



U.S. Merit Systems Protection Board

**Congressional
Budget
Justification
FY 2016**

**Prepared for
Committee on Appropriations**

February 2015

Table of Contents

Introduction	1
External Events impacting MSPB operations.....	1
FY 2016 Request	4
Appropriation Language.....	4
Summary of FY 2016 Costs.....	4
Strategic Goals and Strategic Objectives	4
FY 2016 request by Object Class	5
Board Organization.....	9
Request for additional FTE	9
Schedule O Object Classification.....	15
Schedule Q Employment Summary	16
About MSPB.....	16
Adjudication.....	16
Mediation Appeals Program	17
Merit Systems Studies and OPM Oversight.....	18
Management Support	20
Information Technology	20
Human Resources	20
Financial Management.....	21
Equal Employment Opportunity.....	21
Organization Chart	22

The U.S. Merit Systems Protection Board Performance Budget Justification for Fiscal Year 2016

Introduction

Over the last two fiscal years (FY) the U.S. Merit Systems Protection Board (MSPB or Board) has been managing a case load of historic proportions. This is due to external factors outside of MSPB's control that we believe will likely continue into FY 2016 and beyond. As a result, the Board is submitting its FY2016 Performance Budget Justification requesting \$49,016,000 in appropriated funds and \$2,579,000 in reimbursements from the Civil Service Retirement and Disability Trust Fund.

A highly qualified Federal workforce managed under the Merit System Principles (MSPs) is critical to ensuring effective and efficient Federal agency performance and service to the public. In fact, the MSPs are in essence good management practices and as such, the most fundamental function of the MSPB is to ensure that these good management practices are employed in the management of the Federal workforce. The MSPs help ensure that the Federal Government is able to recruit, select, develop, and maintain a high quality workforce and thereby reduce staffing costs and improve organizational results that serve the public. A fully funded, well-run Board is critical to protecting the Federal merit systems, ensuring due process, promoting Government wide MSPs, and preventing Prohibited Personnel Practices (PPPs).

External Events Impacting MSPB Operations

Government-Wide Sequestration and Resulting Appeals Filed at MSPB

As described below, a number of significant external events have impacted MSPB and are likely to continue to affect MSPB's mission to protect the Federal merit systems through FY 2016 and should be considered as Congress determines funding levels for the MSPB in FY 2016. At MSPB, we recognize the financial challenges facing our nation with increasing pressure to cut fiscal spending and to reduce the size of the Federal Government. However, our agency has been impacted in a unique way. On March 1, 2013, Government-wide "sequestration" was implemented and MSPB sustained a decrease of over \$2 million from its appropriation. As a result of sequestration, a number of Federal agencies furloughed staff, including the Department of Defense. Hundreds of thousands of Federal employees were furloughed, and as expected, tens of thousands of those employees exercised their statutory right¹ to appeal their furloughs to the MSPB, resulting in historical increases in the number of furlough appeals filed. In fact, more than 32,400 furlough appeals were filed with MSPB.²

As of December 2014, MSPB had approximately 19,700 initial appeals, of which 17,500 are furlough appeals, pending. Throughout FY 2015, we will be receiving new initial appeals that are added to our existing caseload that must be processed. Simply processing these appeals and preparing to

¹ Under 5 U.S.C. § 7512, a "furlough of 30 days or less" is an adverse action for which a covered employee is entitled to appeal to MSPB.

² Under the law, each appellant has a statutory right to a hearing, meaning that every case filed must be processed and adjudicated. 5 U.S.C. § 7701(a)(1)

adjudicate them has been an overwhelming endeavor and has affected all offices of the agency. Congress recognized the need for additional resources to address the historical number of furlough appeals, thereby increasing our FY 2014 funding by \$2.6 million more than the amount requested in the President's FY 2014 budget. This permitted MSPB to begin hiring additional staff to fill long-standing vacancies and address the historic inventory of initial appeals.

While we expect to make significant progress in processing the inventory of appeals in FY 2015, it is likely we will begin FY 2016 with a significant inventory of appeals in our regional offices and petitions for review (PFR) at headquarters in Washington, D.C. filed in FY 2015. As we noted in our FY 2015 By-pass justification to Congress, the only historical comparator for this volume of work at our agency are the Air Traffic Controller terminations that occurred in 1981. At that time, approximately 11,000 appeals were filed at the Board by terminated controllers. We would note, however, that at that time, MSPB had about twice the number of FTE than our current staffing level. Additionally, unlike the current furlough appeals, which are spread across various agencies Government-wide, all 11,000 appeals came from a single agency, the Federal Aviation Administration, and covered a uniform adverse action (termination).

Appeals in an Era of Declining Agency Budgets and Expected Retirements

An increase of furlough or RIF appeals could occur in FY 2016 if agencies continue to be faced with declining budgets – via sequestration or otherwise. Based on the number of furlough appeals currently in the MSPB regional offices, our PFR receipts at the full Board in headquarters in Washington, D.C. will likely be at historic levels in FY 2015 and beyond. As of January 8, 2015, headquarters has received approximately 1,000 PFRs in furlough appeals, almost all of which were filed at the end of FY 2014 and beginning of FY 2015. In addition, if agencies continue to furlough their employees during FY 2016 and beyond due to additional budget cuts, or begin to reduce staffing levels through reductions in force (RIFs), PFR receipts would likely remain at historic levels for years to come.

MSPB headquarters received an average of 1,011 PFR cases per fiscal year from FY 2009 through the end of FY 2014. However, as noted in the MSPB's FY 2013 Annual Performance Report and FY 2014 (Final) and FY 2015 (Proposed) Plan, a number of significant external trends are likely to increase PFRs FY 2015 and FY 2016. Sequestration required hundreds of thousands of Federal employees to be furloughed in FY 2013. Due to the likelihood that a majority of the furlough PFRs will be filed in FY 2015 – after decisions by MSPB administrative judges in our regional offices – we anticipate significantly higher than average receipts that fiscal year. Although sequestration is not expected to affect agencies in FY 2015, over the longer term, Federal budgets are expected to decrease. A consequence of budget reductions will likely include increased use of RIFs by agencies, which will result in Federal employees losing their jobs. In that circumstance, Federal employees would likely appeal those adverse actions to MSPB, as is their statutory right.

Changes to the Law and Resulting Impact on the MSPB

Significant changes in the law have had and will continue to have a direct impact on case processing. We anticipate that the recently passed Veterans Access, Choice and Accountability Act of 2014 will increase our workload, although we do not yet know how much of an increase we will see. The most significant aspect of that legislation, however, is that it requires MSPB to devote resources to appeals filed under this law, to the detriment of all other appeals, since appeals filed under this law

must be decided within 21 days of the filing date. This is less than 20% of the already expeditious 120-day time goal the Board has been operating under for many years. Thus, resources will need to be diverted from other categories of ongoing cases that will lead to delays in processing. Moreover, we anticipate that Congress will consider expanding this law to other Federal agencies or categories of Federal employees.

The Whistleblower Protection Enhancement Act (WPEA) will likely increase the number of whistleblower cases that will proceed to a hearing. It also provides additional rights to whistleblowers and those who engage in other protected activity in the Federal Government by expanding the scope of protected disclosures as well as MSPB's whistleblower jurisdiction and options for granting corrective action, all of which make adjudication of WPEA cases far more complex and time-consuming. The additional corrective action possibilities will also likely lead to more addendum appeals being filed as appellants seek compensatory damages and attorney fees. The law also permits review of MSPB decisions by multiple Federal Courts of Appeals, thereby leading to the likelihood of inconsistent precedent that could further complicate adjudication. Finally, the WPEA also requires MSPB to track and report more detailed information about whistleblowing cases in its performance reports, which requires more resources.

Long Term Impacts From the Influx of Appeals on MSPB

There are also longer-term impacts from the massive influx of appeals. MSPB case processing systems and infrastructure need to be upgraded to handle the additional volume of electronically filed appeals and pleadings. In support of MSPB's strategic objective on electronic adjudication (e-adjudication) and the Presidential Memorandum on Managing Government Records, MSPB must streamline case processing efficiencies in its adjudication mission and convert from a paper-based case file system to an electronic case (e-case) file system. With the financial resources we are requesting in our justification, we intend to review, evaluate, and recommend workflows and systems to support MSPB's migration to e-case files through the life cycle of an appeal. MSPB will seek available products, solutions, and ancillary services to convert to 100% electronic case processing to substantially improve the delivery and efficiency of our adjudication services. While some of the systems and components to support an e-case processing environment already exist at MSPB, we need to identify, procure, and implement additional systems, components, and processes, e.g., a certified Electronic Records Management System, and integrate them with existing systems to convert to a 100% e-adjudication process, develop and document that process and related procedures, and to provide necessary training to MSPB staff at the headquarters, and our regional and field offices.

MSPB's data center is currently located in the headquarters building in Washington, DC, a commercial building without sufficient infrastructure for a data center. We have encountered a number of power and air conditioning issues in the past, causing unnecessary downtime and making MSPB systems unavailable to MSPB customers and employees. MSPB is seeking to migrate/outsourc e its computer data center in FY 2016. A true data center hosted offsite will provide more capacity, scalability, reliability, and the capability for disaster recovery.

FY 2016 Budget Request

Appropriation Language

For necessary expenses to carry out functions of the U.S. Merit Systems Protection Board pursuant to Reorganization Plan No. 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note), as amended, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, direct procurement of survey printing, and not to exceed \$2,000 for official reception and representation expenses, \$49,016,000, to remain available until September 30, 2017, together with not to exceed \$2,579,000, to remain available until September 30, 2017, for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts to be determined by the Merit Systems Protection Board.

Summary of FY 2016 Costs

The MSPB requests \$49,016,000 in general funds in FY 2016 to provide for salaries and related expenses and to ensure that the agency continues to meet its strategic and annual performance goals. The agency also requests a transfer of \$2,579,000 from the Civil Service Retirement and Disability Fund to cover personnel compensation and benefit costs and other operating expenses associated with adjudicating retirement appeals. The MSPB has authority to adjudicate appeals from a final administrative action or order affecting the rights or interests of an individual under 5 U.S.C. § 8347(d) (the Civil Service Retirement System) and 5 U.S.C. § 8461(e) (the Federal Employees' Retirement System). Pursuant to 5 U.S.C. § 8348(a)(3), the Fund is made available, subject to such annual limitation as Congress may prescribe, for any expenses incurred by the MSPB in the administration of such appeals. The total FY 2016 request of \$51,595,000 will fund 255 full-time equivalent work-years of effort.

Strategic Goals

Our FY 2016 Congressional Budget Justification is structured on the basis of the MSPB FY 2014–FY 2018 Strategic Plan. The agency's performance goals cover the critical components of two strategic goals, and our performance measures support MSPB's ability to manage and report performance over time. The strategic goals and objectives of our Strategic Plan are discussed in our Annual Performance Plan and are as follows:

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

Strategic Objectives:

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

1B: Enforce timely compliance with MSPB decisions.

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

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

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

Strategic Objectives:

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

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

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

FY 2016 request by Object Class

The MSPB's FY 2016 budget request of \$51,595,000 reflects an **increase** of \$ 6,510,000 from our FY 2015 enacted level of \$45,085,000. With this level of funding, MSPB expects to support a staffing level of 255 FTE, to continue to maintain quality services in support of the agency functions and meet the goals and objectives of the Strategic Plan. Our request includes inflationary adjustments common to most Federal agencies. With the requested amount, MSPB is prepared to undertake mission critical tasks in FY 2016 that will allow MSPB to achieve its strategic goals in an efficient and cost-effective manner.

A discussion of our increases over the FY 2015 enacted level follows:

Personnel Compensation & Benefits – an increase of \$4,973,000

MOC	Description	FY 2015 Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
11	Personnel Compensation	\$26,420	\$30,493	\$4,073
12	Benefits	\$6,619	\$7,519	\$900

Approximately 79% of the agency’s funding is for personnel compensation and benefit costs, which make up the largest amount of our budget submission. Thus, any reduction in resources affects our ability to hire and maintain a highly qualified staff at our requested FTE level. Our request assumes our FTE will be increased to 255 and assumes a 1.3% pay raise in FY 2016.

Our ability to maintain adequate staffing levels was adversely impacted before the sequester cuts. Moreover, the sequester cut of \$2 million made it much more difficult to maintain staffing levels. In FY 2014, Congress appropriated additional resources for MSPB to address the flood of furlough appeals as a result of the sequester cuts. Thus, MSPB has been able to hire additional staff and fill long-standing vacancies to address the backlog of initial appeal cases.

Although we are striving to meet our Performance Goals, any reductions of funding from current enacted levels will make it difficult for the agency to meet the demands of a workload increase. This is due to the inventory of cases we currently have as well as an increase in cases that can be expected once sequester cuts resume in FY 2016 and agencies take personnel actions (e.g., furloughs and RIFs) to address those cuts.

Travel & Transportation of Persons – an increase of \$31,000

MOC	Description	FY 2015 Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
21	Travel & Transportation of Persons	\$449	\$480	\$31

Management will continue to control travel costs although it is likely the MSPB case load will increase for reasons already discussed above. To meet our mission, Administrative Judges (AJs) must frequently travel to hearing sites located a considerable distance from the various regional offices. Additionally, as a result of the WPEA, which strips the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. of exclusive jurisdiction over appeals

filed by whistleblowers, MSPB attorneys may be required to travel to various Federal courts of appeals to represent the agency – something that was not required previously. While we are making increasing use of video conferencing for hearings, we have little control over the number of hearings that might require travel.

Transportation of Things – an increase of \$10,000

MOC	Description	FY 2015Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
22	Transportation of Things	\$75	\$85	\$10

This category covers freight related costs and various courier services.

Rent, Communications, & Utilities – an increase of \$284,000

MOC	Description	FY 2015Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
23	Rent, Communications & Utilities	\$4,542	\$4,826	\$284

The agency makes rental payments to the General Services Administrations (GSA) for office space in our Washington Headquarters as well as all of our regional and field offices. The balance of our request for this object class will be for network contract services, the Internet, and mandated Managed Trusted Internet Protocol services as well as other telecommunication services such as Voice Over Internet protocol and video conferencing. Due to the increase in case processing volume, MSPB needs to increase its internet bandwidth and upgrade its network.

Printing – an increase of \$10,000

MOC	Description	FY 2015Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
24	Printing	\$190	\$200	\$10

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

Other Contractual Services – an increase of \$908,000

MOC	Description	FY 2015 Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
25	Other Contractual Services	\$3,381	\$4,289	\$908

This object class includes the Agency’s Reimbursable Service Agreements (RSA) with the Treasury Department’s Bureau of Public Debt (BPD) for accounting, purchasing, and travel-related services and our RSA with the Department of Agriculture Animal and Plant Health Inspections Service (APHIS) for personnel services. Since FY 2013, the cost for BPD services has increased by nearly 23% and the cost for APHIS services have risen by 27% for the same period.

Other RSA’s included in this object class fund are Administrative Law Judges (agreements with the U.S. Coast Guard, the Environmental Protection Agency, and the Federal Trade Commission), as well as agreements with the National Archives and Records Administration for records management storage. This category includes court reporting services, employee training, information technology hardware and software maintenance renewals, license renewals for software, and the operation and maintenance of other equipment.

For FY 2016, MSPB is requesting \$500,000 to begin work on an system for electronic adjudication—MSPB will seek available products, solutions, and ancillary services to convert to 100% electronic case processing to substantially improve the delivery and efficiency of our adjudication services. Additionally, MSPB is requesting \$500,000 to invest in a data center migration/outsourcing project. A true data center hosted offsite will provide more capacity, scalability, and the capability for disaster recovery. We plan to do develop an implementation plan and conduct proof of concept test for this project during FY 2015.

Supplies & Materials – an increase of \$30,000

MOC	Description	FY 2015 Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
26	Supplies & Materials	\$170	\$200	\$30

Assuming adverse actions resume in FY 2016, expenditures for supplies and materials are expected increase.

Equipment – an increase of \$30,000

MOC	Description	FY 2015 Enacted (000)	FY 2016 Request (000)	Increase (decrease) over FY 2015 (000)
31	Equipment	\$894	\$924	\$30

Most of our equipment expenditures will be for replacing items due to breakdowns as well as equipment that has exceeded its useful life such as laptops, copiers, printers, scanners, and video teleconferencing equipment. Most of laptops and printers will be at least 5 years old by FY 2016 and will need to be replaced. Additionally, there are instances, in which minor construction projects, which include enhancements to equipment must be funded as we maintain the facilities at our headquarters and regional offices. MSPB bears the cost of such projects.

Board Organization

The **Board Members** are the Chairman, Vice Chairman, and Board Member. Board Members are appointed by the President, confirmed by the Senate, and serve overlapping, non-renewable 7-year terms. No more than two of the three Board Members can be from the same political party. The Board Members adjudicate cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer of MSPB. The Office Directors report to the Chairman through the Executive Director.

The agency has its headquarters in Washington, DC with six regional and two field offices located throughout the United States. The agency is currently funded at 226 Full-time Equivalents (FTEs) to conduct and support its statutory duties.

REQUEST FOR ADDITIONAL FTE

If reductions in budgetary resources resume, our ability to meet our performance goals and targets will be impacted, and the timely processing of appeals will likely be delayed. Additionally, the agency has recently experienced several retirements and can expect more, *as approximately a quarter of our employees are eligible to retire within the next two years, including about a third of our AJs.*

As noted, MSPB requests to be funded at 255 FTE in FY 2016, an increase of 29 FTEs from our present FTE level of 226. With the expected resumption of cuts in FY 2016, MSPB expects its caseload to increase.

The discussion that follows identifies the additional FTE requested for the respective offices. Some of the additional FTE requested in this submission were identified in our FY 2015 By-Pass request to Congress.

Office of Appeals Counsel(OAC) – Additional FTE Requested: 5

The **Office of Appeals Counsel (OAC)** OAC is requesting 5 additional FTE (3non-supervisory attorneys, 1 administrative support specialist, and 1 manager). OAC conducts legal research and prepares proposed decisions for the Board for cases in which a party files a PFR of an initial decision issued by an AJ and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of rulings made by AJs, makes recommendations on reopening cases on the Board's own motion, and provides research, policy memoranda, and advice to the Board on legal issues.

OAC is central to the MSPB core mission of adjudicating disputes between employees and executive branch agencies that arise under the civil service laws. To be prepared to face these challenges while maintaining the balance between high quality and timely decisions, it will be crucial to ensure that there is a sufficient number of OAC adjudication staff who have the necessary competencies, knowledge, and training to perform their work efficiently. OAC is requesting 3 additional non-supervisory attorneys, bringing the total to 29.

An appropriate number of administrative support personnel for 29 non-supervisory attorneys is 4 employees in a mix of positions (paralegals, administrative officer, case tracker/legal assistant). Administrative support personnel handle crucial tasks such as proofreading and cite-checking decisions intended for publication as precedent, and processing incoming cases for the Office of the Clerk of the Board and the outgoing cases to the Board offices. A ratio of 1 to 7.25administrative to professional personnel is appropriate for these tasks. OAC currently has 3 employees in administrative positions and is requesting 1 additional FTE for an administrative support specialist position.

OAC needs 2 managers, a Director and a Deputy Director, to oversee day-to-day operations, to conduct long-range planning, and to be accountable for the overall results of the office. Currently, OAC does not have a Deputy.

Office of the General Counsel (OGC) – Additional FTE requested: 2

The **Office of the General Counsel (OGC)** serves as legal counsel to MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents MSPB in litigation; coordinates the review of OPM rules and regulations; prepares proposed decisions for the Board to enforce a final MSPB decision or order, in response to requests to review OPM regulations, and for other assigned cases; conducts the agency's PFR settlement program; and coordinates the agency's legislative policy and congressional relations functions. The office drafts regulations, conducts MSPB's ethics program, performs the Inspector General function, and plans and directs audits and investigations.

OGC is requesting 2 additional FTE. Fully funding our FY 2016 request would permit OGC to fill current vacancies and hire two additional FTE (attorneys at the GS-13/14/15 level). The increase in staffing should ensure the important roles the OGC has in the day-to-day operations of MSPB are being met. The increase in FTE would enhance the performance of the office, permitting it to meet its duties to the agency in litigation; reviewing and responding to petitions for enforcement; coordinating the agency's legislative policy and congressional relations functions as well as reviewing and responding to OPM regulations.

Office of Regional Operations (ORO) – Additional FTE requested: 14

The **Office of Regional Operations (ORO)** oversees the agency's six regional and two field offices, which receive and process appeals and related cases. It also manages MSPB's Mediation Appeals Program (MAP). AJs in the regional and field offices are responsible for adjudicating assigned cases and for issuing fair, well-reasoned, and timely initial decisions.

ORO is requesting 14 additional FTE. The quality of MSPB's customer service depends heavily on having a staff of highly skilled and well-trained AJs, led by actively involved Chief AJs, to adjudicate employee appeals. Adjudication and the Alternative Dispute Resolution (ADR) efforts that accompany it constitute the core statutory mission of the MSPB.

The under staffing of the regional and field offices over a period of many years left the agency little prepared for the current wave of furlough related appeals, and the problem will be exacerbated if sequester cuts resume in FY 2016 and we continue to lose AJ's through retirements. As of this writing, one of our six Regional Directors, one of the two Chief Administrative Judges and *about a third of the AJ staff are currently eligible for retirement*. One Regional Director retired at the end of December 2014. Without taking significant action now; we endanger the success of the Board's core statutory mission.

A resumption of sequester cuts in FY 2016 is likely to bring about an increase in adverse personnel actions which means more furlough appeals for ORO. Additionally, the recently passed Veterans Access, Choice and Accountability Act of 2014 will likely increase our initial appeals and require ORO to prioritize resources for these cases, since they must be processed within 21 days of being filed at MSPB. Thus, resources will need to be diverted from other categories of ongoing cases, which will likely lead to delays in processing all other categories of initial appeals.

Office of the Clerk of the Board (OCB) – Additional FTE requested: 1

The **Office of the Clerk of the Board (OCB)** receives and processes cases filed at MSPB headquarters, rules on certain procedural matters, and issues MSPB decisions and orders. The office serves as MSPB's public information center, coordinates media relations, produces publications, operates MSPB's library and on-line information services, and administers the Freedom of Information Act (FOIA) and Privacy Act programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, legal research systems, and Open Government responsibilities. The OCB is requesting one additional FTE in FY 2016 to support the records management, FOIA, and Privacy Act programs administered by this office.

Office of Policy and Evaluation (OPE) – Additional FTE requested: 2

The **Office of Policy and Evaluation (OPE)** carries out MSPB’s statutory responsibility to conduct special studies of the civil service and other Federal merit systems. Reports of these studies are sent to the President and the Congress and are distributed to a national audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office reviews and reports on the significant actions of OPM. The office also conducts special projects and program evaluations for the agency and has responsibility for preparing MSPB’s strategic and performance plans and performance reports required by the Government Performance and Results Act Modernization Act of 2010.

OPE is requesting 2 additional FTE. These FTE would support MSPB’s statutory functions of merit system studies and OPM oversight and strategic planning and performance improvement activities required by the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010. The FTE increase would augment OPE’s ability to (1) conduct merit system studies; (2) support evidence-based merit system studies, strategic planning, and performance improvement; (3) carry out strategic planning and performance measurement activities for MSPB (e.g., develop and maintain the agency Strategic Plan and Resources Management Plan and produce the Annual Report); and (4) conduct outreach and develop materials to educate policymakers and stakeholders about merit system issues and policy recommendations.

Office of Information Resource Management (IRM) – Additional FTE requested: 2

The **Office of Information Resources Management (IRM)** develops, implements, and maintains MSPB's automated information systems to help the agency manage its caseload efficiently and carry out its administrative and research responsibilities.

IRM is requesting 2 additional FTE. These FTE will support our dedicated technical support call center for external users which has experienced a consistent high volume of user calls. The technical support call center will provide the agency a central call center to handle all external calls for all time zones and provide live-chat support from 7am - 8 pm Eastern Time (ET). Hiring permanent Government employees instead of contractors will allow them to understand MSPB specific systems, avoid security issues with granting external contractors access to our internal systems, provide better customer service, maintain continuity and allow them to better support our west coast offices up to 8 pm ET.

Office of Financial and Administrative Management (FAM) – Additional FTE requested: 2

The **Office of Financial and Administrative Management (FAM)** administers the budget, accounting, travel, time and attendance, human resources, procurement, property management, facilities, transportation services, mailroom, physical security, and general services functions of MSPB. It develops and coordinates internal management programs, including review of agency internal controls. It also administers the agency's cross-servicing agreements with the U.S. Department of Agriculture (USDA), National Finance Center (NFC) for payroll services, and U.S. Department of the Treasury, Bureau of the Public Debt (BPD) for accounting services, and USDA's Animal and Plant Health Inspection Service (APHIS) for human resources management services.

FAM is requesting 2 additional FTE. The FTE increases include: (1) a GS-13 Security Specialist that will develop, implement and maintain procedural and technical methods to enhance physical protection throughout the organization; and (2) a GS-12 Writer/Editor Specialist that will research, analyze, distill, and present information that has benefit to the Agency as it relates to policies and procedures. The individual will perform the following tasks: (a) write policy; (b) prepare reports on management and administrative activities; (c) explain the programmatic rules and regulations that affect the Agency, especially those concerning rights and obligations; (d) report results of research and investigations; (e) announce regulations; and (f) provide training and operating manuals for the use of employees.

Office of Equal Employment Opportunity (EEO) – Additional FTE requested: 1

The **Office of Equal Employment Opportunity (EEO)** plans, implements, and evaluates MSPB's equal employment opportunity programs. It processes complaints of alleged discrimination brought by agency employees and provides advice and assistance on affirmative employment initiatives to MSPB's managers and supervisors.

EEO is requesting 1 additional FTE. It is anticipated that eight agency employees will assist with EEO related services on a collateral duty basis. These include three collateral duty EEO counselors and five collateral duty Reasonable Accommodation Coordinators. An additional FTE in EEO would significantly strengthen EEO and better enable the agency to achieve goals of ensuring a representative, diverse workforce. Specifically, an additional FTE would enable EEO to develop,

better promote, and implement diversity and inclusion initiatives within MSPB. Other responsibilities would include: identifying, developing and providing training relating to EEO, diversity and inclusion, and conflict resolution related training, which would help increase employee engagement and morale. Other significant duties would include: (1) transferring reasonable accommodation coordinator functions into a full-time position, which has several advantages over the function being performed on a collateral duty basis; (2) better promoting the use of the Schedule A Hiring Authority for individuals with disabilities (including developing a data base and procedure for referring qualified candidates to MSPB hiring officials); and (3) assisting the EEO Director with planning substantive commemorative events, such as Unity Day, maintaining the EEO intranet website, and performing the barrier analyses required under MD 715. Without the addition of one FTE, EEO may be limited in its ability to consistently carry out new and bold initiatives and to take the program to a higher level, particularly in times when the complaint and reasonable accommodation caseloads increase.

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

	FY 2014 Actual	FY 2015 Enacted	FY 2016 Request	Change
Direct obligations:				
Personnel compensation	22,211	26,420	30,493	4,073
Civilian personnel benefits	6,194	6,619	7,519	900
Travel of persons	322	449	480	31
Transportation of things	87	75	85	10
Rental payments to GSA	3,631	3,700	3,800	100
Rental payments to others	185	110	122	12
Communications, utilities, and miscellaneous charges	548	732	904	172
Printing and reproduction	114	190	200	10
Other services	836	1,528	2,124	596
Other purchases of goods and services from Government accounts	914	1,260	1,525	265
Maintenance of facilities	44	28	40	12
Maintenance of equipment	328	565	600	35
Supplies & Materials	190	170	200	30
Equipment/Lease Improvements	<u>926</u>	<u>894</u>	<u>924</u>	<u>30</u>
Direct Obligations...	36,530	42,740	49,016	\$6,276
Reimbursable Obligations...	<u>2,345</u>	<u>2,345</u>	<u>2,579</u>	<u>234</u>
Total New Obligations...	\$38,875	\$45,085	\$51,595	\$6,510

Additionally, for FY 14 actuals, MSPB incurred \$2.7 million in obligations utilizing FY 13/14 carryover funds.

Schedule Q - Employment Summary

	FY 2014 Actual	FY 2015 Enacted	FY 2016 Request	Change
Direct:				
Civilian full-time equivalent employment	183	211	238	27
Reimbursable:				
Civilian full-time equivalent employment	<u>15</u>	<u>15</u>	<u>17</u>	<u>2</u>
Total...	198	226	255	29

About MSPB

MSPB has its origin in the Pendleton Act of 1883, which established the Civil Service Commission (CSC) and a merit-based employment system for the Federal Government. The Pendleton Act was passed after the assassination of President Garfield by a disgruntled Federal job seeker and grew out of the 19th century reform movement to curtail the excesses of political patronage in Government and ensure a stable highly qualified workforce to serve the public. Over time, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals. Concern over the inherent conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;³ the Office of Personnel Management (OPM) to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations. The CSRA also codified for the first time the values of the merit systems as the MSPs and defined the PPPs.⁴

Adjudication

The majority of the cases brought to the MSPB are appeals of adverse actions – that is, removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less. The next largest number of cases involves appeals of the Office of Personnel Management (OPM) and some agency determinations in retirement matters. The MSPB also receives a significant number of appeals under three important statutory authorities, the Whistleblower Protection Enhancement Act of 2012 (WPEA), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and the Veterans Employment Opportunities Act of 1998 (VEOA). Other types of actions that may be appealed to the MSPB include: performance-based removals or reductions in grade; denials of within-grade salary increases; reduction-in-force actions; suitability determinations; OPM employment practices (the development and use of examinations, qualification standards, tests, and other measurement instruments); denials of restoration or reemployment rights; and certain terminations of probationary employees.

³ Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, Journal of the Federal Circuit Historical Society, Volume 4, 2010.

⁴ Title 5 U.S.C. § 2301 and Title 5 U.S.C. § 2302, respectively.

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

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

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

In addition to adjudicating cases on the merits, the Board also provides alternative dispute Resolution (ADR) services to assist parties in resolving the case. Use of these services is voluntary, provides the parties more control of the process and can result in effective resolution of a case. In addition, resolving a case through ADR procedures can save time and reduce costs to the appellant, agency, MSPB, and Government-wide associated with the more formal regulations and procedures involved with adjudication on the merits. The MSPB provides opportunities for the parties to settle initial appeals filed in the regional offices and to settle PFR filed at headquarters. The MSPB also offers trained mediators (at no charge to the parties) who can facilitate confidential discussions between the parties to aid in addressing issues and barriers to agreement and reaching a settlement to which both parties agree. The parties control the results under the guidance of the mediator who plays no role in deciding the appeal.

Mediation Appeals Program

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

Because of these advantages, MAP has become a popular and successful program, as shown by the fact that a greater number of cases have been mediated each year since the program's inception. Moreover, while MAP had been settling approximately half the cases mediated (nearly 60% when

those that settle after return to the traditional adjudication track are considered), in recent years the success rate in MAP alone has increased so that approximately two-thirds of the cases mediated are now being settled. Even where the case is resolved by an AJ's decision, the mediation process often helps sharpen the parties' focus on the matters truly in dispute and the resolution they seek. Moreover, based on the evaluations the parties are asked to complete at the end of each mediation, more than 95% of the participants have stated that they would use MAP again.

Merit Systems Studies and OPM Oversight

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

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

Studies released in FY 2014 include:

Clean Record Settlement Agreements and the Law (December 2013) discusses the prevalence of clean record settlement agreements and the importance of parties making careful decisions about what an agreement will cover and choosing words that accurately express their intentions. This report speaks to a Government-wide practice that directly affects when and how employment disputes (including appeals before MSPB) are resolved.

Preserving the Integrity of the Federal Merit Systems: Understanding and Addressing Perceptions of Favoritism (December 2013) discusses the merit system principle that calls for protecting Federal employees from "personal favoritism." Despite this principle, over one-quarter of Federal employees believe that their supervisor demonstrates favoritism by treating some employees better than others based on friendship or other affinity rather than a legitimate merit-based reason. Such perceptions can damage morale, productivity, and leadership credibility. This report (1) clarifies what constitutes favoritism; (2) presents Federal employees' views on the occurrence and consequences of favoritism; (3) recommends managerial practices to prevent favoritism and reduce perceptions of its occurrence; and (4) identifies steps that employees can take to better understand Federal Government merit systems and improve their ability to advance.

Evaluating Job Applicants: The Role of Training and Experience in Hiring (January 2014) is the latest in a series of MSPB reports on methods used to assess and select applicants for Federal jobs. Training and experience (T&E) assessments are central to Federal hiring and promotion decisions, from entry level to executive level. T&E assessments use information about the past to make inferences about a person's present proficiency and likelihood of future job success. For reasons of workforce quality, productivity, and fairness, T&E assessments must be done in a manner that best identifies true differences in ability as accurately as possible. This report discusses the strengths and

weaknesses of T&E assessments, provides recommendations for their most effective use, and describes specific strategies to improve T&E assessment and the resulting hiring decisions.

Sexual Orientation and the Federal Workplace: Policy and Perception (May 2014) examines Federal employee perceptions of workplace treatment based on sexual orientation, reviews how Federal workplace protections from sexual orientation discrimination evolved, and explores whether further action is warranted to communicate or clarify those protections. The U.S. Office of Personnel Management interprets the tenth prohibited personnel practice at 5 U.S.C. § 2302(b)(10) to prohibit sexual orientation discrimination, but that prohibition is neither specifically expressed in statute nor affirmed in judicial decision and has been subject to alternate interpretations. The report notes that any ambiguity in the longstanding policy prohibiting sexual orientation discrimination in the Federal workplace would be resolved by legislation making that prohibition explicit.

Studies planned for issuance in FY 2015:

Veteran Hiring in the Civil Service: Practices and Perceptions will discuss (1) civil service hiring laws and regulations regarding veterans, noting their complexity and the implications of that complexity for compliance and transparency; (2) the status and implementation of a law that governs the appointment of recently-retired members of the armed services to civil service positions in the Department of Defense; and (3) the perceptions of Federal employees regarding the treatment of veterans in the civil service.

Fair and Open Competition for Federal Employment. The principle of fair and open competition for filling jobs is a longstanding and fundamental element of Federal merit systems. Changes in technology and policy, including a near-complete decentralization of the Federal hiring and a proliferation of noncompetitive hiring authorities, have materially changed the nature and extent of job competitions. The report study will discuss the ideal and implementation of fair and open competition and explore whether changes to policy or practice may be needed.

Veterans' Employment Redress Laws in the Federal Civil Service. The Veterans Employment Opportunities Act of 1998 (VEOA) provides an avenue for veterans to seek redress for violations of their preference rights or right to consideration for certain vacancies. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides an avenue for redress for individuals who are discriminated against based on a military service obligation or denied their reemployment rights following such service. This report will review statutes and case law to discuss redress procedures under VEOA and USERRA and important ways in which those two laws differ.

Training and Development of Senior Executives. The Senior Executive Service (SES) was established by the Civil Service Reform Act (CSRA) of 1978. According to the CSRA, the SES is to be managed so as to “provide for the initial and continuing systematic development of highly competent senior executives.” This study will examine some frequently used leadership training and development activities, their level of effectiveness (e.g., learning, behavioral change), advantages and disadvantages, and costs to provide agencies with information for determining the best strategies to pursue when developing senior executives.

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

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

OPE also conducts outreach and education, which is integral to MSPB's role as guardian of merit systems in the Federal Government. For example, research-based report recommendations on civil service policy and practice will not produce the desired changes unless policymakers and practitioners are aware of—and are persuaded by—those recommendations. Similarly, for Federal agencies to comply with civil service law, it is essential that they understand how MSPB interprets and applies the provisions of title 5, United States Code, and other statutes.

Management Support

Information Technology

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

The agency has also implemented an agency-wide, electronic Case Management System (CMS). The system is used to process and track each initial appeal and Petition for Review filed with the agency. CMS has also been integrated with the MSPB's e-Appeal, document management, and document assembly systems to allow our Administrative Judges and Attorneys to more efficiently create legal documents that are pre-populated with case data. In addition, MSPB has implemented an agency-wide, web-based office calendar system to make staff aware of scheduled events, such as hearings, leave, and outreach. In FY 2014, MSPB piloted the Virtual Desktop Interface (VDI) technology, which allows MSPB employees easy and efficient access to their desktop while working at home or on travel. In FY 2015, VDI will be implemented agency-wide.

Human Resources

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

The MSPB contracts with Federal Occupational Health (FOH), a service unit within the U.S. Department of Health and Human Services' Program Support center, to provide basic occupational health services to all of its employees throughout the country. In addition, the agency contracts with FOH to offer all of its employee's access to an employee assistance program (EAP). The EAP assists the agency in addressing productivity issues by providing both prevention and intervention for employee problems, which ultimately improves employee health and functioning, as well as workplace performance. The MSPB's agreement with FOH provides for a comprehensive EAP, delivering short-term, problem-focused counseling and a variety of services. While many health and wellness activities and accommodations are not equally available to each MSPB employee with respect to workplace or onsite availability of services, the agency does strive to ensure that each employee understands that it fully supports a healthy and safe work place for all employees.

Financial Management

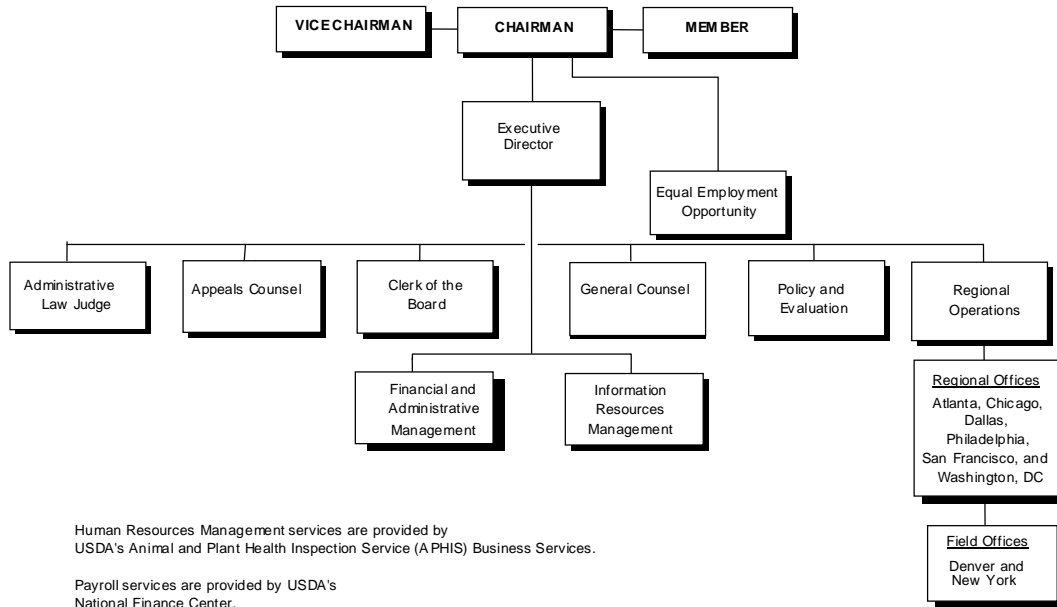
The MSPB has initiated cross-servicing agreements with U.S. Department of Treasury, Bureau of Public Debt (BPD) for its accounting, financial auditing, purchasing, and travel-related services and support. The agency also has an agreement in place with APHIS for personnel services and the USDA National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

Equal Employment Opportunity

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

Organization Chart

U.S. Merit Systems Protection Board



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

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

Accounting services are provided by the Department of the Treasury's Bureau of the Public Debt.

