and procedures, development research plans) and provide training related to MSPB's mission at FEW's National Program and regional conferences, as resources permit.

Federally Employed Women is a private, non-profit organization founded to promote equality for women and address the concerns of women in the Federal Government. These goals are consistent with MSPB's mission to protect the merit system and promote an effective workforce free of prohibited personnel practices.

Chairman Grundmann noted, "This memorandum of understanding expands our existing relationship we have with FEW that we look forward to expanding. As our first MOU we have established for this purpose, it reflects a continuation of our commitment to reach out to stakeholders to share information and work collaboratively."

This commenter documented the above MSPB-FEW ‘MOU’ on November 9, 2024 after Great Magistrate of the United States President Donald J. Trump was elected for our 2nd term. MSPB had entered into such MOU with full notice of:

D. C. Charter Chapter Federally Employed Women, Inc. Plaintiff v. T. F. McCormick, (The Government Printer Department Head Government Printing Office) Civil Action No. 76-777 1976 WL 698 November 12, 1976 (District Court DC 1976). There Judge Richey observed:

The parties' views to the contrary notwithstanding, this Court believes that it is an open question as to whether organizational plaintiffs have standing to sue under 42 U. S. C. § 2000e-16. See *Spencer v. Schlesinger*, [7 EPD P 9302] 374 F. Supp. 840, 846 n. 17 (D. D. C. 1974) (specifically leaving the question open); *Minority Employees at NASA v. Fletcher*, C. A. No. 74-1832 (D. D. C., Order of Dec. 10, 1975) (finding standing for organizational plaintiff and certifying class represented by organization and individual named plaintiffs). Cf. *League of United Latin American Citizens v. Hampton*, [8 EPD P 9540] 501 F. 2d 843 (D. C. Cir. 1974) (implication that if organizational plaintiff had properly alleged injury in fact to its members, it would have been able to maintain Title VII suit to redress discrimination in federal employment)’.

MSPB Pleads for Funding Ahead of Expected Workload Surge

Published: [February 18, 2020](#)

More in: [Fedweek](#)

By: [FEDweek Staff](#)

The MSPB has sent to Congress an unusual “bypass request,” seeking more money for fiscal 2021 than the White House’s budget request would provide for the agency, on grounds that it expects an increase in its workload due to recent changes in law and actions by the administration.

While the White House wants \$42.2 million for the MSPB, the agency is asking for \$46.8 million. It said the lower figure would cause the labor-intensive agency to cut staff, which would have “a direct impact on MSPB’s mission, contributing to a significant increase in processing time” for initial appeals to hearing officers and for appeals from them to the board, while also hampering its other operations.

A backlog of more than 2,500 cases has built up in the three years that the board has lacked the members needed to issue decisions.

The workload will increase when it again has a quorum — nominees for all three seats have been awaiting a Senate vote for months — and starts issuing decisions, some of those rulings will require further work by the hearing officers, it said.

Further, it expects that proposed OPM rules to carry out one of the administration’s executive orders on federal employee appeals will result in more work for hearing officers and the board.

Those rules would bar agencies from agreeing to remove any reference to the proposed disciplinary action from the person’s personnel files and also would bar “any settlement agreement in which an action is mitigated, changed to a no-fault reason, or in any way changed or corrected without admission of error by the agency.”

“The provision limits the potential for reaching an agreement and settling cases on terms both parties might otherwise find appropriate,” the MSPB said—an effect already being seen at the hearing officer level, according to an annual MSPB report issued recently.

Other recent developments that it said could increase its appeals workload include: the administration’s plans to reorganize agencies, which could trigger furloughs, RIFs and other appealable actions; a law requiring that when an employee resigns while under investigation any eventual finding against the employee must be put in their personnel files; a law requiring discipline against supervisors found to have retaliated against whistleblowers; and laws broadening the scope of whistleblower protections.

[MSPB Says Impact from Leadership Void Is Showing](#) (12/10/2019)

[Merit Board Explains Impact of Leadership Void](#) (3/6/2019)

The Importance of a Strategic Plan – which MSPB does not have – the following is from the USAID transition briefing Plan to the incoming Biden Administration (this commenter observes that the USAID appears to be by-the-by way– for the extract - here it is:

the Acting Administrator unless they are specifically appointed by the President to be the Acting Administrator pursuant to the Vacancies Reform Act. This Memorandum will need to be updated once the Transformation of the Agency is complete.

OTHER LEGISLATION OF MAJOR IMPORTANCE TO USAID

Appropriations Acts

Funds for most of USAID's economic assistance programs are appropriated in the annual *Department of State, Foreign Operations, and Related Programs Appropriations Act*. That Act also contains funding for State Department operations, multilateral assistance through the Multilateral Development Banks, funding for the Peace Corps, the Development Finance Corporation, the Export-Import Bank, and military assistance programs. Funds for food aid programs authorized by the *Food for Peace Act* are included in the annual appropriations act for the Department of Agriculture. The annual foreign assistance appropriations act also serves as the primary legislative vehicle for Congressional earmarking, directives, and statements of policy.

Food for Peace Act

Titles II and III of the *Food for Peace Act* authorize USAID to administer grant food aid programs. Title II authorizes the provision of agricultural commodities through governmental and nongovernmental organizations to meet emergency food needs, notwithstanding any other provision of law. Title II also authorizes provision of nonemergency food assistance. Title III, which is currently an unfunded program, authorizes the use of food aid to encourage policy reform in the poorer developing countries. Title I of the *Food for Peace Act*, administered by the Department of Agriculture, provides credit for the export of U.S. agricultural commodities to more advanced developing countries.

Government Performance and Results Act (GPRA)

The GPRA is government-wide legislation requiring each Agency to prepare a strategic plan and annual performance plans for its programs. The strategic plan, submitted to the Office of Management and Budget and to Congress, is to be updated every three years. The annual performance plans establish performance goals and indicators, and provide a basis for comparing results with performance goals. Each Agency must also submit program performance reports reviewing, among other things, the success in achieving performance goals during the previous year and, as appropriate, why such goals were not met. GPRA was expanded and modified in 2011 by the *Government Performance and Results Modernization Act*. In addition to amendments relating to such matters as progress reviews and transparency, the 2011 Act mandates that each Agency designate a Chief Operating Officer and Performance Improvement Officer, and to identify Goal Leaders for Agency Priority Goals.

Continuing – the change from “Twitter” to “X” leads one to the conclusion that the MSPB has no Strategic Plan – and as we speak – the MSPB is obligated to provide update to the Great Magistrate President Donald J. Trump – lets start the analysis.

Foreword

In accordance with § 1206 of Title 5, United States Code (U.S.C.), the U.S. Merit Systems Protection Board (MSPB) submits this Annual Report (AR) on its significant actions during fiscal year (FY)

2021.

We invite customers and stakeholders to send comments to improve MSPB's ARs to:

DeeAnn Batten, Ph.D.

Performance Improvement Officer (PIO)

Office of Policy and Evaluation

U.S. Merit Systems Protection Board

1615 M Street, NW

Washington, DC 20419

Email: mspb@mspb.gov (to the attention of the PIO)

Toll Free: 1-800-209-8960

Fax: 202-653-7130

Information about MSPB's FY 2021 program performance results (as required under the Government Performance and Results Act Modernization Act of 2010 (GPRAMA)) is available in the Annual Performance Report and Annual Performance Plan (APR-APP) for FY 2021-2023.

Financial accountability and audit information is included in MSPB's Annual Financial Report for FY 2021. MSPB's ARs and GPRAMA documents are posted on the Plans, Budget and Performance page on MSPB's website (www.mspb.gov) when they are released.

Go to www.mspb.gov to learn more about MSPB's work, sign up for MSPB's adjudication or studies listservs, or follow us on Twitter [@USMSPB](https://twitter.com/USMSPB).

OPE MSPB's Office of Policy and Evaluation

OPM Office of Personnel Management

...

PIO Performance Improvement Officer

35 Merit Systems Protection Board Annual Report for FY 2021 February 18, 2022

....

PPPs Prohibited personnel practices

....

36 Merit Systems Protection Board Annual Report for FY 2021 February 18, 2022



U.S. Merit Systems Protection Board

1615 M Street, NW

Washington, DC 20419

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37 Merit Systems Protection Board Annual Report for FY 2021 **February 18, 2022**

Washington Legal Foundation (WLF) March 13, 2025 Amicus Brief before the Supreme Court which brings home what the Merit Systems Protection Board done – outstepped its Constitutional boundaries – indeed breached the President’s role as the Great Magistrate of the United States. We have shown so much already – the MSPB has ignored the what a Continuity of Operations Plan (COOP) amounts to in using it as a pretext for creating a PAS level status for a general attorney – one who in essence takes the mantle of the Board Chair. We have shown the an attitude of immaturity ins “bypassing” standard budgeting processes- bypassing the Great Magistrate President Donald J. Trump during his first Administration. This is not the sort of behavior that one would expect of any member of a “quasi-judicial’ agency. This commenter observes that little presented to this point can be said to amount to “quasi-judicial” – much less

be of the nature that suggests that such an activity is in a position to even utilize the Federal Register to seek comments – particularly (as here where the OMB references do not refer to those of the Present administration. Here is the March 13, 2025 WLF nugget before the Supreme Court as we speak- harbinger – Congress and the President cannot delegate to private authorities – neither can the MSPB:

‘The President’s ability to control the initiation, prosecution, and termination of actions to ensure compliance with federal law is crucial to taking care that the laws are enforced. The hallmark of this enforcement authority is the exercise of prosecutorial discretion. Such discretion “creates a troubling potential for abuse, even when it is exercised by a governmental entity that is subject to constitutional and other legal and political constraints.” Tara Leigh Grove, *Standing as an Article II Nondelegation Doctrine*, 11 U. Pa. J. Const. L. 781, 790 (2009). That is why “the Constitution prohibits Congress and the Executive Branch from delegating such prosecutorial discretion to private parties, who are subject to no such requirements.” Id.

‘A statute divesting the President of some measure of prosecutorial discretion must “give the Executive Branch sufficient control * * * to ensure that the President is able to perform his constitutionally assigned duties.” *Morrison v. Olson*, 487 U.S. 654, 696 (1988). *Morrison* involved a constitutional challenge to the Ethics in Government Act of 1978, which authorized the appointment of an independent counsel to prosecute high-ranking government officials. See id. at 660-61. In upholding the law, the Court emphasized that the challenged statute included “several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel,” which satisfied the Take Care Clause. Id. For example, the Attorney General could “remove the counsel for ‘good cause,’” controlled the scope of the litigation, and ensured that the prosecution was pursued in the public interest. *Morrison*, 487 U.S. at 696. None of the statutory safeguards identified in *Morrison* are present here. Plaintiffs are subject to no control or oversight by the Executive Branch.’

From the WLF to this commenter’s continued narrative: There is more much more. What we have shown highlights “stakeholders” “partners” of which neither Congress nor the President envisioned the MSPB to usurp – the



United States

Merit Systems Protection Board



Strategic Plan for FY 2022-2026

Draft for Submission to OMB

March 28, 2022

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U.S. Merit Systems Protection Board Strategic Plan FY 2022-2026

....

conduct and support its statutory duties. Many support functions are performed by other Federal agencies through interagency agreements. MSPB has been without any presidentially appointed, Senate-confirmed Board members since March 1, 2019. Since that time, MSPB has continued to operate in accordance with its continuity of operations plan (COOP). **Under the COOP, MSPB's General Counsel serves as the agency's acting chief executive and administrative**

officer in the absence of any Board members. On June 24, 2021, the President nominated Cathy A. Harris to be a member and Chair of the Board and Raymond A. Limon to be a member of the Board with a designation as Vice Chair. On September 13, President Biden nominated Tristan L. Leavitt as the third Board member. The Senate Committee on Homeland Security and Governmental Affairs held a nomination hearing for the three nominees on September 22. On October 6, 2021, the nominees were reported favorably out of committee and the nominations were placed on the Senate calendar. On January 3, 2022, the Senate returned Ms. Harris's nomination to the President, and she was renominated on January 4, 2022. On March 1, 2022, the Senate confirmed the nominations of Mr. Limon and Mr. Leavitt, and on March 4, 2022, they were sworn in as Board members. We hope necessary action will be taken to confirm Ms. Harris in early calendar year 2022.

Revising the Strategic Plan. This SP was developed in accordance with the **Government Performance and Results Act Modernization Act of 2021 (GPRAMA)** and guidance from the Office of Management and Budget (OMB). Prior to updating the SP, MSPB consulted its employees, external stakeholders, and the public to gather their thoughts and perspectives about MSPB and its future plans. From that input, a new draft SP was created which is a somewhat streamlined version of MSPB's prior SP. **This draft was reviewed by MSPB program managers and approved for submission to the OMB in September 2021 by MSPB leadership.** In the fall of 2021, MSPB consulted with Congress on the draft SP. Additional information about changes in this SP in response to stakeholder comments and how it links to other agency planning and reporting documents is contained in Appendix C.

4 March 28, 2022

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U.S. Merit Systems Protection Board Strategic Plan FY 2022-2026

taxpayers by decreasing Governmentwide costs and increasing confidence that the Government is doing its job and appropriately managing the workforce.

MSPB's Customers, Partners, and Stakeholders

MSPB has a range of **customers, partners, and stakeholders beyond the President and Congress** who receive our reports on Federal merit systems studies and on OPM significant actions, and who look to MSPB as a key component of a healthy civil service. Adjudication customers include those who appear before us, such as appellants, their representatives, and agency representatives. **Legal stakeholder** groups include **bar associations**, attorney **associations focused on Federal employment law**, **employee unions**, management associations, veterans and military organizations, and other people and groups interested in our decisions and legal precedents. Customers and stakeholders primarily interested in our merit systems studies and OPM review functions include agency leaders, chief HC officers, human resources (HR) directors, EEO directors, HR and EEO specialists, **academicians**, **good Government groups** (e.g., the **National Academy of Public Administration**, etc.), and **affinity**

groups (e.g., **Federally Employed Women, Blacks in Government, the Society of American Indian Government Employees, etc.**). This also includes other Government and nonprofit organizations that do work similar to MSPB's studies function, such as GAO and the **Partnership for Public Service**.

MSPB partners include those organizations with which it has formal statutory or functional relationships, such as OPM, OSC, EEOC, and the CAFC. In particular, **an MSPB Board member may request an advisory opinion from the OPM Director** concerning the interpretation of any rule, regulation, or other policy directive promulgated by OPM. The OPM Director may request reconsideration of an MSPB decision when the Director determines that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

OSC prosecutes cases before MSPB that involve PPPs and violations of the Hatch Act and can seek corrective action. Further, if MSPB determines there is reason to believe that a current Federal employee may have committed a PPP, it must refer the matter to OSC to investigate and take appropriate action. **MSPB and EEOC each review mixed cases that involve issues concerning both Federal MSPs and anti-discrimination principles as applied to Federal employees.** Usually, MSPB and EEOC agree on the outcome of such cases. However, when the two agencies do not agree, the case is decided by a **Special Panel as established by the CSRA**.

The CAFC hears appeals of final Board decisions in which no issue of discrimination was raised to, or decided by, the Board, or when a discrimination issue was abandoned on judicial review. Whistleblower appeals may be filed with any U.S. Circuit Court of Appeals, and mixed cases may be appealed to Federal district courts or to EEOC.⁴⁹ MSPB applies precedents established by the courts in adjudicating initial appeals and PFRs, although it has not yet comprehensively addressed how it will apply the whistleblower law of the other numbered circuits to the extent it may differ from the CAFC's holdings.

MSPB employees and the MSPB Professional Association, which represents MSPB's nonsupervisory attorneys, are also key stakeholders because they carry out MSPB's work. Federal civilian employees, Federal annuitants and their beneficiaries, applicants for Federal civilian jobs, and selected categories of USPS employees and military service members are also stakeholders. This is because the precedents MSPB sets through adjudication, the findings and recommendations of our studies, and our review of OPM rules, regulations, and significant actions affect how well these

employees are managed and how any potential appeals they may file are processed and decided. Several foreign governments also have used MSPB and the U.S. merit systems as models for

establishing similar agencies and systems in their own countries. Finally, the public is a stakeholder because a successful MSPB helps ensure healthy merit systems and a high-quality workforce able to provide effective and efficient services to the American people.

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March 28, 2022

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U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

www.mspb.gov - [@USMSPB](https://twitter.com/USMSPB) on Twitter

In these various Reports MSPB acknowledges the transition from Twitter to X however, for our purposes I show the following transition via List Serve of MSPB here – it shows that the MSPB has never updated its Strategic Plan – and owes such update to President Trump and his OMB – without that the MSPB has nothing – even the USAID has so acknowledged this to the Biden Administration – here is the list-serve – chronology from Twitter to X

MSPB-DECISIONSLIST-L Archives

MSPB Decisions List

MSPB-DECISIONSLIST-L@LISTSERV.MSPB.GOV

Options: Use Forum View

Use Monospaced Font

Show Text Part by Default

Show All Mail Headers

Message: [<< First] [< Prev] [Next >] [Last >>]

Topic: [<< First] [< Prev] [Next >] [Last >>]

Author: [<< First] [< Prev] [Next >] [Last >>]

Subject:

MSPB Case Report - March 14, 2025

From:

"Bussey, Kateri" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Fri, 14 Mar 2025 20:10:29 +0000

Content-Type:

multipart/alternative

A new Case Report has been published to the public website.

To unsubscribe, please click [LISTSERV](#).

Please follow us on X (Formerly Twitter).

.....

Subject:

MSPB Announces Petition for Review Mediation Appeals Program

From:

"Bussey, Kateri" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Wed, 9 Oct 2024 17:29:41 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (2897 bytes) , text/html (7 kB)

A new Press Release has been published to the public site: MSPB Announces Petition For Review Mediation Appeals Program.

Link not working? Please click here, or copy and paste into your browser:

https://www.mspb.gov/publicaffairs/press_releases/MSPB_Announces_Petition_for_Review_Mediation_Appeals_Program.pdf

FOR IMMEDIATE RELEASE – October 8, 2024

MSPB Announces Petition for Review Mediation Appeals Program

The U.S. Merit Systems Protection Board (MSPB or Board) Mediation Appeals Program (MAP) has provided the services of MSPB's trained and certified mediators as an alternative to the formal initial appeal process for more than 20 years. Building on the success of that alternative dispute resolution (ADR) program, and following a successful pilot program, MSPB has launched a new permanent ADR program that provides mediation services for MSPB cases with a pending petition for review (PFR) before the Board. This new ADR program is called PFR MAP.

PFR MAP is free, easy, and confidential. All parties must agree to its use and submit a completed Agreement to Mediate Form before the case is accepted to PFR MAP, and all must agree on a resolution before any settlement is concluded. Unlike the traditional PFR process, the parties control the result of the case under the skilled guidance of a mediator, who will play no role in deciding the PFR if the parties do not reach a settlement.

MSPB Chairman Cathy Harris stated, "Settlement is always an option at the MSPB. With the passage of time, circumstances may have changed that make settlement more likely. We encourage parties to always consider settlement no matter the stage of the case, as it allows for both sides to control the outcome."

Parties seeking mediation of a pending PFR should submit a completed Agreement to Mediate Form to PFR MAP at [log in to unmask] Parties may also contact the PFR MAP Coordinator at that same email address for more information about the program.

Additional information about MSPB's Mediation Appeals Program is available at <https://www.mspb.gov/appeals/mediationappeals.htm>.

The U.S. Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency whose mission is to protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices.

To unsubscribe, please click [LISTSERV](#).

Please follow us on **X (Formerly Twitter)**.

.....

Subject:

MSPB Case Report - September 22, 2023

From:

"Braun, Paul" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Fri, 22 Sep 2023 19:19:22 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (585 bytes) , text/html (3928 bytes)

A new Case Report has been published to the public website.

To unsubscribe, please click [LISTSERV](#).

Please follow us on **X (formerly Twitter)**.

Subject:

MSPB Case Report - August 18, 2023

From:

"Silveira, Kateri" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Fri, 18 Aug 2023 18:48:56 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (577 bytes) , text/html (2833 bytes)

A new Case Report has been published to the public website.

To unsubscribe, please click [LISTSERV](#).

Please follow us on **Twitter**.

.....

[PrintReply](#)

Subject:

No MSPB Case Report - October 28, 2022

From:

"Silveira, Kateri" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Fri, 28 Oct 2022 14:38:11 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (598 bytes) , text/html (2607 bytes)

There is no new Case Report this week. There are no new Board O&O's, Federal Circuit decisions, (precedential and nonprecedential), or all Circuit Court opinions.

To unsubscribe, please click [LISTSERV](#).

Please follow us on Twitter.

....

Subject:

MSPB Case Report - December 10, 2021

From:

"Silveira, Kateri" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Fri, 10 Dec 2021 16:13:53 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (576 bytes) , text/html (2487 bytes)

A new Case Report has been posted to the public website.

To unsubscribe, please click [LISTSERV](#).

Please follow us on Twitter.

...

Subject:

OPE Vacancy Announcement

From:

"Braun, Paul" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Thu, 2 Dec 2021 23:52:09 +0000

Content-Type:

multipart/related

Parts/Attachments:

text/plain (136 kB) , text/html (13 kB) , image.png (136 kB)

Are you interested in Federal Government systems and the effective and fair management of the Federal workforce? If so, you might want to consider working in the U.S. Merit Systems Protection Board's (MSPB's) Office of Policy and Evaluation (OPE), which researches and analyzes Federal merit system and workforce issues.

We communicate the findings and recommendations of our research to the **President, Congress**, Federal policy-makers and decision-makers, the human resources (HR) community, and other stakeholders to help the Federal Government maintain a strong merit-based civil service that serves the public interest.

MSPB is recruiting a Director for its Office of Policy and Evaluation. The Director is a member of the career Senior Executive Service, stationed at MSPB's headquarters in Washington, DC. The Director leads a **small staff of research psychologists and HR professionals in studying Federal civil service policies and practices**.

The U.S. Merit Systems Protection Board (MSPB) is an independent Federal agency that protects the merit system principles and promotes an effective Federal workforce **free of prohibited personnel practices**. The links below provide further information about MSPB, the studies program, and the Director vacancy.

MSPB mission: www.mspb.gov/about/about.htm

Studies program: www.mspb.gov/studies/index.htm

OPE Director vacancy announcement: <https://www.usajobs.gov/GetJob/ViewDetails/624215100>

Have you heard about us? MSPB is an independent Federal agency that protects Federal merit systems and the rights of individuals within those systems. **We conduct evaluations of the civil service and other merit systems in the Executive Branch and report our findings to the President and Congress.** Those studies and our previous newsletters can be found at <https://www.mspb.gov/studies>.

The MSPB Site has been updated.

Subject:

MSPB Case Report - July 16, 2021 - Current Link

From:

"Silveira, Kateri" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Mon, 19 Jul 2021 15:42:56 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (741 bytes) , text/html (3317 bytes)

The Case Report from July 16, 2021 can be located here.

The previously published Case Reports are also available.

To unsubscribe, please click [LISTSERV](#).

Please follow us on [Twitter](#).

Subject:

MSPB Case Report - June 21, 2021

From:

"Braun, Paul" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Mon, 21 Jun 2021 14:17:31 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (598 bytes) , text/html (10 kB)

A new Case Report has been posted to the public website.

To unsubscribe, please click [LISTSERV](#).

Please follow us on [Twitter](#).

Subject:

"Notification: MSPB is conducting a strategic planning process"

From:

"Braun, Paul" <[log in to unmask]>

Reply To:

Merit Systems Protection Board <[log in to unmask]>

Date:

Fri, 11 Jun 2021 16:13:06 +0000

Content-Type:

multipart/alternative

Parts/Attachments:

text/plain (859 bytes) , text/html (3483 bytes)

"The Merit Systems Protection Board (MSPB) is seeking **input from its stakeholders to inform its strategic planning process and preparation for its strategic plan for FY 2022-2026.**

MSPB's stakeholders, including subscribers to our listservs, have important perspectives about the agency and its mission, objectives, goals, and operations. **We hope you will consider providing your input as we plan for the future.**

For more information, please visit the Plans and Reports page on the MSPB website at <https://www.mspb.gov/publicaffairs/annual.htm>.

Thank you in advance for providing your perspective!"

#####

To unsubscribe from the MSPB-DECISIONSLIST-L list:

write to: [mailto:\[log in to unmask\]](mailto:[log in to unmask])

or click the following link:

<https://LISTSERV.MSPB.GOV/scripts/wa-MSPB.exe?SUBED1=MSPB-DECISIONSLIST-L&A=1>

From this commenter's vantage – why “FEW” – this commenter's view – why any Private Organization? Why not the *Heritage Foundation*? This comes in contrast to 1980. Witness:

MSPB Report on Significant Actions of Office of Personnel Management During 1980. p 2
the following organizations were contacted either by letter or interview in order to elicit their opinions on the topics covered in this report

American Enterprise Institute for Public Policy Research

American Federation of Government Employees

American Society for Public Administration

Blacks in Government

The Brookings Institute

FED 42

Federal Executive Alumnae Association

Federal Managers Association

Federally Employed Women

Government Accountability Project

The Heritage Foundation

International Personnel Management Association

National Academy of Public Administration

National Association of Government Employees

National Federation of Federal Employees

National IMAGE, Inc.

National Organization for Women

National Treasury Employees Union

Senior Executive Association

MSPB Annual Report for the Fiscal Year 1980 Submitted to the President and the Congress of the United States)

In closing in the matter of tweets

historic absences.

The board hasn't had a quorum for more than four-and-a-half years, and it hasn't had any members at all since March 2019.

But the nominees still face a long and arduous Senate confirmation process — one that's failed previous board nominees and prolonged historic absences at the agency in the past.

<https://federalnewsnetwork.com/workforce/2021/09/after-years-of-historic-absences-bidens-mspb-nominees-face-their-first-test/>

After years of historic absences, Biden's MSPB nominees face their first test

Nicole Ogrysko@nogryskoWFED

September 22, 2021 10:42 am

Federal employees, whistleblowers and advocacy groups have anxiously awaited the restoration of a quorum at the Merit Systems Protection Board, viewing President Biden's three nominees as perhaps their best shot in achieving a goal that's been elusive for nearly five years.

The nominees — Cathy Harris, Raymond Limon and Tristan Leavitt — faced their first test Wednesday morning in front of the Senate Homeland Security and Governmental Affairs Committee.

The committee's top two leaders praised the nominees for their experience, and they lamented the board's

“Prolonged vacancies on the board slow the administration of justice, and, for years, vacancies on the MSPB have prevented federal employees from obtaining relief from prohibited personnel practices,” Senate committee Chairman Gary Peters (D-Mich.) said Wednesday morning at the nominees' confirmation hearing. “If the three nominees before us today are confirmed, the MSPB will have a quorum for the first time in nearly five years, a crucial step towards preserving the rights of federal employees and protecting whistleblowers from retaliation.”

Cathy Harris is a long-time federal employment attorney. Raymond Limon is the chief human capital officer for the Interior Department with federal HR experience at the State Department and Office of Personnel Management.

And Tristan Leavitt is general counsel for the MSPB, where he's also served as the agency's acting chief executive for the last several years while the board hasn't had any members. In introducing Leavitt to the committee, Sen. Chuck Grassley (R-Iowa) called his former staffer the “perfect choice” for the job.

Wednesday's nomination hearing, of course, is just the first step.

The same Senate committee met more than three years ago to consider MSPB nominees from former President Trump. One nominee eventually took his name out of the running, and Trump nominated another candidate the following year.

But none of Trump's nominees made it through the Senate confirmation process, frustrating whistleblower advocates and federal employee groups.

The MSPB is one of several agencies designed to uphold and safeguard merit system principles inside the federal workforce. Without a fully functioning board, federal employees lose sight of the institutions that are supposed to protect them, Limon, the president's pick for MSPB vice chairman, said.

"Yes, there are wonderful employees currently working very hard at MSPB," he said. "Not having the quorum and not having that leadership, people are going to think we're not at full strength. And truth be told, it's not at full strength."

Nominees describe possible strategies for reducing MSPB backlog

A backlog of pending cases has built since January 2017, when the MSPB lost its quorum. There are currently 3,421 petitions for review awaiting action from confirmed members, according to the board's most recent data.

To address the backlog, Harris said she would first meet with MSPB staff who have their own ideas and potential strategies for tackling the workload. Then she and the board members would agree to a "triage strategy."

The board may, for example, tackle the oldest cases first. They could prioritize whistleblower retaliation cases, or cases involving terminations or stay requests that the Office of Special Counsel couldn't bring to the board, Harris said.

She also recommended the MSPB resume the practice of issuing short form decisions.

"The short form decision is similar to when a federal court, the appeals court, affirms, denies or remands the underlying decision without a lengthy explanation of the reasons for the decision," Harris said. "There are many cases for which that would be perfectly appropriate, for example, if they're clearly untimely or there's a lack of jurisdiction, or the administrative judge's opinion is really well-reasoned or well-stated and there's nothing more to add."

Both Leavitt and Limon agreed with the approaches Harris described. Historically, the board members haven't spent much time discussing the cases amongst themselves, Leavitt added. He

also sees an opportunity for the nominees to embrace that practice and possibly save time through the course of their discussions.

“Fundamentally in the past the board has decided about 1,000 cases a year, but that’s all there were to decide,” Leavitt said. “It’s really not entirely clear what a sustainable pace will be. But no matter what it is, just putting in the work and working our hardest, putting in the time, will really make a difference.”

Sen. Rob Portman (R-Ohio), the committee’s ranking member, described the MSPB as a “really important” agency.

“We obviously need a quorum, and we need to move forward with these cases that have been languishing for years,” he said.

In a letter to Senate committee leadership, the Make It Safe Coalition Steering Committee, a group that includes the Government Accountability Project and Project on Government Oversight, among others, encouraged members to expeditiously advance Biden’s nominees.

“The destructive impact on the merit system is unprecedented and the board, in its own words, ‘faces its most dire crisis since it was established by the Civil Reform Act of 1978,’” the coalition wrote. “Concerns are inherent for any nominee, and the advice and consent process requires scrutiny and policy commitments. However, each of these MSPB nominees has a track record of responsible, effective public service from diverse public and private perspectives.”

How quickly that might happen, if at all, is still an open question.

At least two committee members zeroed in on past social media posts from Harris, the president’s pick to serve as MSPB chairman. Portman and Sen. Josh Hawley (R-Mo.) flagged a few of her tweets and retweets, which they described as hostile toward Republicans.

The posts covered Trump’s Supreme Court nominees and the previous administration’s decision to ban certain kinds of diversity and inclusion training, topics that have doomed or delayed nominees in the Senate confirmation process in the past.

“In light of those partisan statements and the approach that you have taken in the past, I’d like to know how can people in the federal system feel comfortable that they’re going to be fairly heard and fairly treated?” Portman said.

As a trained adjudicator, Harris said puts her personal opinions aside and focuses on the law at hand.

“I’ve represented Democrats, Republicans and people who I have no idea what their party is. I’ve represented federal agencies under, I think, every administration for the past 20 years,” she said. “[With] my personal opinions, I’m very well-practiced at putting them aside and advocating for my clients in the most zealous manner that I can for their benefit. If you asked my clients, the MSPB administrative judges before whom I’m practiced, federal court judges and my opposing counsel, they would tell you I’m fair, objective and I do my best.”

Harris said she regretted the tweets and retweets and vowed to put her personal opinions aside on the job.

“I’ve learned a valuable lesson about retweeting others who have used words that I wouldn’t have personally chosen, and I think I’m never going to retweet anyone ever again,” she said. “I certainly want to do better going forward, and I will do better going forward. I probably will never use Twitter again, anyway.”



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Administration
Office of Equal Employment
Opportunity, Diversity and Inclusion
EEO Service Center
Washington, DC 20201

LETTER OF DISMISSAL MIXED CASE|

February 6, 2024

....

HHS-OS-0582-2023

3

Therefore..... will not be investigated.

Statement of Appeal Rights

Certain employment actions may be the subject of a discrimination complaint under 29 C.F.R. §1614 and may also be appealed to the Merit Systems Protection Board (MSPB).

These claims are considered mixed-case complaints. Because your complaint alleges

...../..... federal employment, it is a “**mixed-case**” complaint, and

appealable to the **MSPB**.

Should you elect to file an appeal with the MSPB in connection with this matter, the request must be transmitted to:

Merit Systems Protection Board
Washington, DC Regional Office
1901 S. Bell Street, Suite 950
Arlington, Virginia 22202
<https://e-appeal.mspb.gov/>

If dissatisfied with MSPB’s decision on the appeal of the Agency’s final decision, you may petition the EEOC to review/re-consider the decision.

.....

If you have any questions regarding the above, please contact Daisy Christophe Complaints Branch Chief, at Daisy.Christopher@hhs.gov or (202) 240-3149.

That was well over a year ago – Feb 2024– but the long essence of liberty – civil liberty:

In *Marbury v. Madison*, 1 Cranch 137, 163 (1803), a case itself involving review of executive action, Chief Justice Marshall insisted that “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws.” Later, in the lesser known but

nonetheless important case of *United States v. Nourse*, 9 Pet. 8, 28-29 (1835), the Chief Justice noted the traditional observance of this right and laid the foundation for the modern presumption of judicial review:

"It would excite some surprise if, in a government of laws and of principle, furnished with a department whose appropriate duty it is to decide questions of right, not only between individuals, but between the government and individuals; a ministerial officer might, at his discretion, issue this powerful process . . . leaving to the debtor no remedy, no appeal to the laws of his country, if he should believe the claim to be unjust. But this anomaly does not exist; this imputation cannot be cast on the legislature of the United States."

In the interim what has the Justice Department come to grasp? –

RE *Manis v. USDA*, No. 24-1367 February 11, 2025

U.S. Department of Justice
Civil Division
Tel: 202-514-4052
February 11, 2025

Nwamaka Anowi

United States Court of Appeals for the Fourth Circuit

1100 East Main Street, Suite 501

Richmond, VA 23219

RE: *Manis v. USDA*, No. 24-1367 (argued December 10, 2024)

Dear Ms. Anowi,

We file this letter to notify the Court that the Acting Solicitor General

has decided that the multiple layers of removal restrictions for administrative law judges in 5 U.S.C. § 7521 do not comport with the separation of powers and Article II and that the United States will no longer defend them in litigation. Accordingly, the government will not continue to press its merits defense of § 7521 in this appeal. See Answering Br. 24-27.

The government maintains that this Court should affirm the denial of a preliminary injunction. We continue to argue that plaintiff's removal claim fails at the threshold because plaintiff cannot show "that the unconstitutional removal provision itself inflicted harm." Answering Br. 24 (quoting *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 149 (4th Cir. 2023)). And as we explained at oral argument, this Court may affirm the district court without reaching the merits of any of plaintiff's claims because he has failed to satisfy the irreparable harm requirement for preliminary injunctive relief. See *id.* at 31-34; *Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1333-34 (D.C. Cir. 2024).

Sincerely,

/s/ Graham W. White
Graham W. White
U.S. Department of Justice
Appellate Staff, Civil Division

cc: all counsel (via e-mail)

Here we have come with a new Attorney General Department of Justice for that matter a New FBI, a Secret Service, and new head of and another – this time a committed to making healthy – Secretary of Health and Human Services with President Trump recent calling to the attention of As Chief Executive he is the Nation's chief prosecutor. As on file with the board (see MSPB

FOIA electronic reading room), this undersigned recognized President Trump in the course of his first term - for what he is the *Chief Magistrate of the United States*. Also, within that MSPB E-FOIA reading room – is a *Reese v Department of Navy Brief* – wherein the present commentator wrote of the “interest of amicus” – documenting his mailings to (yes the Washington Regional Office – though – that- per Ms. Christopher’s advice) as well mailings to the MSPB HQ office and mailings to such offices taking objections to the “decision-makers on basis of Appointment’s Clause – and Structural concerns (including dismissal on basis of a never received Counselors report? - - more shades of FAR violations – inherently governmental functions. What is critical here is that from a read the decision the Board read the present commenter’s brief – to date though no-one from MSPB – whether – board member or employee has yet to recognize such mailings – in keeping with how impolite – if not rude (more of that shall be seen with respect to the Board’s treatment President Trump’s triumphant OPM and new Dept of Homeland Security head – in the wake of the fired head of Coast Guard – is invited to do a look into the Coast Guard Docketing Center – your commenter can ably provide a tour:

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

2025 MSPB 1

Docket No. DC-1221-21-0203-W-1

Mary Reese,

Appellant,

v.

Department of the Navy,

Agency.

January 31, 2025

Richard R. Renner, Esquire, Raleigh, North Carolina, for the appellant.

Kristin Roberts, Esquire, and Michael S. Causey, Esquire,
Washington, D.C., for the agency.

Andres M. Grajales, Esquire, Washington, D.C., for amicus curiae,
the American Federation of Government Employees.

Debra D'Agostino, Esquire, Washington, D.C., and Rosa M. Koppel,
Esquire, McLean, Virginia, for amicus curiae, the National Employment
Lawyers Association and the Metropolitan Washington Employment
Lawyers Association.

Julie D. Yeagle, Esquire, and Gregory Giaccio, Esquire, Washington, D.C.,
for amicus curiae, the Office of Special Counsel.

Martin Akerman, Arlington, Virginia, pro se, amicus curiae.

Pere Jarboe, Annapolis, Maryland, pro se, amicus curiae.

BEFORE

Cathy A. Harris, Chairman*
Raymond A. Limon, Vice Chairman
Henry J. Kerner, Member**

I add that it is the Office of Personnel Management that is the Agency charged with the determination of personnel regulations, as well as the Chief Magistrate of the United States who oversees it all in obligation to “take care” that the laws are executed. Yet the MSPB has recently

written “information papers” to the public on matters such as furlough, Riffs and the like.

Congress however, has delegated such authorities to Office of Personnel Management and the President – the Chief Magistrate of the United States. What we see may be akin to what CMS (that was Centers for Medicare and Medicaid Services) was exposed) –

“Courts routinely hold that rules like the CMS Bulletin exceed the agency's congressionally delegated authority—e.g.: ... So too here. CMS “may not rewrite clear statutory terms to suit its own sense of how the statute should operate.” *In re Benjamin*, 932 F.3d 293, 300 (5th Cir. 2019); accord Docket No. 10, Ex. 3 (2019 email from CMS representative confirming the agency “do[es] not particularly like” private arrangements among providers)..

Texas v. Chiquita Brooks-LaSure, et. al 2023 WL 4304749 D.C. Eastern Div Texas, Tyler Div (June 30, 2023).

Only the Secretary for Health and Human Services has delegated authority to regulate Robert F. Kennedy, Jr.'s Judges. The words of the statute are clear – it goes no further. Not only did CMS in pos-hoc fashion (wholly ignorant of *Georgetown University v Bowen v. Georgetown University Hospital* 488 U.S. 204 (1988).

CMS attempted to explain the MMA Dec 8, 2003 – but in doing so expanded the Department of Health and Human Services – into “DHHS” (the Department of Homeland Security) which was created in 2002.

11420 Federal Register / Vol. 70, No. 44 / Tuesday, March 8, 2005 / Rules and Regulations

Section 931 of the MMA requires transfer of the functions of administrative law judges (ALJs) responsible for hearing appeals under title XVIII of the Act (and related provisions of title XI of the Act) from the Commissioner of SSA to the Secretary of the Department of Health and Human Services (DHHS). These ALJs are required to be organizationally and functionally independent from CMS and must report to and fall under the general supervision of the Secretary of DHHS... –

As such CMS attempted to water down the Congressionally - established relationship between the Secretary's Judges and their Secretary Robert F. Kennedy, Jr.