

Silver  
Anniversary  
Edition  
Summer 2004

# ISSUES OF MERIT

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the U.S. Merit Systems  
Protection Board,  
Office of Policy  
and Evaluation

## WHAT'S INSIDE

Bane of "Rule of Three"  
Page 3

Health of the Civil Service  
Page 4

Taking Steps to Prevent  
Sexual Harassment  
Page 5

Lessons Learned on  
Poor Performers  
Page 6

OPM's Achievements,  
Challenges  
Page 6

Vacancy Announcements  
Page 8

From Intern to Fellow  
Page 9

Halting Discrimination  
Page 10

Whistleblower Fears  
Page 10

Federal Personnel Offices:  
Change Still Needed  
Page 11

## MESSAGE FROM THE CHAIRMAN

In this time of change, it is important to reflect on past successes. This historical perspective on the Merit System Protection Board's (MSPB) accomplishments commemorates 25 years of service to the Federal workforce. I invite you to reflect with me as you peruse this Silver Anniversary edition of *Issues of Merit*.

In addition to assuming the employee appeals function from the Civil Service Commission 25 years ago, MSPB was also given the new responsibilities of performing merit systems studies and reviewing the significant actions of the Office of Personnel Management (OPM). Since that time,

MSPB has been working diligently to preserve merit in the Federal workplace.

I recently accepted the challenge of leading MSPB through this time of great change in the human capital environment. As you read on, I think you will see the importance of the work we do in sustaining merit. You will also see the challenges we continue to face. I am proud of the work our staff has done over the past quarter century and look forward to continuing this legacy into the future.

Neil A. G. McPhie  
Acting Chairman

## DIRECTOR'S PERSPECTIVE Celebrating 25 Years

Welcome to the celebration of 25 years of MSPB. It has been a quarter of a century since MSPB became the successor organization to the Civil Service Commission through the Civil Service Reform Act (CSRA). Our sister agency, OPM, also celebrates this same date as the anniversary of its birth, as do the Federal Labor Relations Authority and the Office of Special Counsel. The CSRA, signed into law by President Carter, has had a significant effect on

the American public service. This edition of *Issues of Merit* is dedicated to looking back at this 25-year history and tying this backward glance to today's related issues.

I enjoyed looking back with pride at the items we have highlighted in this issue from past MSPB studies that document our influence. The Congress created MSPB to accomplish a single mission through a dual role. The single mission – as reflected in our name – is

*continued, page 2*

## ISSUES OF MERIT

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***Our Mission***

The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

***Issues of Merit***

We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

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# Retrospective on Accomplishments

*(continued from page 1)*

to protect Federal merit systems overall, the merit principles in particular, and to exercise specific corrective authorities in instances involving prohibited personnel practices. Our dual role is to carry out this mission by adjudicating disputes over specific personnel actions and by conducting studies, analyzing data and reporting to the President and to the Congress – influencing both the Executive and Legislative branches.

The outcomes for our agency are not easily measured within a fiscal year when the mission is specifically designed to take a long term approach to help guide, improve and influence the direction of the civil service.

However, in looking through this issue, it is clear that our government-wide studies have been successful in assessing the health of Federal merit systems and influencing the discussion about how to protect merit and improve the civil service.

Consistent with recommendations we have made over the past 25 years, many improvements are taking place. For instance, the Congress and OPM have made category rating available to all agencies. The Presidential Management Fellows program is being expanded to improve its ability to recruit, select, and develop outstanding Federal leaders. Additionally, OPM is working with agencies to improve the way the government markets itself and its job opportunities to the public. These advances were achieved through a collaborative partnership among Federal agencies, OPM, and stakeholders. We believe that our research has helped shape those results as well.

It is also clear, though, that there is still room for improvement. For example, there are still challenges in dealing with poor performers and strategically changing the way that personnel offices do business. Although there is more attention being devoted to the issue of sexual harassment and a greater awareness of the issue, the number of employees who feel they have been sexually harassed has remained unchanged over time. And employees continue to fear inaction and retaliation in response to whistleblowing. As part of our statutory responsibility, MSPB will continue to draw attention to these issues and identify ways in which agencies, and the government as a whole, can solve these enduring problems.

The MSPB role is also to evaluate the effectiveness of OPM policies over time, and the articles in this issue show that often our recommendations have manifested themselves in improved policies and guidance by OPM. Our research shows that in its 25-year history, OPM has faced and met many challenges.

OPM was created to better address the need for a central personnel agency to act for the Chief Executive and to align personnel systems with the strategic direction of the Administration. The fact that this change can result in a large improvement in responsiveness can be clearly seen in the current Administration. The OPM Director is integrally involved in achieving the President's Management Agenda. The number one item on the President's Management Agenda is Human Capital Management, and this

*continued, page 3*

# Merit-Based Hiring Undercut, Rather than Upheld, by Antiquated “Rule of Three”

*Category rating, a far better alternative, is finally available to agencies*

In December 1995, the Board released a report, “The Rule of Three in Federal Hiring: Boon or Bane?” questioning the need for the rule of three. Originating in the 1870s during the Grant administration, the rule of three required managers to select their new hires from the top three available candidates referred to them.

Our study found that the rule of three undermined, rather than supported, merit-based hiring. Thus, we advocated the elimination of the antiquated rule, and instead encouraged selection from among as large a number of well-qualified candidates as is reasonable and feasible. We also supported retaining “three” as the minimum number of candidates below which managers should be able to request referral of additional candidates.

We specifically expressed support for replacing the rule of three with category rating, which replaces individual numerical scores with two or more broad categories. At the time of our study, parts of the Department of Agriculture were using this alternate assessment system under a demonstration project. Demonstration project evaluations and our own study analysis found that this alternative to numerically scoring applicants worked well. We also found that category rating led to hiring people eligible for veterans’ preference at about the same rate that they were hired through case

examining procedures. In addition, a higher proportion of veterans were hired through category rating than from certificates prepared from standing registers using the rule of three.

MSPB was one of several organizations planting the seeds for changes to the rule of three in 1995. Other advocates for change included GAO and the National Advisory Council on the Public Service. OPM even drafted proposed legislation. However, it was not until January 2003, when the Homeland Security Act of 2002 became effective, that all agencies were given this flexibility. A provision of that Act allows all Federal agencies to develop and implement a category rating system as an alternative to numerical scores and applying the rule of three. To ensure that managers get real choices, the law also allows a manager with fewer than three candidates in the top category to select from a merged category made up of the highest and second highest categories.

We don’t know yet how many organizations have taken advantage of this assessment option, but we expect that most eventually will. When they do we’ll see an end to artificial devices such as random numbers to identify the “top three” candidates when there are many tied scores, and managers often will be able to select from a larger group of equally qualified applicants. ♦

## ***Looking Forward***

*(continued from page 2)*

agenda is successfully affecting operations in most of the major Departments and agencies. OPM still faces many future challenges, but today we remember the progress it has made.

As we commemorate MSPB’s 25<sup>th</sup> anniversary, we celebrate our agency’s contributions to the human capital policy arena and are proud to share with you some highlights of our work. We also recognize that we are only one piece of the system of checks and balances that has been established to ensure that the American public is well served by its civil service. Therefore, as we look

toward the future, we look forward to a continued collaboration with other agencies, such as OPM and the Government Accountability Office, that has worked well to protect the culture of merit in the Federal Government over the past 25 years.

*Steve Nelson*  
Director, Policy and Evaluation

# MSPB Merit Principles Surveys: Checking the Health of Federal Civil Service

One of MSPB’s important missions is to monitor the “health” of our Federal civil service and to ensure that the American public is served by a workforce that is both free from prohibited personnel practices and governed by merit principles.

One tool that helps MSPB to carry out this responsibility is the Merit Principles Survey (MPS). Since the first MPS in 1983, this “thermometer” of the civil service has given us insights into the perceptions of the workforce and issues that need to be addressed.

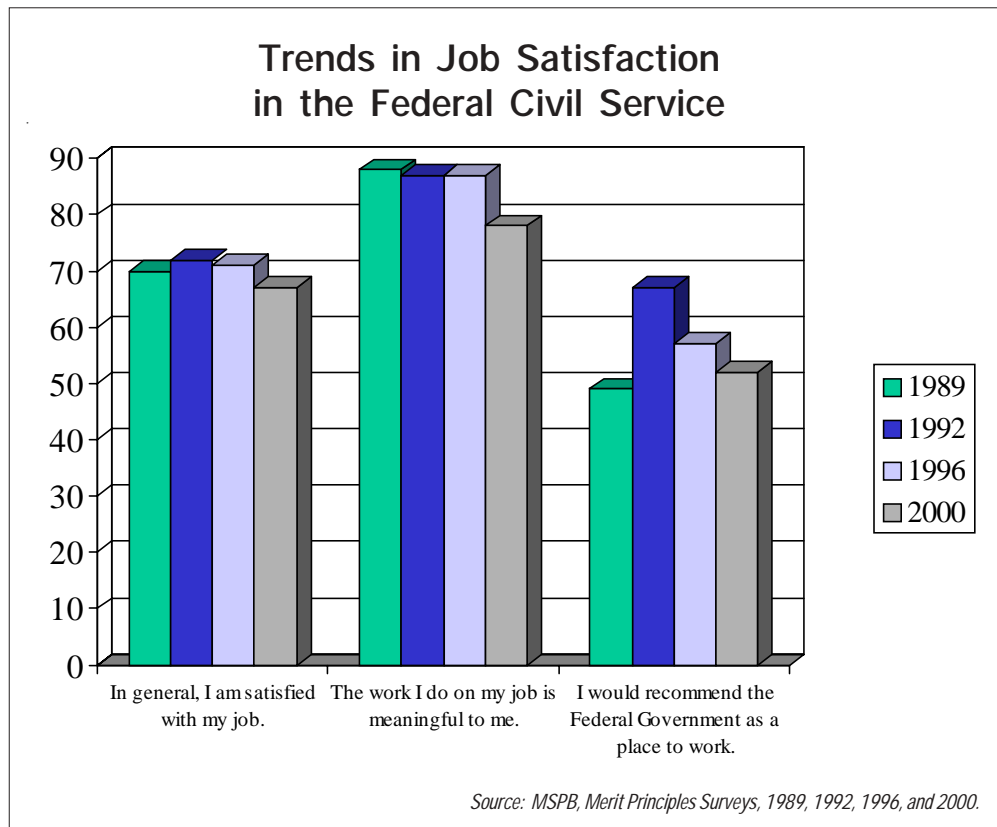
MSPB has administered six of the surveys: in 1983, 1986, 1989, 1992, 1996, and 2000. Each MPS was distributed governmentwide to large random samples of employees and each asked questions related to prohibited personnel practices, fair treatment, supervision, productivity, and other related workforce management issues.

While the core issues tended to remain the same, each survey also included questions related to issues of particular importance at the time. For example, merit pay was a major focus of the 1983 survey, the 1986 survey examined job satisfaction, the 1992 survey revisited earlier studies of whistleblowing, and the 2000 survey examined the effects of downsizing in the 1990s and the reasons employees stay or leave Federal service.

While selected questions have highlighted specific issues to be addressed over the years, some perceptions have remained quite stable over time, even though there can be substantial subgroup or agency differences. Generally, less than 5 percent of employees perceived

unlawful partisan political pressures, nepotism in hiring, or denials of jobs because of disability, marital status, or religion.

Perceptions of retaliation range from 5 to 10 percent, while perceived job denials based on RNO, sex, and age range from 10 to 15 percent of survey respondents. Around 60 percent are satisfied with their supervisor, and about 70 percent report general satisfaction with their job.



(See the table above for a closer look at trends in job satisfaction measures, drawn from surveys in 1989, 1992, 1996 and 2000.)

Overall, the governmentwide results provide benchmarks against which managers can compare their views and compare themselves to other organizations. Inevitably, the survey findings flag critical problem areas that need to be addressed and other areas where we can do better, but generally, some two-thirds of the indicators tend to be positive. To understand more about the current health of the Federal civil service, MSPB plans to issue another MPS in the near future. ♦

# Sexual Harassment in the Federal Workforce

## *Problems Persist Despite Increased Awareness*

At the request of Congress, MSPB conducted a landmark study of sexual harassment in the Federal workplace in 1980, with follow up studies in 1987 and 1995. In the first survey, an alarming 42% of women and 15% of men reported that they had experienced some form of unwanted sexual attention during the preceding two years. Perhaps even more surprisingly, these numbers remained consistent over the subsequent fifteen years. Given the extensive efforts within the Federal Government to address this issue, it is a bit discouraging that so many employees still experience harassment.

Although the incidence rate for sexual harassment has remained constant, it is quite probable the nature of what is considered harassment has changed. To combat sexual harassment, many Federal agencies have implemented widespread training for supervisors and employees (although they haven't necessarily evaluated the effectiveness of these efforts in preventing sexual harassment). Most have also publicized policies prohibiting sexual harassment and informed employees regarding how to report harassment. As a result, the continued high levels of sexual harassment may reflect that more incidents are now viewed as harassment due to greater awareness of what constitutes sexual harassment and more confidence that these complaints will be handled properly, rather than the more discouraging conclusion that the same level of sexual harassment persists in the workplace.

Another finding from the studies was that Federal employees didn't yet share a common definition of sexual harassment. Responses to the MSPB surveys revealed that a majority of men and women viewed uninvited behaviors, such as pressure for sexual favors, deliberate touching, suggestive calls and letters, pressure for dates, suggestive looks, and sexual teasing, jokes and remarks to be sexual harassment. However, the results also indicated a gender gap because women

were more likely than men to view some of these behaviors as off-limits in the workplace.

Training and policies are essential steps in the right direction. But Federal agencies can and should do more to combat sexual harassment. First, agencies need to understand the extent and nature of sexual harassment in their organizations to help identify where to focus their efforts and to select the appropriate remedies. Second, agencies need to implement the most effective strategies to prevent sexual harassment. Training should raise awareness about sexual harassment by supervisors and coworkers, while encouraging employees to consider direct actions, such as confronting harassers and telling them to stop. Agencies also need to continue publicizing policies and penalties. In fact, the 2002 Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR) Act requires agencies to make employees aware of discrimination laws and to summarize complaint statistics on their websites. Finally, managers and supervisors must be firm and consistent with these penalties for proven harassers, regardless of rank or position.

Although eradicating sexual harassment in the Federal workforce requires an investment of resources, it greatly outweighs the potential costs to the morale and productivity of Federal agencies and their employees. Progress has been made, but more remains to be accomplished to achieve a workplace that maintains the high level of ethical behavior required of all Federal employees. ♦

### **What is Sexual Harassment?**

EEOC's guidelines (29 C.F.R. Part 1604.11) define sexual harassment as "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature...when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

# Lessons Learned on Removing Poor Performers

A primary goal of the Civil Service Reform Act (CSRA) was to enable Federal managers to remove poor performers. It is clear, 25 years after the CSRA, that this goal has not been fully achieved: Federal employees do not believe that their supervisors deal effectively with poor performance; the procedures established by CSRA for correcting poor performance are little-used; and current personnel reform initiatives – notably those in the Departments of Homeland Security and Defense – emphasize the need to strengthen employee accountability for both performance and conduct. In this article, we outline “lessons learned” from over 20 years of MSPB research on this topic.

*Poor performers are relatively rare but highly harmful.* MSPB estimates that less than four percent of Federal employees are truly poor performers. Yet such employees materially reduce organizational productivity. In our 2000 Merit Principles Survey, employees who indicated that their work unit had one or more poor performers were only half as likely to rate their work unit as highly productive as employees whose work units had no such employees. Also, poor performers – especially if

tolerated by management – can make their coworkers resentful and less inclined to “go the extra mile.”

*The most prominent barriers to dealing with poor performance are based in organizational culture, not in procedures.* In our 2000 Merit Principles Survey, supervisors who reported difficulty in dealing with a poor performer cited organizational culture factors as a problem more often than they cited procedural factors. For example, 63% percent of supervisors cited a lack of confidence in the agency’s performance management process, and 60% percent cited a lack of support from higher level management – more than cited concerns such as subjectivity of performance standards (31%) or a lack of training (35%).

*A long-term view is necessary.* Supervisors report that removing a poor performer entails significant short-term pain, which may include delivering bad news to an unreceptive or hostile employee; documenting and defending an adverse action; lost productivity; and the job stress associated with affecting someone’s livelihood. So it’s particularly important that agency supervisors and

*continued, page 7*

## MSPB Reports on OPM’s Achievements and Challenges

The Office of Personnel Management was established by the Civil Service Reform Act (CSRA) of 1978 to provide the Federal civil service system with leadership, guidance and oversight. MSPB was also created by the CSRA and given the responsibility to review and report on the significant actions of OPM. MSPB’s formal studies of OPM have included two summary reports that examine OPM’s impact.

The first report, “U.S. Office of Personnel Management and the Merit System: A Retrospective Assessment,” was published in 1989 and reviewed the first ten years of OPM’s significant actions. MSPB praised OPM’s work with agencies to delegate personnel examining authorities. The report also noted that OPM had renewed its emphasis of this responsibility after retreating from it for some years. However, MSPB expressed concern that merit principles were not adequately protected in OPM’s delegation of Schedule B excepted service hiring authority.

OPM also indirectly “delegated” responsibility to agencies for assuring that their hiring procedures were

free of prohibited personnel practices. OPM’s oversight efforts during these years seemed narrowly focused on agency use of specific authorities. MSPB did not find OPM oversight effective in identifying and addressing systemic problems in the larger body of personnel regulations and procedures.

MSPB’s second report, “The U.S. Office of Personnel Management in Retrospect: Achievements and Challenges After Two Decades,” was published in 2001 and highlighted OPM’s continued successes in delegating personnel authorities to agencies, and recognized new achievements in encouraging diversity and family-friendly workplace flexibilities. MSPB was pleased to note OPM’s progress in strengthening oversight of agency HR practices. Nevertheless, the second report also expressed concerns about OPM’s leadership in creating effective staffing and compensation systems. OPM’s new director expressed appreciation for this report, echoing MSPB’s praise for the “wealth of experience, professionalism, and wisdom” of OPM’s career civil servants. ♦

# Understanding the Problem of Poor Performers

(continued from page 6)

leaders emphasize long-term considerations of morale and productivity when making decisions concerning a poor performer. Otherwise, it is very tempting to ignore or “work around” the poor performance, at significant cost to organizational effectiveness.

*Two tracks may be one too many.* CSRA created separate procedures for adverse actions based on poor performance (“Chapter 43”) and adverse actions based on conduct (“Chapter 75”). The accompanying table outlines the most important differences between these two procedures. CSRA’s goal was to make it easier for Federal supervisors to improve or remove a poor performer. Yet Chapter 43 procedures are little-used and may confuse supervisors more than they help them. For this reason, in our 1995 issue paper “Removing Poor Performers in the Federal Service,” we stated that “it is time to ask whether the Chapter 43 provisions that were intended to simplify matters have themselves proven so complex that they are now a part of the removal system’s problems.”

*Removing a poor performer is not a “do it yourself” job.* Supervisors will be reluctant to attempt to remove a poor performer when they receive unclear or contradictory advice. Supportive leaders and simplified procedures can do much to “empower” supervisors to deal with poor performers. Nevertheless, the supervisors cannot be expected to document and defend a removal for poor performance entirely on their own. The legal requirements and potential ramifications of such an action are simply too complex. Assistance from competent HR professionals and legal counsel remain essential, for both technical and moral support.

*Removing a poor performer is possible.* The challenges and barriers discussed above should not overshadow the fact that agencies can and do remove poor performers. And data shows that such actions usually succeed. In our 1999 report “Federal Supervisors

## An Overview of Title 5’s “Dual Track” for Dealing with Poor Performers

### Chapter 43

#### Actions covered

Chapter 43 covers actions based on unacceptable performance.

#### Showing “nexus”

The agency does not have to show “nexus” – that its action will promote the efficiency of the service.

#### Standard of evidence

The standard of evidence is “substantial” – the agency’s case must be plausible.

#### Mitigation

MSPB may not mitigate the penalty.

### Chapter 75

#### Actions covered

Chapter 75 covers actions taken to promote the “efficiency of the service.” Such actions are usually based on misconduct, but can also be based on poor performance.

#### Showing “nexus”

The agency must show nexus.

#### Standard of evidence

The standard of evidence is “preponderant” – the agency’s case must be supported by the balance of the evidence.

#### Mitigation

MSPB may mitigate the penalty.

and Poor Performers,” we noted that “most employees whose removal or demotion is proposed do not challenge management’s action and do not appeal to the MSPB, the EEOC, or other third parties.” Those who do appeal to the MSPB are unlikely to succeed: over the years, MSPB has sustained agencies’ actions much more often than it has reversed them.

*The Future.* Changes are coming. The Department of Homeland Security has proposed significant changes to adverse action processes, including the elimination of the “dual track.” Similar changes are likely to appear in the Department of Defense’s new personnel system. Time will tell whether these changes make it easier to address poor performance. However, one thing is already clear: that changes to rules and regulations are, at best, only one piece of the puzzle. Leadership support, determination, and evenhandedness are also essential pieces of the puzzle – and ones that cannot be created by legislation alone. ♦

# Federal Vacancy Announcements: *Help Needed*

Our April 2003 report on the quality of Federal vacancy announcements was timely: the aging of the Federal workforce and the retirements that will follow mean that the Federal Government will need to issue quite a few of them in the near future. Our review of Federal vacancy announcements, however, suggests that agencies aren't quite ready to wage a successful war for talent.

The Board found much room for improvement in Federal vacancy announcements. Most were poorly written; few attempted to "sell" the government, the agency, or the job being announced. Many announcements were so bureaucratic and obscure that they were more likely to repel applicants than to attract

them. This does not bode well for agencies' quests for talent, because vacancy announcements are the main source, and often the only source, of public information on Federal employment opportunities.

However, our research revealed that the poor quality of Federal vacancy announcements we noted is actually an indication of larger problems in agency staffing programs. Two of these problems are the use of flawed assessment strategies and deficient recruiting strategies.

## **Assessment Strategy**

Ideally, agencies should tailor their assessment methods to the job being filled so that they can identify and select the most competent candidates.

Unfortunately, such tailoring is infrequent. Too often, agencies take a "one size fits all" approach, relying heavily on training and experience to assess applicants. Evaluation of training and experience is convenient; it demands less of agencies than other assessment tools such as written tests, work samples, or assessment centers. And evaluation of training and experience is appropriate for jobs that require a "track record." However, the use of training and experience is problematic for jobs where high potential applicants may have the competencies to do the job well, yet lack the required experience or education.

## **Recruiting Strategy**

Agencies' lack of a comprehensive recruiting strategy is apparent in how they publicize job

## ***Highlights of Common Problems Plaguing Vacancy Announcements***

### **Jargon and acronyms are prevalent**

Undefined terms such as "career/career-conditional appointment" and "PCS" may suggest a closed process geared to insiders rather than thoughtful consideration of all applicants.

### **Templates and "canned" language are used ineffectively**

One announcement for a GS 6/7 administrative program assistant included the following: "Veterans Preference is not a factor for Senior Executive Service jobs ...."

### **Job titles and duties are unclear**

An announcement for an Assistant Crossing and Trespasser Regional Manager sounds as if the agency is looking for someone to manage assistant crossings (whatever they might be) and trespassers.

### **Minimum qualification requirements are vague**

Many times, the requirements language in the announcements presuppose that applicants know about the Federal classification and qualification standards, as well as the organization's line of advancement.

### **Announcements are negative and even threatening**

One announcement for a laborer grade 2 position said, "If you make a false statement in any part of your application, you may not be hired; you may be fired after you begin work; or you may be subject to fine, imprisonment, or other disciplinary action."

### **Poor service and limited methods to apply**

Common statements in vacancy announcements include, "Don't call," "We WILL NOT accept FAX," "If you fail to submit a COMPLETE on-line resume, you WILL NOT be considered," and "Paper applications WILL NOT be accepted."

*continued, page 9*



# From Intern to Fellow, PMI Grows Up

After 27 years, the Presidential Management Intern (PMI) program has apparently “grown up.” By executive order in November 2003, the President renamed it the Presidential Management Fellows Program. The new name distinguishes it from other government intern programs, such as the Federal Career Intern Program and student intern programs. This is no mere name change, however. The executive order eliminates the 400 limit that can be hired, allows excepted service agencies to use the program, and creates two distinct components: a Fellows program for those fresh out of graduate school and a Senior Fellows program for those with extensive managerial or professional experience. Depending on their qualifications, Fellows may now be appointed at grades up to grade GS-12 (compared to only GS-9 before), and Senior Fellows at grades GS-13 to GS-15. These changes strengthen the program’s status as one of the government’s premier mechanisms to recruit, select, and develop outstanding future leaders and managers.

The PMI program has not always been viewed this way. In our August 2001 study, we found that while the program was thought of highly, it lacked focus. More than one out of every five supervisors of PMIs viewed the program simply as a method for hiring individuals with graduate degrees and rather than selecting and hiring people for their managerial and leadership potential. The Board recommended that OPM: (1) refocus and strengthen the program as a tool for attracting those with exceptional management potential; and (2) ensure that people selected have the competencies needed to

lead and manage and are provided the training and developmental opportunities necessary to succeed. Consistent with this recommendation, the new executive order set the groundwork for this by stating that the program’s purpose is to attract outstanding individuals who “have a clear interest in, and commitment to, excellence in leadership and management of public policies and programs.”

Our report also cited some inflexibility in the program that could potentially jeopardize continued interest in the program. The old PMI program only allowed agencies to hire PMIs at grade GS-9, although some candidates possessed qualifications (e.g., doctoral degrees or extensive higher-graded work experience) that qualified them for appointment at GS-11 or above. The new Fellows program corrects this weakness.

Given that candidates can be directly appointed to senior positions, up to and including GS-15, thorough assessment is critical to ensure good selection. Time and money spent on proper assessment is an excellent investment; indeed, studies have shown that selecting the wrong person for a Federal job can cost many thousands of dollars, estimated at up to three times the employee’s annual salary. According to OPM’s proposed regulations, the assessment process for the Fellows and Senior Fellows programs will include an “evaluation of each candidate’s experience and accomplishments” and “a rigorous structured assessment process.” We encourage OPM to ensure the assessment process is not only rigorous, but also valid, reliable, and efficient. ♦

## Federal Vacancy Announcements Show Need for Improvement

*(continued from page 8)*

opportunities. Our survey of HR specialists showed that agencies rely almost exclusively on USAJOBS, the government’s central career opportunity site, to advertise their jobs. Unfortunately, the announcements posted here are rarely attractive, well-written and clear. Further, relying on USAJOBS alone may not be sufficient to reach all potential applicants, especially those unfamiliar with Federal Government hiring procedures.

### **Improvement is Possible**

At the time of our review, USAJOBS was visually unattractive and its search feature was difficult to use. But since the publication of our report, OPM has

overseen major improvements in USAJOBS. Consistent with our recommendation to improve USAJOBS, OPM, through its Recruitment One-Stop e-gov initiative, has enhanced the site to make it more appealing and easier to use. These enhancements appear to be well-received: since its re-launch in August 2003, USAJOBS has had 42 million visitors, according to OPM.

However, not all improvements to vacancy announcements can be accomplished through technology. The problems we noted above are substantive ones that simply revamping USAJOBS won’t fix. Only by addressing assessment and recruitment can these problems be solved effectively. ♦

## *Halting Discrimination Against Women and Minorities in the Federal Workforce*

Recent class action lawsuits against Wal-Mart, Morgan Stanley, and other companies illustrate the American expectation that businesses hire, reward, and promote based on merit, as opposed to personal characteristics unrelated to job performance. Certainly Americans would expect at least as much from their government. Undoubtedly the law requires it; the Federal civil service is supposed to be blind to personal characteristics unrelated to job performance and in fact should reflect our nation's diversity. How does the Federal Government stack up?

Almost decade ago, MSPB asked this question in two landmark reports that examined to what extent gender and race marred hiring, awards, and promotions in the Federal Government: "A Question of Equity: Women and the Glass Ceiling in the Federal Government" (1992) and "Fair and Equitable Treatment: A Progress Report on Minority Employment in the Federal Government" (1996). In these reports, we found that both women and minorities were

more heavily concentrated in lower-graded jobs – and this unequal concentration could not be fully explained by varying education and experience levels.

Women were particularly hampered by the fact that they were not promoted to the critical grades of 9 and 11 at the same rate that men were, meaning fewer women would be available for higher-graded jobs. While many minority groups were employed at a rate roughly equal to their representation in the civilian labor force, Hispanics remained underrepresented.

In addition, significant percentages of women and minorities believed they had been overlooked for awards and/or promotions, as well as subjected to subtle discrimination, because of their gender or race. All told, while progress had been made from the 1970s, much work remained to be done.

To examine whether and to what extent such inequitable treatment still exists today, MSPB plans to update both reports in the near future. ❖

## *Potential Whistleblowers Fear Inaction, Retaliation*

In a 1981 report entitled "Whistleblowing and the Federal Employee: Blowing the Whistle on Fraud, Waste, and Mismanagement," MSPB noted that while employees feared retaliation for blowing the whistle, a greater hindrance to whistleblowing was the belief that nothing would be done to correct the problem.

In a 1984 follow-up report, "Blowing the Whistle in the Federal Government: A Comparative Analysis of 1980 and 1983 Survey Findings," we noted that this remained the greatest stumbling block in the minds of Federal employees. In fact, employees expressed even more fear that a report of fraud, waste, or abuse would place them at risk.

To help whistleblowers, in 1989 Congress enacted the Whistleblower Protection Act (WPA) which led to the creation of the Office of the Special Counsel (OSC) as a separate independent agency. (Prior to the WPA, the Special Counsel was an autonomous entity within MSPB.) The WPA was intended to both strengthen protections for whistleblowers and enhance the ability of the OSC to enforce those protections.

In 1996, we conducted a survey to discover if the passage of 10 years (and the WPA) had changed the way Federal employees responded to suspicions of fraud, waste and abuse. We found only minor indications of change. The most common reason for not taking action remained a belief that "nothing would be done." Employees also still believed that blowing the whistle would put them at risk. (In 1996 we offered "a fear of workplace retaliation" as separate response option from "too great a risk for me" and 33% indicated retaliation fears were a factor in their decision not to blow the whistle.)

Today, encouraging employees to report fraud, waste, and abuse remains a challenge for the Federal Government. The OSC faces the challenge of convincing employees that they can and will be protected from retaliation. However, the greater responsibility still rests with the employing agencies, who must not only take measures to prevent retaliation, but also must find a way to convince employees that if they speak up, they can make a difference. ❖

# Federal Personnel Offices: It's Still Time for Change

Federal personnel laws, rules, and regulations are too complex. It takes too long to hire. It is difficult to attract quality candidates. Personnel forms and processes are not user-friendly and deter candidates from wanting to apply for jobs. There are too few personnel staff to do the work.

Are these the conclusions from a new MSPB publication? No, they're the findings from a 1993 Board study, "Federal Personnel Offices: Time for Change?" Some of the problems cited in the study are eerily similar to many of the human capital challenges agencies face today. Other problems identified at that time include:

- The need for better personnel program indicators;
- A focus on personnel process rather than on substantive management issues;
- Concerns about personnelists' capabilities and effectiveness;
- The reluctance of managers to take on additional personnel delegations;
- Lack of managerial and personnelist training to effectively perform their duties.

The report found that to address these problems, we would need to attack the problems on three fronts: the personnel system and its rigid rules and regulations, the personnel office staff, and agency managers. On the system side, MSPB recommended reducing personnel rules and regulations, delegating more personnel authorities and accountability to agencies and managers while preserving merit, and improving personnel evaluation and accountability. Regarding the personnel office, the report recommended increasing personnel staff capabilities through better recruitment, selection, and development processes. Finally, the report recommended increasing manager involvement, accountability, and training in personnel management responsibilities

Since the report was published, some important advances have taken place. For instance:

- Each major agency has established a Chief Human Capital Officer to ensure that human resources (HR) receives top leadership attention;

- The Federal Personnel Manual was abolished, giving HR specialists the ability to develop their own work processes;
- Examining authority was delegated to agencies to help them develop their staffing strategies to meet mission needs;
- A number of HR flexibilities were established to allow for better, targeted recruitment and streamlined hiring processes, including category rating as a substitute to the restrictive rule of three;
- Many HR processes, such as job applications, are being automated to make them more user-friendly and efficient.

However, many challenges still remain. Rather than increasing HR staff capacity, government has downsized this workforce, leading to a loss of expertise and institutional knowledge. Not enough has been done to train and develop personnel specialists, their supervisors, and line supervisors to handle their HR responsibilities. Automation often occurs without re-engineering or improving the actual HR processes. Selection procedures are still stymied by slow or questionable assessment approaches. Government is still struggling to identify performance measures that demonstrate HR's impact on mission accomplishment.

Finally, instead of strategically changing the way we do business, many of the new flexibilities have incrementally added processes onto the already complex structure of HR rules and regulations, making the system even more difficult to understand and navigate than before.

While these existing challenges seem daunting, the Federal Government may be on the verge of human capital management reforms that could redefine how we do business. The Department of Homeland Security and the Department of Defense are in the process of implementing new HR systems designed to better meet their mission needs while also protecting merit

If the new systems deliver what is promised, the human capital rules and regulations will be more flexible, managers will be more involved in and accountable for decisions, and HR staffs will receive the resources and support they need. If the new systems don't deliver, we may miss an opportune "time for change." ♦



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# ISSUES OF MERIT

Volume 9 Issue 3

## IN THIS ISSUE \* IN THIS ISSUE \* IN THIS ISSUE

*Over the past 25 years, MSPB has studied many pressing issues facing the Federal civil service. In this Silver Anniversary Edition, we highlight some of our reports and update you on the critical issues we still face today.*

**Introductions.** *MSPB's Chairman and Director of OPE celebrate 25 years of MSPB's influence on the civil service. (Page 1)*

**Bane of "Rule of Three."** *This antiquated rule is no longer required. (Page 3)*

**Civil Service's Thermometer.** *Our surveys check the health of the civil service. (Page 4)*

**Sexual Harassment in the Federal Workplace.** *Why does it happen, and what progress have we made? (Page 5)*

**Lessons Learned on Removing Poor Performers.** *MSPB research shows you really can do something about poor performers. (Page 6)*

**OPM's Progress.** *MSPB reports on OPM's achievements, challenges. (Page 6)*

**Federal Vacancy Announcements.** *Our review shows that help is needed not only for Federal vacancy announcements, but also the assessment and recruitment strategies that underpin them. (Page 8)*

**From Intern to Fellow.** *Changes to the PMI program. (Page 9)*

**Understanding Discrimination.** *MSPB's ground-breaking research on discrimination against women and minorities will be updated soon. (Page 10)*

**Why Not Blow the Whistle?** *MSPB found that fear of nothing changing is what keeps many from blowing the whistle. (Page 10)*

**Federal Personnel Offices.** *Despite progress, changes are still needed. (Page 11)*