United States

Merit Systems Protection Board

Performance Budget Justification For Fiscal Year 2011

Submitted to the Committees on Appropriations

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Overview of the U.S. Merit Systems Protection Board

Background and Mission

The Merit Systems Protection Board (MSPB) is an independent agency in the Executive branch of the Federal government that serves as the guardian of Federal merit systems. The MSPB's mission is:

> ***To protect Federal merit systems and the rights of individuals within those systems.***

The MSPB accomplishes its mission by:

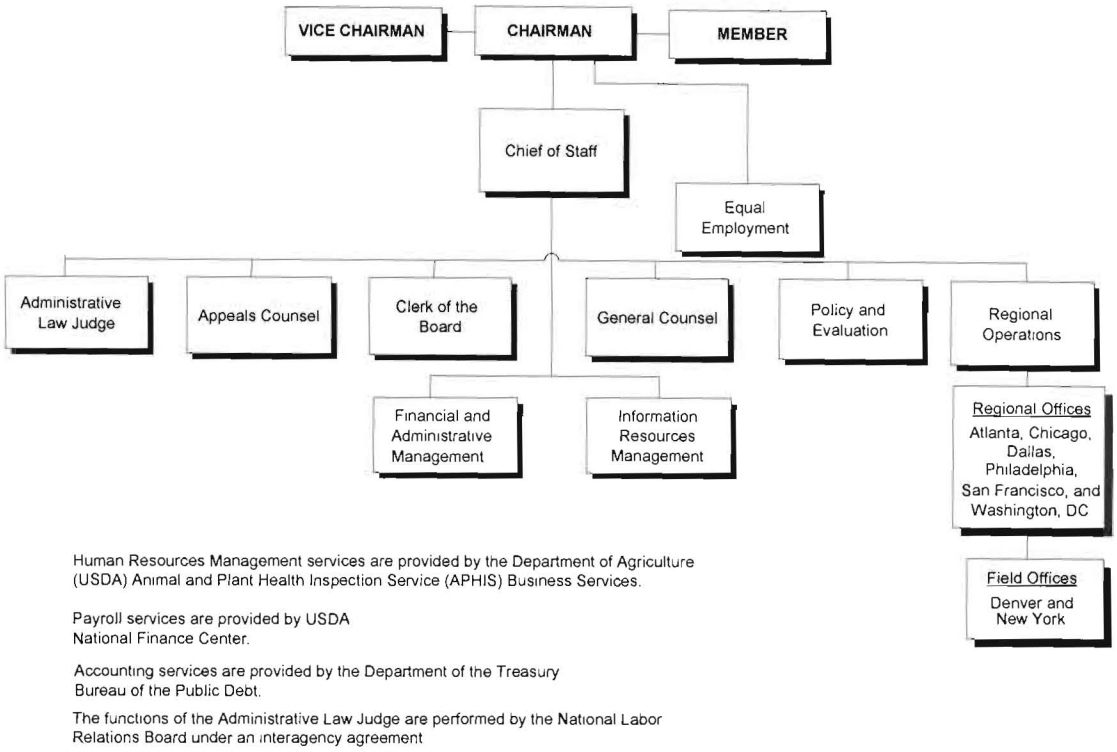
- Hearing and deciding employee appeals from agency actions;
- Hearing and deciding cases brought by the Special Counsel involving alleged abuses of the merit systems, and other cases arising under the Board's original jurisdiction;
- Conducting studies of the civil service and other merit systems in the Executive branch to determine whether they are free from prohibited personnel practices; and
- Providing oversight of the significant actions and regulations of the Office of Personnel Management (OPM) to determine whether they are in accord with merit system principles.

The MSPB's inception began in 1883, when Congress passed the Pendleton Act establishing the Civil Service Commission and a merit-based employment system for the Federal government. The Pendleton Act grew out of the 19th century reform movement to curtail the excesses of political patronage in government. As the Commission's responsibilities multiplied, a growing consensus emerged that it could not properly and adequately perform managerial and adjudicatory functions simultaneously. Concern over the inherent conflict of interest in the Commission's role as both rule-maker and judge was a principal motivating factor behind the enactment by Congress of the Civil Service Reform Act of 1978. The Act replaced the Civil Service Commission with three new independent agencies: the Office of Personnel Management, which manages the Federal workforce; the Federal Labor Relations Authority, which oversees Federal labor-management relations; and the MSPB. The MSPB assumed the employee appeals functions of the Commission and was given the new responsibilities to perform merit systems studies and to review the significant actions of the OPM.

Board Organization

The agency is divided into several functional offices organized according to its statutory missions to adjudicate appeals and to conduct merit systems studies, and the functions required to support these missions. In addition to its three appointed Board members, the MSPB has 235 positions assigned to its Washington, DC headquarters and six regional and two field offices, which are located throughout the United States.

U.S. Merit Systems Protection Board



The **Board Members** adjudicate the cases brought to the MSPB. The bipartisan Board consists of the Chairman, Vice Chairman, and Member, with no more than two of its three members from the same political party. Board members are appointed by the President, confirmed by the Senate, and serve over-lapping, non-renewable 7-year terms. The **Chairman**, by statute, is the chief executive and administrative officer of the MSPB. Office heads report to the Chairman through the Chief of Staff.

The **Office of the Administrative Law Judge** (ALJ) adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by the MSPB. The functions of this office are currently performed by ALJs at the National Labor Relations Board (NLRB) under an interagency agreement.

The **Office of Appeals Counsel** conducts legal research and prepares proposed decisions for the Board in cases where a party petitions for review of an Administrative Judge's (AJ) initial decision and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of rulings made by judges, makes recommendations on reopening cases on the Board's own motion, and provides research and policy memoranda to the Board on legal issues.

The **Office of the Clerk of the Board** 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 public information publications, operates MSPB's library and on-line information services, and administers the Freedom of Information Act and Privacy Act programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records and directives systems, legal research programs, and the Government in the Sunshine Act program.

The **Office of Equal Employment Opportunity** 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 action initiatives to MSPB's managers and supervisors.

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

The **Office of the General Counsel**, as legal counsel to the MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents the MSPB in litigation, prepares proposed decisions for the Board on compliance cases, requests to review OPM regulations and other assigned cases, conducts the agency's petition for review settlement program, and coordinates the agency's legislative policy and congressional relations functions. The office drafts regulations, conducts the MSPB's ethics program, and plans and directs audits and investigations. The office also provides legal research and other administrative assistance to NLRB ALJs.

The **Office of Information Resources Management** 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.

The **Office of Policy and Evaluation** 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 also conducts special projects for the agency and has responsibility for preparing MSPB's plans and reports required by the Government Performance and Results Act.

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

FY 2011 Budget Request

Appropriation Language

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note), 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, [$40,339,000] *$41,621,000* together with not to exceed $2,579,000 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. (Financial Services/General Government Appropriations Act, 2010.)

Performance Budget

The budget and performance planning processes have been integrated, so that the FY 2011 MSPB appropriation request can easily be compared to the agency's FY 2011 performance goals. The performance budget is structured on the basis of the MSPB FY 2010 – FY 2015 Strategic Plan. The agency's performance goals cover the critical components of three strategic goals, and our performance measures support MSPB's ability to manage and report performance over time. The strategic goals are:

Strategic Goal 1: To provide fair, high-quality and timely adjudication of cases filed with the MSPB and to make effective use of alternative methods of dispute resolution in MSPB proceedings (Adjudication).

Strategic Goal 2: To conduct studies that support strong and viable merit systems that ensure the public's interest in a high quality, professional workforce managed under the merit principles and free from prohibited personnel practices (Merit Systems Studies).

Strategic Goal 3: To achieve organizational excellence and strategically manage MSPB's human capital, information technology, and other internal systems and processes (Management Support).

(In Thousands of Dollars)

Program Activity	FY 2009 Actual	FY 2010 Enacted	FY 2011 Request	Change
Adjudication *	$33,192	$35,286	$36,367	$1,081
Merit Systems Studies	2,443	2,536	2,628	92
Management Support	5,209	5,116	5,205	89
Total...	**$40,844**	**$42,938**	**$44,200**	**$1,262**
FTEs...	**217**	**226**	**226**	**0**

* Includes transfer from the Civil Service Retirement and Disability Fund.

The MSPB requests $41,621,000 in general funds in FY 2011 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 (the 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 2011 request of $44,200,000 will fully fund 226 full-time equivalent (FTE) work-years of effort.

Changes from FY 2010

The MSPB's FY 2011 budget request reflects a 2.9% increase over the FY 2010 enacted level. The requested FY 2011 FTE level of 226 is consistent with FY 2010. The agency's request for an additional $1,262,000 in FY 2011 is comprised of the following:

Personnel Compensation and Benefits -- $657,000

An additional $564,000 has been included to provide for statutory pay raises of 2% and 1.4% in January 2010 and January 2011, respectively. In addition, agency benefit costs, as a percentage of salaries, continue to rise as the percentage of the workforce under the Federal Employees Retirement System (FERS) continues to grow. As those in the Civil Service Retirement System retire or transfer to other agencies, they are generally replaced by those under the FERS. The MSPB's personnel benefits estimate assumes that this gradual, government-wide transition will cost an additional $61,000 in FY 2011. The FY 2011 request also includes an additional $32,000 to reimburse the Employment Standards Administration of the Department of Labor for workers' compensation benefits paid on behalf of MSPB employees under the Federal Employees' Compensation Act.

Rent, Communications, & Utilities -- $572,000

An additional $282,000 has been included to cover fixed rent increases, over which MSPB has no control. The agency makes rental payments to the General Services Administration (GSA) for office space in Atlanta, Chicago, Dallas, New York, Philadelphia, and San Francisco. MSPB currently has commercial leases for office space for its Washington, DC headquarters, Washington Regional Office, and Denver Field Office. The headquarters and Washington Regional Office leases are both due to expire in FY 2010, while the Denver Field Office lease expires in FY 2011. The agency is currently working with GSA on lease renewals for both Washington locations and intends to do the same in Denver. All future rent payments in accordance with the new leases will be made to GSA.

Furthermore, the agency intends to purchase a new telephone system in FY 2010 capable of transmitting voice-over-internet-protocol (VOIP). The transition to VOIP is expected to reduce

the cost of local and long distance telephone calls, currently transmitted over traditional phone lines. VOIP will reduce long distance phone charges, improve phone system management, provide additional functionality, and better integrate the phone with MSPB's business systems. The additional $290,000 in FY 2011 is necessary to increase bandwidth to accommodate additional functionality associated with the VOIP system, as well as video-over-IP. The MSPB currently conducts videoconferencing over Integrated Services Digital Network (ISDN) lines. Video-over-IP will reduce ISDN charges while making video hearings more universally available. The additional funding would also allow the MSPB to install a new communications line to its new disaster recovery site to allow quicker recovery in the case of a disaster or network attack. By FY 2011, all communication services will be provided through Networx, which along with the Trusted Internet Connections Initiative, requires all connections to the internet to use a Managed Trusted Internet Protocol Service (MTIPS). The additional funding would also cover the cost of MTIPS.

Other Contractual Services -- $53,000

An additional $30,000 is included to provide for Federal Protective Service charges associated with future GSA leases for MSPB's headquarters, Washington Regional Office, and Denver Field Office locations. These costs are not included in our commercial leases. Another $23,000 is necessary to cover the annual, inflationary cost of the agency's contract with the Treasury Department's Bureau of Public Debt for accounting, financial auditing, purchasing, and travel-related services.

Adjudication Program Activity

Appellate Jurisdiction

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 involve 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 Act (WPA), 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.

An estimated 1.6 million Federal employees, or about 85% of the full-time civilian workforce of 1.9 million, currently have adverse action appeal rights to the MSPB. That figure is likely to be low, though, because it excludes the U.S. Postal Service, the second largest employer in the United States, whose preference eligible and managerial employees have such rights. It also does not take into account all of the Federal employees and applicants who lack adverse action appeal rights but do have appeal rights under specific statutes such as the WPA, USERRA and VEOA.

An appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An Administrative Judge (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 Petition for Review (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.

Mediation Appeals Program

The MSPB 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 it.

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. Statistics for the current and previous fiscal years show that more than 50% of all cases mediated settled at the conclusion of the MAP process, and including those cases that are not resolved by the mediation itself but settle when they are returned to the traditional adjudication track, MAP enjoys a settlement rate of over 60%. 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.

Trends and Challenges

The challenges the MSPB will face throughout FY 2010 and during FY 2011 cannot be predicted with any certainty. However, based on pending legislation and current events, and informed by history, it appears likely that workload will increase in numbers and complexity. First, as has been true several times in the recent past, changes to the WPA in proposed legislation would protect additional categories of people and disclosures, including government scientists who make certain disclosures, the 55,000 Transportation Security Administration officers, and employees who provide information on wrongdoing during a government investigation. The proposed changes would also add types of retaliation for which an individual right of action (IRA) appeal may be filed. These changes would almost certainly result in not only a greater number of IRA appeals, but also in a greater number of hearings in those cases and a greater number of affirmative defenses of retaliation raised in otherwise appealable actions. In addition, the legislation would increase the complexity of WPA appeals by changing a long-approved method of analysis, barring the Board from ruling in favor of an agency after it has met its burden of proving that it would have taken the same action absent any whistleblowing but before a whistleblower has had the opportunity to present evidence of retaliation. These same initiatives often include a provision to end the exclusive review authority for WPA appeals now reposed in the Federal Circuit. If enacted, these changes would also increase the complexity of these cases

because there would no longer be a single court to set the standard for future adjudications, so that MSPB AJs and Board members would be faced with the task of addressing and applying potentially conflicting precedent from each of the judicial circuits.

While the agency is not aware of any additional legislation regarding veterans' issues that will create further appeal rights at this time, we believe that an increased sensitivity to veterans' issues may lead to additional legislation that creates or enhances appeal rights. Moreover, as additional service members return from Iraq and Afghanistan, we would anticipate not only more appeals under existing authorities, but also that veterans' issues will naturally capture the national spotlight. This, in turn, will raise the possibility of new legislative initiatives in support of veterans that could affect the MSPB's caseload, as USERRA and VEOA have done in recent years and statutes on a range of other subjects have done in the past. Just a few examples of the many statutes that have led to hundreds of appeals are: The Federal Employee Erroneous Retirement Coverage Correction Act, Pub. L. No. 106-265 (2000), which provided for correction of the retirement system into which an employee was placed when the Federal Employees Retirement System was begun, and for an appeal to the Board from the result; the Department of Veterans Affairs (DVA) Health Care Program Enhancement Act of 2002, Pub. L. 107-135 (2002), which allowed recomputation of part-time service as full-time for certain DVA health care workers, including current retirees, who have appeal rights to seek recomputation of their annuities based on the change to creditable service; and the "Ford Act," Pub. L. 106-181 (2000), which restored appeal rights to Federal Aviation Administration employees as they were when the agency's internal personnel system was established in 1996.

Even in the absence of legislation that increases the number of USERRA and VEOA appeals, such appeals will almost certainly remain a significant part of the Board's workload. In FY 2001, the MSPB received 115 cases raising issues under USERRA and VEOA. By FY 2005, this figure had increased to 553 cases; the number further increased to 681 cases in FY 2007, and during FY 2009 it jumped to 1,109. Considering that the number of veterans of working age continues to increase due to the two major military conflicts, and that in an uncertain economy more veterans are likely to seek employment or reemployment with the Federal government, there is no reason to believe that veterans' rights cases will decrease in number.

Another factor that could lead to increased work for the Board is the recent arrival of two new Board Members. In FY 2007, an attorney from the second-largest Federal union said in an address to Board employees, that when a person who may elect between filing a Board appeal and pursuing arbitration asks for his advice, he ordinarily recommends choosing arbitration. Because the individuals now serving as Chairman and Vice Chairman of the Board have strong union backgrounds, it is plausible that advice of this sort will change and that more individuals when presented with a choice of forum will choose the Board.

In recent years, the Departments of Defense and Homeland Security have expressed a strong desire for the MSPB to decide cases within compressed timeframes. Furthermore, the House version of the proposed bill that would amend the WPA would require the MSPB to render a decision in every whistleblower case within 180 days, which presumably would include both the

regional proceeding and any headquarters proceeding if a party filed a PFR. The MSPB values timeliness in its adjudication, but more importantly it does not want to compromise fairness.

Finally, decisions of the Federal Circuit also often add to MSPB's workload. This is clearly illustrated by three relatively recent examples, *Butterbaugh v. Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003); *Russell v. Merit Systems Protection Board*, 324 Fed. Appx. 872 (Fed. Cir. Nov. 18, 2008); and *Kirkendall v. Department of the Army*, 479 F.3d 830 (Fed. Cir. 2007). In the first two of those three cases, alone, the changed precedent led to hundreds of additional appeals concerning military leave and will likely increase the number of USERRA appeals that the Board can review where the appellant has already filed a grievance over the same matter. We cannot predict how many of the latter type of appeal will be filed, although the number of such appeals will certainly be smaller than the first category. The third decision affects every USERRA appeal in which the appellant proves jurisdiction because it requires a hearing in each case. While it does not increase the number of appeals, it does increase their complexity considerably.

We mention these possibilities to inform as to the potential obstacles the MSPB faces. As we have noted before, it is at times of hardship for other agencies that the MSPB must rise to meet the challenges of a greatly increased caseload. For budgetary reasons, in the coming months agencies throughout the Federal government may be pushed to reduce their workforce through reduction in force, or they may be more likely to take performance-based actions against poor performers or adverse actions for conduct reasons where they might under other circumstances have been willing to assist such employees to improve. All of these actions could constitute an additional reason for an increased number of appeals filed with the MSPB.

Adjudication Performance Plan

Summary

Strategic Goal 1: To provide fair, high quality and timely adjudication of cases filed with MSPB and to make effective use of alternative methods of dispute resolution in MSPB proceedings.

Performance Goals:

1.1 Issue high quality decisions.

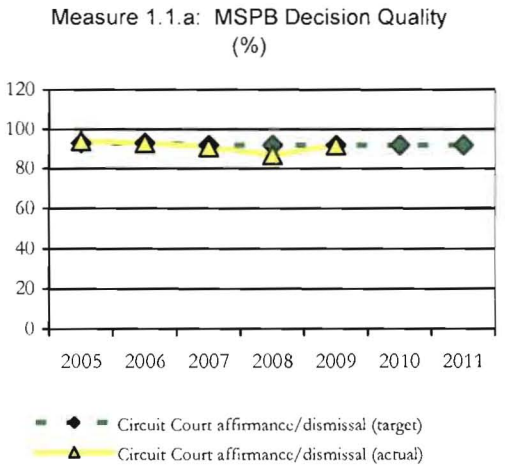
1.2 Issue timely decisions.

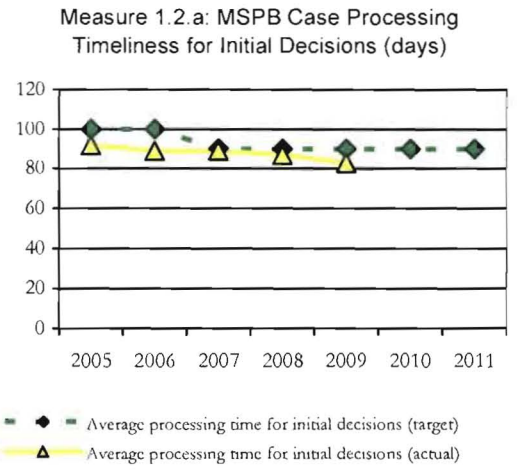
1.3 Make effective use of alternative methods of dispute resolution.

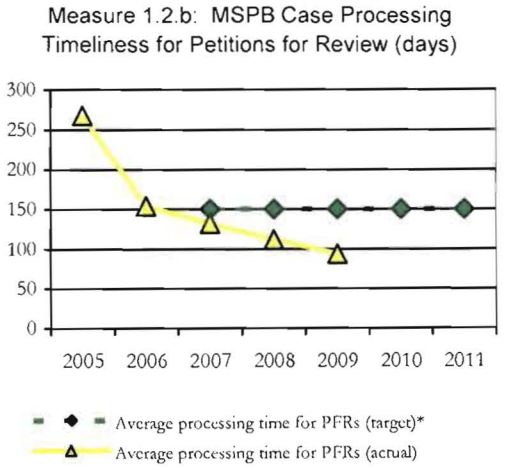
1.4 Achieve and maintain customer satisfaction with our adjudicatory and alternative dispute resolution programs and with adjudication outreach efforts.

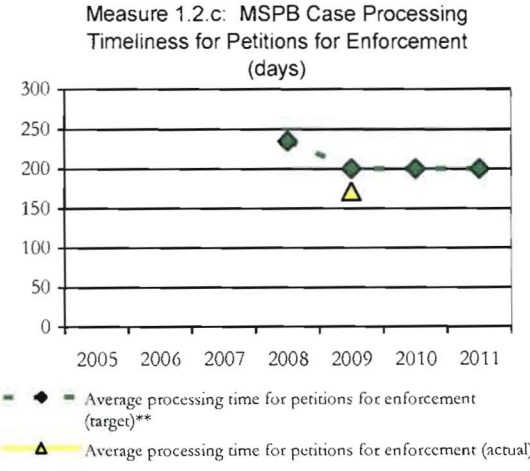
Selected Results:

(* New goal in FY 2007, ** New goal in FY 2008)









Performance Goals and Results

Performance Goal 1.1: Issue high quality-decisions

1.1.a: Percentage of MSPB decisions unchanged on review by the U.S. Court of Appeals for the Federal Circuit (Court dismisses case or affirms Board decision).

Results		Targets	
FY 2006	93%	**FY 2010**	92% or greater.
FY 2007	91%	**FY 2011**	92% or greater.
FY 2008	87%*		
FY 2009	92%		

* A significant number of cases were affected by the Court's decision in *Kirkendall v. Department of the Army*. Adjusting for these related decisions results in 94 percent of the cases left unchanged by the Court.

1.1.b: Percent of cases decided by the Board on Petition for Review (PFR) that are reversed and/or remanded to MSPB Administrative Judges (AJ) for a new decision, adjusted for those not due to error or oversight by the AJ.

Results		Targets	
FY 2006	10%	**FY 2010**	10% or fewer.
FY 2007	9%	**FY 2011**	10% or fewer.
FY 2008	6%		
FY 2009	5%		

Performance Goal 1.2: Issue timely decisions.

1.2.a: Average case processing time for initial decisions.

Results		Targets	
FY 2006	89 days	**FY 2010**	90 days or less.
FY 2007	89 days	**FY 2011**	90 days or less.
FY 2008	87 days		
FY 2009	83 days*		

* Average case processing time for initial decisions excluding the time spent in the Mediation Appeals Program (MAP) was 80 days.

1.2.b: Average case processing time for PFRs.

Results		Targets	
FY 2006	154 days.	**FY 2010**	150 days or less.
FY 2007	132 days.	**FY 2011**	150 days or less.
FY 2008	112 days.		
FY 2009	94 days.		

1.2.c: Average case processing time for Petitions for Enforcement (headquarters only).

Results		Targets	
FY 2006	New measure in FY 2008.	**FY 2010**	200 days or less.
FY 2007	New measure in FY 2008.	**FY 2011**	200 days or less.
FY 2008	Measure assessed and target established for FY 2009.		
FY 2009	171 days.		

1.2.d: Percentage of initial appeals decided within time standards.

Results		Targets	
FY 2006	New measure in FY 2007.	**FY 2010**	50% or more of cases decided within 110 days.
FY 2007	85% decided within 120 days.		
FY 2008	72% decided within 110 days.	**FY 2011**	50% or more of cases decided within 110 days.
FY 2009	75% decided within 110 days.*		

* The percentage of initial appeals decided within time standards excluding the time spent in the MAP was 77%.

1.2.e: Percentage of PFRs decided within time standards.

Results		Targets	
FY 2006	New measure in FY 2007.	**FY 2010**	50% or more of cases decided within 110 days.
FY 2007	48% decided within 110 days.		
FY 2008	60% decided within 110 days.	**FY 2011**	50% or more of cases decided within 110 days.
FY 2009	72% decided within 110 days.		

Performance Goal 1.3: Make effective use of alternative methods of dispute resolution.

1.3.a: Maintain rate of settlement of initial appeals that are not dismissed at 50% or higher.

Results		Targets	
FY 2006	58%	**FY 2010**	50% success rate or better.
FY 2007	57%	**FY 2011**	50% success rate or better.
FY 2008	54%		
FY 2009	62%		

FY 2007 results provided for comparison purposes only. In FY 2007, MSPB reported the settlement rate for initial appeals and PFRs, combined, which was 56%.

1.3.b: Maintain rate of settlement of cases selected for the PFR settlement program at 25% or higher.

Results		Targets	
FY 2006	38%	**FY 2010**	25% success rate or better.
FY 2007	23%	**FY 2011**	25% success rate or better.
FY 2008	34%		
FY 2009	65%		

FY 2007 results provided for comparison purposes only. In FY 2007, MSPB reported the settlement rate for initial appeals and PFRs, combined, which was 56%.

1.3.c: Number of cases mediated and percentage of cases successfully resolved through mediation procedures.

Results		Targets	
FY 2006	109 cases mediated with a 45% success rate at the conclusion of the MAP, and a 61% success rate including cases that settled after returning to adjudication.	**FY 2010**	Mediate 106 or more cases with a 50% or better success rate.
FY 2007	100 cases were mediated with a success rate of 48% at the conclusion of MAP (48 settled cases), and a success rate of 67% including cases that settled after returning to	**FY 2011**	Mediate 106 or more cases with a 50% or better success rate.

	adjudication (19 additional cases settled).
FY 2008	147 cases were mediated with a success rate of 54% at the conclusion of MAP (79 settled cases), and a success rate of 71% including cases that settled after returning to adjudication (26 additional cases settled).
FY 2009	173 cases were mediated with a success rate of 55% at the conclusion of MAP, and a success rate of 62% including cases that settled after returning to adjudication.

Performance Goal 1.4: Achieve and maintain customer satisfaction with our adjudicatory and alternative dispute resolution programs and with adjudication outreach efforts.

1.4.a: Customer satisfaction with adjudication and alternative dispute resolution processes and with adjudication outreach efforts.

Results		**Targets**	
FY 2006	New measure in FY 2007.	**FY 2010**	Implement appropriate modifications to e-Appeal based on survey results.
FY 2007	Completed internal report on customer satisfaction with initial appeals and settlement processes which indicated that customers are satisfied with MSPB processes and their interactions with MSPB employees; feedback from e-Appeal users was positive including many who reported encouraging all users in their agencies to file using e-Appeal.	**FY 2011**	TBD based on FY 2010 results.
FY 2008	Developed four automated surveys for e-Appeal customers including those who file appeals, use automated pleadings, use the		

	repository, and those who created e-Appeal accounts but did not use the system to file their appeal.
FY 2009	The automated surveys for e-Appeal customers were implemented.

Review of Adjudication Performance Goals and Measures

The performance goals and measures align with MSPB's FY 2010-FY 2015 Strategic Plan. The performance goals and measures balance the need to maintain decision quality, improve and maintain timeliness, and achieve and maintain customer satisfaction with MSPB's adjudication processes. This performance plan contains no significant changes to MSPB's adjudication performance goals and measures. The established performance targets for FY 2010 and FY 2011 are consistent with the enacted budget for FY 2010 and with the FY 2011 budget request.

The performance measures emphasize important aspects of MSPB's adjudication mission and performance and reflect our continued focus on maintaining the high quality and timely resolution of cases brought to MSPB. The FY 2010 and FY 2011 numeric targets for the percent of cases left unchanged by the U.S Court of Appeals for the Federal Circuit are maintained at 92% or greater (measure 1.1.a). FY 2010 and FY 2011 numeric targets for the percent of cases decided by the Board on PFR that are reversed or remanded to MSPB judges for a new decision that are due to error or oversight by the AJ are set at 10% or fewer cases for each fiscal year (measure 1.1.b).

The FY 2010 and FY 2011 numeric targets for the average processing time for initial appeals (measure 1.2.a) are maintained at 90 days or less. It is important to balance the timely resolution of initial appeals cases with the need to ensure that appropriate cases are considered for resolution through mediation. Therefore, continuing in FY 2010, we will also track average case processing time for initial appeals adjusting for cases that are involved in the mediation appeals program. This information will be useful in determining the need for possible adjustments to future initial appeals timeliness targets.

FY 2010 and FY 2011 numeric targets for the average processing time for PFRs (measure 1.2.b) are maintained at 150 days or less. In FY 2009, the average case processing time for enforcement cases at headquarters was added to focus on our efforts to improve the timeliness of processing these cases (measure 1.2.c). The FY 2010 and FY 2011 targets for this measure are set at 200 days or less. This target is longer than that for initial decisions and PFRs because these timeframes could include the issuance of a number of orders and the clock does not stop counting unless and until the Board finds compliance. The specified target has been adjusted since FY 2008 when it was 235 days, and is appropriate given the time required to process these cases in previous years. FY 2010 and FY 2011 targets for the percent of cases decided within time standards for initial appeals (measure 1.2.d) remain at 50% or more of cases closed within 110

days. The FY 2010 and FY 2011 targets for percent of PFRs closed within time standards (measure 1.2.e) also remain at 50% or more of cases closed within 110 days.

The FY 2010 and FY 2011 targets for the successful settlement of initial appeals that were not dismissed are set at 50% or greater (measure 1.3.a). Variability in the number of cases selected as appropriate for the PFR settlement program as well as the unpredictability of settlement success can lead to considerable variability in the PFR settlement success rate. Given this variability, the FY 2010 and 2011 targets for PFR settlement success rate will remain at 25% or more of the cases selected for the settlement program (measure 1.3.b). The FY 2010 target for the number of cases mediated has been set at 106 or more cases (measure 1.3.c) with a 50% or better success rate. This value reflects a 28% increase in the number of cases mediated over the number mediated in FY 2005 (the base year of the program). The FY 2011 target for number of cases mediated will remain at 106 cases or more at a 50% or better success rate. The FY 2010 target for customer satisfaction with the adjudication program is to implement appropriate modifications to e-Appeal based on the 2009 survey of e-Appeal users (measure 1.4.a). The FY 2011 target is to be determined based on FY 2010 results.

Performance Measurement

Most performance measurement data for the adjudication performance goals are maintained in MSPB's automated Case Management System. This system contains information about individual cases, their current status and final resolution including remands, rewrites, the outcomes of court decisions, case processing timeliness, and the numbers and types of cases settled. Data are entered into the system, monitored for accuracy, and summarized in a variety of reports. The automated data are supplemented with qualitative information about cases as well as data that are collected from a cross-section of adjudication customers.

Merit Systems Studies Program Activity

Special Studies and Office of Personnel Management 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 the 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. In FY 2009, the agency published four editions of the *Issues of Merit* newsletter and completed six merit systems reports including studies on performance management practices that can drive employee engagement, the laws governing adverse actions, the utility of job simulations in assessing applicants, supervisory demographic trends, and the progress made in fair and equitable treatment of employees.

Recently, the positive impact of MSPB studies has been evident in a number of areas. Examples include the following.

- *Improving the engagement level of the Federal workforce:* Established a link between employee engagement and Federal agency outcomes. The Office of Management and Budget's (OMB) planning guidance for the FY 2011 budget and performance plans reiterated this link, and, for the first time, required that agencies submit reports detailing how they promote employee satisfaction and wellness as a means to improving employee engagement.

- *Improving Federal hiring:* Advocated better applicant recruitment, assessment, and communication procedures that have been included in the Office of Personnel Management's (OPM) end-to-end hiring process as well as instructions to agencies as to how they are expected to improve their hiring processes by FY 2010.

- *Improving the management of probationary employees:* Reported that OPM's regulations regarding the appeal rights of individuals serving in probationary or trial periods were misleading. In 2008, OPM finalized regulations clarifying the appeal rights of these individuals.

- *Improving the management of Federal contracts:* In 2007, OMB issued guidelines for certification of Contracting Officer Technical Representatives – the experts who help ensure that contractors are meeting contracts' technical requirements, referencing MSPB's 2005 report on managing these professionals.

- *Federal job announcements:* Evaluated Federal vacancy announcements and provided practical guidance for improvement that OPM is currently using to improve agency practices and the USAJOBs website.

Employee Satisfaction

The MSPB analyzes employee survey results each year to maintain agency strengths and to take steps to improve areas where there are relative weaknesses. An analysis of MSPB's 2008 annual employee survey results indicates that the agency's performance on the survey continues to be strong. In fact, MSPB's responses were generally well above the government averages. We continue to evaluate employee satisfaction levels and are currently analyzing data from the 2009 annual employee survey to determine potential improvement areas.

Trends and Challenges

Over the next few years, the Federal government faces numerous human capital challenges that make it necessary to ensure that the MSPB has the staff and resources required to continue its merit systems studies work, including:

- The near-certain, if delayed, retirement of many of the government's most-experienced employees, including a significant percentage of career senior executives;
- The growing demands on the Federal budget that could result in greater potential to cut costs by decreasing the size of the workforce, reducing or freezing hiring, or reducing training;
- Using a knowledge-based Federal workforce effectively, including training and engagement, to enable employees to perform at the highest possible level and to help agencies recruit and retain a capable, motivated, and diverse workforce;
- Reforming Federal human resources (HR) systems to make them more responsive to agency mission requirements while preserving core values of fairness and openness. One system in particular need of reform is Federal hiring, which is considered complex, difficult to understand, and often ineffective at attracting and selecting individuals on the basis of merit in a timely manner;
- Assuring the fair treatment of applicants and Federal employees, including freedom from discrimination and prohibited personnel practices;
- Making effective and fair use of HR authorities, under both the traditional framework of title 5, United States Code and under the growing non-traditional HR flexibilities and alternative personnel systems;
- Selecting and developing a cadre of Federal managers who are prepared to lead Federal programs and manage employees fairly and effectively.

It is essential that the MSPB continue to hire and retain highly-qualified employees to perform its studies function to ensure the solutions to these challenges are rooted in the merit system principles and are free from prohibited personnel practices.

Merit Systems Studies Performance Plan

Summary

Strategic Goal 2: To conduct studies that support strong and viable merit systems that ensure the public's interest in a high quality, professional workforce managed under the merit principles and free from prohibited personnel practices.

Performance Goals:

2.1 Conduct merit systems studies and recommend improvements to policy-makers and practitioners.

2.2 Assess the application of merit in the workplace.

2.3 Achieve and maintain customer satisfaction with merit systems studies products and outreach efforts.

Selected Results:

Significant impact

Improved Federal hiring by advocating better applicant recruitment, assessment, and communication procedures.

Increased attention to the importance of employee engagement on agency outcomes and strategies for improving engagement.

Improved performance management practices.

Select recent studies (beginning with most recent)

As Supervisors Retire: An Opportunity to Re-Shape Organizations
Job Simulations: Trying Out for a Federal Job
Addressing Poor Performers and the Law
Managing for Engagement: Communication, Connection, and Courage
Merit Systems Protection Board Annual Report for FY 2008
The Federal Government: A Model Employer or a Work in Progress?
The Power of Federal Employee Engagement
Alternative Discipline: Creative Solutions for Agencies to Effectively Address Employee Misconduct
Federal Appointment Authorities: Cutting Through the Confusion
In Search of Highly Skilled Workers: A Study on the Hiring of Upper Level Employees From Outside the Federal Government
Attracting the Next Generation: A Look at Federal Entry-Level New Hires

Performance Goals and Results

Performance Goal 2.1: Conduct merit systems studies and recommend improvements to policy-makers and practitioners.

2.1.a: Number and scope of MSPB reports and *Issues of Merit* newsletters issued.

Results

FY 2006 Published eight reports and four editions of the *Issues of Merit* newsletter. Report topics included: designing effective pay-for-performance compensation systems, managing contracting officer representatives to achieve positive contract outcomes, reforming Federal hiring, the symposium on the practice of merit, the effect of *Van Wersch* and *McCormick* on the probationary period, study of initial appeals and settlements (internal report), the MSPB FY 2005 Annual Report and the MSPB FY 2005 Performance and Accountability Report (PAR); completed reports on the 2005 Merit Principles Survey (MPS), baseline data for the Department of Homeland Security (DHS), baseline data for the Department of Defense (DoD), and a draft of the MSPB Strategic Plan for FY 2007-2012.

FY 2007 Published a report on the results of the 2005 MPS and four editions of the *Issues of Merit* newsletter; completed a report on Federal entry-level new hires and four internal reports; published MSPB's FY 2006 Annual Report, FY 2006 PAR, FY 2007-2012 Strategic Plan, and FY 2007 (revised) - FY 2008 (final) Performance Plan; received Board Member approval for a new research agenda covering the 2008-2010 time period.

FY 2008 Published reports on hiring upper-level employees from outside the Federal government, the use of various hiring authorities, Federal employee engagement, the use of alternative discipline in Federal agencies, a longitudinal analysis of prior MPSs, the MSPB FY 2007 Annual Report, and four editions of the *Issues of Merit* newsletter. Completed three internal reports including a report outlining MSPB Human Capital Survey results for the public that was placed on the MSPB website. Assessed the scope of study reports and selected research topics from the existing research agenda.

FY 2009 Completed reports on addressing poor performers in the Federal government, the utility of job simulations in employee selection, an examination of how the role of the supervisor is changing, fair and equitable treatment in the Federal workforce, a summary report of the FY 2007 MPS results that focuses on performance management practices that drive employee engagement, and the FY 2008 MSPB Annual Report. Completed an internal report summarizing MSPB's Annual Employee Survey data, and published four editions of the *Issues of Merit* newsletter. Assessed the scope of study reports and selected research topics from the existing research agenda.

Targets

FY 2010 Complete six reports and four editions of the newsletter; assess scope of studies and newsletters; develop a new research agenda for approval by the Board Members.

FY 2011 TBD based on FY 2010 results.

2.1.b: Studies or study recommendations referenced in policy papers, professional literature, legislation, and the media.

Results

FY 2006 Used customer feedback survey cards in hard-copy reports and an online version for web-based users to help assess usefulness and impact of studies; continued review of vacancy announcements including projected cost impacts; continued to collect information about use of MSPB study findings and recommendations as reports are referenced in policy papers, professional literature, legislation, and the media.

FY 2007 Evaluated the feedback provided by customers through both report feedback cards and web-based surveys concerning study reports and the Office of Policy and Evaluation newsletter; collected information concerning MSPB report findings and recommendations through references in the professional literature, legislation, and the media which included a presentation on referencing MSPB reports at the Annual Conference of the American Society for Public Administration.

FY 2008 Tracked references of findings and recommendations in the policy, professional literature, legislation, and the media. Following a 2006 Board decision and previous MSPB study reports, the Office of Personnel Management (OPM) strongly advised agencies against using the Outstanding Scholar and Bilingual/Bicultural hiring authorities. Citing the Contracting Officer Representatives report, the Office of Management and Budget (OMB) set new standards for training and development of Contracting Officer Technical Representatives. Following publication of two previous Board reports, OPM revised regulations regarding procedural and appeal rights of individuals serving a probationary or trial period. Testified by invitation before the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on recruiting and hiring the next generation of Federal employees.

FY 2009 Tracked references of findings and recommendations in policy, professional literature, legislation, and the media. Following numerous MSPB studies that advocate better applicant recruitment, assessment, and communication, OPM included many of MSPB's recommendations in its end-to-end hiring process as well as instructions to agencies on how to improve job announcements and hiring processes. Following the

release of two employee engagement studies, numerous requests were received for more information about engagement from Federal agencies, the Congress, oversight agencies such as OMB and the Government Accountability Office, good-Government groups, and the media. Testified by invitation before the House Armed Services Readiness Subcommittee about government hiring practices and before the Defense Business Board about pay for performance. Findings and recommendations of studies were highlighted by numerous media outlets, including the *Washington Post*, *Federal Times*, *Government Executive*, Federal News Radio, and others.

Targets

FY 2010 Continue to track and evaluate mechanisms for measuring the impact of studies and newsletters.

FY 2011 Continue to track and evaluate mechanisms for measuring the impact of studies and newsletters.

Performance Goal 2.2: Assess the application of merit in the workplace.

2.2.a: Periodically conduct MPS or other surveys to monitor and report on perceptions of merit in the workplace.

Results

FY 2006 Completed three reports using data from the 2005 MPS including a baseline report on DHS and a baseline report on DoD; collected data from OPM's Central Personnel Data File on DHS and DoD to monitor the impact of personnel system changes; collaborated with the Senior Executive Association (SEA) on the annual survey requirement followed by SEA proposing legislation which included a requirement to use the MSPB MPS in alternate years to the OPM Human Capital Survey; began planning a survey to assess the practice of merit and prohibited personnel practices related to equitable treatment.

FY 2007 Published a report on the FY 2005 MPS; began electronic administration of the FY 2007 MPS, which included assisting several agencies in meeting their statutory requirement for conducting an annual survey of their workforce; began electronic administration of a separate survey to investigate career advancement issues in the Federal workforce.

FY 2008 Completed the administration of the government-wide 2007 MPS, which included assisting a number of agencies in meeting their statutory requirements for conducting an annual survey of their workforce by providing them with their survey results for posting on their agency websites; completed a report on longitudinal MPS results including those from the 2007 MPS; completed administration of the government-wide career advancement survey and began analysis of the results; determined that

planning should begin for a government-wide administration of the next MPS to be administered in FY 2010.

FY 2009 Completed a report on the findings from the 2007 MPS, focusing on improving Federal performance management practices; completed the administration of a government-wide telework survey and began analysis of the results; administered surveys to Federal proposing and deciding officials of suspension and removal actions in nine agencies and completed a report on addressing poor performers using this data; completed a report on fair and equitable treatment using survey data from the 2007 career advancement survey; completed agency interrogatories regarding how agencies use qualification standards and job simulations; began planning for the MPS 2010 administration.

Targets

FY 2010 Continue to assess the practice of merit and prohibited personnel practices in agencies. Conduct a version of the MPS. Draft a report on the 2009 telecommuting survey.

FY 2011 Draft a report on the 2010 Merit Principles Survey.

Performance Goal 2.3: Achieve and maintain customer satisfaction with merit systems studies products and outreach efforts.

2.3.a: Customer satisfaction with reports, newsletters, website, and outreach efforts.

Results

FY 2006 New measure in FY 2007.

FY 2007 Collected and analyzed feedback from customers concerning their satisfaction with MSPB reports, newsletters, our website, and outreach efforts using a variety of methods including discussions with stakeholders, responses received from feedback cards distributed with reports and information obtained directly from users of the website; used this information to inform the development of our research agenda for FY 2008-FY 2010, improve the quality, usefulness, and impact of our reports and newsletters, and completely redesigned our website to make it more accessible and helpful to potential users.

FY 2008 Collected and analyzed feedback from customers concerning their satisfaction with MSPB reports, newsletters, the studies website, and outreach efforts using a variety of methods including discussions with stakeholders, responses received from feedback cards distributed with reports, outreach feedback, and information obtained directly from users of our website.

FY 2009 Collected and analyzed feedback from customers concerning their satisfaction with MSPB reports, newsletters, the studies website, and outreach efforts using a variety of methods including discussions with stakeholders, outreach feedback, and information obtained directly from users of our website. In addition, we began administering a survey of newsletter readers to obtain feedback on the quality, content, and utility of *Issues of Merit*. To date, the feedback about the newsletter has been very positive. We will continue collecting feedback and use the information to improve the publication in FY 2010.

Targets

FY 2010 Use feedback on quality, usefulness, and impact of reports to maintain or improve the readability of reports, make improvements to the MSPB website. Use feedback received from the *Issues of Merit* survey, as appropriate, to improve the newsletter. Evaluate feedback received from agency presentations and outreach efforts. Seek feedback from stakeholders to inform the development of the FY 2010-2013 research agenda.

FY 2011 Use feedback on quality, usefulness, and impact of reports to maintain or improve the readability of reports and newsletters, and make improvements to the MSPB website. Evaluate feedback received from agency presentations and outreach efforts.

Review of Merit Systems Studies Performance Goals and Measures

The merit systems studies goal aligns with MSPB's Strategic Plan for FY 2010-FY 2015. The performance goals for merit systems studies reflect the agency's focus on conducting studies that provide recommendations for improvements to policy-makers and practitioners, assessing the practice of merit in the workplace, and achieving and maintaining customer satisfaction with its studies products and outreach efforts. This performance plan contains no significant changes to MSPB's merit systems studies performance goals and measures. These performance measures and targets are consistent with the enacted budget for FY 2010 and with the FY 2011 budget request.

In 2010, the MSPB will maintain its current level of studies work focusing primarily on its current research agenda, and will develop a new research agenda for future studies. In FY 2010, MSPB plans to complete six studies and four editions of the *Issues of Merit* newsletter (measure 2.1.a). The targets for FY 2011 will be determined based on FY 2010 results. In FY 2010 and FY 2011, the MSPB will continue to track and evaluate mechanisms for measuring the impact of its studies and newsletter (measure 2.1.b). In FY 2010, we will conduct a version of the MPS, and in FY 2011, we will draft a report on the FY 2010 MPS (measure 2.2.a). In FY 2010, we will use customer feedback solicited from readers of the *Issues of Merit* newsletter, as appropriate, to improve that publication, and in FY 2011, we will continue to use feedback to improve reports and the MSPB website (measure 2.3.a).

Performance Measurement

Measures of impact of studies and recommendations are obtained from reviews of professional literature, academic texts, legislative proposals, the media, and other sources where MSPB studies are cited as authoritative sources of information or analyses. Standard survey design and sampling procedures are used to conduct the MPS and other surveys designed to collect information on the merit systems and Federal human capital management. Standard procedures are also used to conduct periodic customer satisfaction surveys such as customer comment cards, online targeted solicitations of feedback or government-wide web-based surveys. In addition, MSPB uses focus groups conducted at various locations to gather feedback from its merit systems studies stakeholders. Program evaluations and other assessments by independent organizations can also be used to inform program effectiveness.

Management Support Program Activity

Information Technology

The MSPB's primary mission is to provide for independent adjudication of appeals of personnel actions for over two million 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. Parties who file electronically can also receive acknowledgement orders from the agency by e-mail instantaneously, rather than through the regular mail. Agency representatives can also assign themselves to a case electronically instead of mailing in a designation form. e-Appeal Online was selected as a finalist for the FY 2008 Web Managers Best Practice Award and listed as one of the ten great .GOV websites by Government Computer News magazine. At the end of FY 2009, 39% of all appeals and 28% of all pleadings were filed electronically through e-Appeal.

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.

Human Resources

The Economy Act provides Federal agencies the authority to contract with other Federal organizations to provide services, supplies, and equipment. The MSPB contracts with the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service 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 employees 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 the U.S. Department of Treasury, Bureau of Public Debt (BPD) for its accounting (general ledger), financial auditing, purchasing, and travel-related services and support. BPD has been designated by the Office of Management and Budget (OMB) as a Center of Excellence. The agency also has an agreement in place with 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. Both 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 Office of Equal Employment Opportunity (OEEO) plans, implements, and evaluates MSPB's affirmative employment programs and initiatives, advises senior executives, managers and supervisors about these programs and initiatives and provides all employees training on rights and remedies available under anti-discrimination laws and whistleblower protection laws. OEEO provides counseling, complaint and alternative dispute resolution processes to current and former MSPB employees and applicants for employment who allege employment discrimination. OEEO provides similar processes to individuals who allege disability discrimination in their access to MSPB programs and activities. The office evaluates and reports the MSPB's complaints data and workforce demographics by occupation and grade to the Congress, the Equal Employment Opportunity Commission, the Office of Personnel Management and other external stakeholders. OEEO also works with MSPB employees to provide Special Emphasis Observance Programs and an annual Unity Day Program to promote the value of diversity and inclusiveness in achieving the agency's mission.

Trends and Challenges

The FY 2010 and FY 2011 targets for MSPB's human capital, information technology, and other internal programs reflect our intent to maintain or increase performance over that obtained in FY 2009. In FY 2010, MSPB will complete its transition to the government-wide Personal Identity Verification card program required by OMB Memorandum 05-24, "Implementation of Homeland Security Presidential Directive 12 - Policy for a Common Identification Standard for Federal Employees and Contractors." The agency also intends over the next two years to continue increasing the percentage of appeals and pleadings filed electronically, to advance e-government

by implementing and enhancing web-based applications, to continue to improve customer service, and to comply with Federal Information Security Management Act and other regulatory requirements. In FY 2009, MSPB was attacked by a virus that caused an agency-wide outage. MSPB has been negotiating with another federal agency to co-locate MSPB's disaster recovery site at their location. MSPB hopes to sign a Memorandum of Understanding for the disaster recovery site with that agency in FY 2010. Installation and configuration of the site is planned for FY 2011.

Management Support Performance Plan

Summary

Strategic Goal 3: To achieve organizational excellence and strategically manage MSPB's human capital, information technology and other internal systems and processes.

Performance Goals:

3.1 Attract, develop and retain a highly qualified, diverse and highly motivated workforce.

3.2 Effectively use information technology to enhance organizational performance and efficiency, and provide appropriate access to and dissemination of MSPB information.

3.3 Effective and efficient operation of financial, budget and other support programs.

Performance Goals and Results

Performance Goal 3.1: Attract, develop, and retain a high-quality, diverse, and highly motivated workforce.

3.1.a: Program managers assure that the right employees are in the right place to achieve results.

Results

FY 2006 New measure in FY 2007.

FY 2007 The MSPB placed as the second "Best Places to Work in Government" in the small agency category; office directors focused on specific issues relevant to their offices; increased use of structured interviews resulted in a better comparative assessment of the qualifications of the best qualified candidates.

FY 2008 Implemented an exit interview questionnaire and refined vacancy announcements to be more user-friendly and better able to attract the right applicants for the targeted position.

FY 2009 Due to low employee turnover in FY 2009, one annual assessment was completed with no areas of concern referenced in the exit interview questionnaire. Also, the MSPB increased its use of electronic hiring software to improve the timeliness of the hiring process. The Executive Resources Board recommended and secured three training slots at the Office of Personnel Management's (OPM) Federal Executive Institute as part of MSPB's training program, including the Senior Management Fellows Program. A variety of health and wellness programs were provided for employees throughout the year.

Targets

FY 2010 Review the assessment process based on results of a hiring makeover project to include timely hiring process, user-friendly vacancy announcements, and exit interview questionnaire.

FY 2011 Continue to monitor assessment process on an annual basis.

3.1.b: MSPB managers and employees ensure that the agency's mission is enhanced by a diverse workforce.

Results

FY 2006-FY 2007 New measure in FY 2008.

FY 2008 Developed and implemented a Unity Day celebration and various special emphasis initiatives to improve inclusiveness, and respect for and appreciation of individual differences among employees; improved employee opportunities by notifying them about career advancement seminars and opportunities offered by affinity groups, and by working with managers to add inclusiveness in crediting plans and target vacancies toward minority populations; used data audits and other tools to assess effectiveness of diversity initiatives.

FY 2009 The delivery of Special Emphasis Observance Programs was enhanced with presentations from noted speakers on Federal workplace diversity issues such as generational differences and sexual orientation. Awareness and appreciation of diversity in its broadest context was promoted through these programs and other communications to all employees. Strategies were developed for achieving diverse applicant pools and for proposing training plans that will assist employees with achieving their best in accomplishing the agency's mission and assist managers and supervisors with managing a diverse workforce. Training and developmental opportunities were offered to employees, largely from affinity groups; a new collateral duty Disability Program Coordinator was recruited; an Equal Employment Opportunity (EEO) and Diversity Training Policy was developed; and an expansion of the mission and goals of the Office of EEO to include a focus on diversity was proposed.

Targets

FY 2010 Update, develop, implement, and evaluate measurement goals or indicators (i.e., EEO policies, hiring and training practices, reasonable accommodations, climate surveys, exit surveys, special emphasis observance programs, representation turnover, turnover costs, participation in vendor fairs) for achieving diversity and inclusiveness in the

broadest context (including language proficiency and cultural backgrounds) across all occupations and grade levels.

FY 2011 TBD based on FY 2010 results.

3.1.c: Customer satisfaction with internal human resources (HR) and EEO programs.

Results

FY 2006 New measure in FY 2007.

FY 2007 Informal interviews with employees suggested a high level of satisfaction with HR programs; staffing actions handled by the Animal and Plant Health Inspection Service's (APHIS) personnel office met or exceeded government-wide standards; hired a new HR Director and detailed an employee to serve as the Acting EEO Director to replace the previous Director who transferred to another agency.

FY 2008 Administered internal HR and EEO customer satisfaction surveys. Convened a team of employees to recommend changes to MSPB's hiring process and prepared a report containing a number of recommended initiatives for the Chairman's review and comment.

FY 2009 Feedback received from senior management concerned communication regarding the year-end procurement process which will be further addressed in FY 2010. The MSPB implemented a hiring make-over team to review hiring processes and procedures and make recommendations on options to our hiring process with a goal of more timely, efficient hiring procedures. The team is currently tracking the recruitment process from initial planning to onboard.

Targets

FY 2010 Complete hiring makeover project and make changes to agency hiring program based on analysis of project results.

FY 2011 TBD based on FY 2010 results.

3.1.d: Effectively implement human capital authorities and flexibilities.

Results

FY 2006 New measure in FY 2007.

FY 2007 Forwarded employee Official Personnel Folders (OPF) to a contractor for scanning and began using the electronic OPF (e-OPF) for all new employees; received provisional certification from OPM on our Senior Executive Service (SES) Performance Appraisal System; HR Director visited APHIS Service Center to discuss operational processes and opportunities for change.

FY 2008 Updated the interagency agreement between APHIS and MSPB to better reflect the service needs of the agency; received full certification of our SES Performance Management Plan from OPM, which was endorsed by the Office of Management and Budget (OMB).

FY 2009 The e-OPF was implemented, which allows MSPB employees immediate access to their personnel information. Arranged an on-site pre-retirement seminar for MSPB employees, conducted two brown-bag lunch seminars on HR topics, and detailed MSPB health and wellness initiatives in a report to OMB that was selected as a template for other agency submissions. No modification of the SES Performance Appraisal System was required due to a full certification evaluation of the current plan by OPM.

Targets

FY 2010 Continue to comply with new and existing program requirements; retain full certification of SES Performance Management Plan; evaluate first year of the e-OPF program.

FY 2011 Continue to comply with new and existing program requirements.

Performance Goal 3.2: Effectively use information technology to enhance organizational performance and efficiency, and provide appropriate access to and dissemination of MSPB information.

3.2.a: Support e-government objectives by increasing appeals and pleadings filed electronically.

Results

FY 2006 New measure in FY 2007.

FY 2007 29% of initial appeals filed were filed electronically through e-Appeal (1,763/5,991).

FY 2008 37% of initial appeals were filed electronically (2,175/5,891). e-Appeal was selected as a finalist for the FY 2008 Web Managers Best Practice Award and listed as one of the ten great .GOV websites by Government Computer News magazine.

FY 2009 39% of initial appeals were filed electronically (2,546/6,586), and 28% of pleadings were filed electronically (11,156/40,276).

Targets

FY 2010 40% or more of initial appeals are filed electronically and 28% or more of pleadings are submitted electronically.

FY 2011 42% or greater of initial appeals are filed electronically and 30% or greater of pleadings are submitted electronically.

3.2.b: Improve customer service by conforming with established Office of Information Resources Management (OIRM) service level agreements.

Results		Targets	
FY 2006	New measure in FY 2007.	**FY 2010**	86% of tickets resolved within one business day.
FY 2007	88% of technical support tickets or requests were resolved in one business day.	**FY 2011**	86% of tickets resolved within one business day.
FY 2008	87% of the 4,120 technical support tickets were resolved in one business day.		
FY 2009	88% of the 3,589 technical support tickets were resolved in one business day. In addition, 2,877 tickets were resolved from external customers.		

3.2.c: Measure success in enhancing organizational performance and efficiency through OIRM customer satisfaction surveys.

Results		Targets	
FY 2006	New measure in FY 2007.	**FY 2010**	85% or more of staff who responded to the survey indicated they were satisfied or very satisfied with OIRM meeting their needs.
FY 2007	Conducted an internal OIRM customer satisfaction survey; 86% of the 64 MSPB staff who responded to the survey indicated they were satisfied or very satisfied with OIRM meeting their needs.	**FY 2011**	85% or more of staff who responded to the survey indicated they were satisfied or

FY 2008	89% of the 89 survey respondents were satisfied or very satisfied with OIRM meeting their needs.	very satisfied with OIRM meeting their needs.
FY 2009	86% of the 116 survey respondents were satisfied or very satisfied with OIRM meeting their needs.	

3.2.d: Comply with information management regulatory requirements.

Results

FY 2006 New measure in FY 2007.

FY 2007 Federal Information Security Management Act (FISMA) compliance was reviewed by an outside contractor and the final FISMA report was submitted to OMB; 100% of MSPB employees completed annual security awareness training; remained in full compliance with FISMA, Homeland Security Presidential Directive 12, and Internet Protocol Version 6 (IPv6).

FY 2008 Complied with FISMA including 100% of MSPB employees completing security awareness training, completion of FISMA security audit, and submission of annual FISMA report. Complied with requirements for e-Gov Act, IPv6, Trusted Internet Connections (TIC), Networx, and Federal Desktop Core Configuration.

FY 2009 Began tracking FISMA Plan of Action and Milestones tasks on a weekly basis and continued to work with auditors on the FISMA report as the deadline was postponed by OMB due to new reporting requirements. To minimize vulnerabilities from further virus attacks, servers were established at headquarters, the regions, and field offices to download and apply Microsoft patches, all PCs and servers were upgraded to the Symantec latest antivirus client version, and servers were programmed to push virus definition files to all PCs and servers on a daily basis. Potential disaster recovery sites were visited and we obtained a commitment from one site to host MSPB servers. Other compliance activities included the Networx transition and its associated statement of work, TIC, and Domain Name Service Security.

Targets

FY 2010 Comply with information management regulatory requirements.

FY 2011 Comply with information management regulatory requirements.

Performance Goal 3.3: Effective and efficient operation of financial, budget and other support programs.

3.3.a: Maintain accurate and legally sound budget accounts and accountings ledgers.

FY 2006 New measure in FY 2007.

FY 2007 Achieved unqualified opinion on the FY 2006 financial audit; maintained accurate, up-to-date budget and accounting ledgers; began update of internal Financial Management Manual.

FY 2008 Achieved unqualified opinion on the FY 2007 financial audit.

FY 2009 Achieved unqualified opinion on the FY 2008 financial audit.

Targets

FY 2010 Achieve unqualified opinion on the annual financial audit.

FY 2011 Achieve unqualified opinion on the annual financial audit.

3.3.b: Customer satisfaction of employees with other support programs (i.e., payroll, travel, printing and procurement).

Results

FY 2006 New measure in FY 2007.

FY 2007 Used customer feedback to review and update support program manuals; issued new Procurement Manual; began update of Time and Attendance Manual; hired new travel coordinator and a second employee as a procurement specialist.

FY 2008 Completed an internal customer satisfaction survey for other management programs and an additional survey of MSPB administrative management staff.

FY 2009 Customer satisfaction has increased by 10% for most support programs except in one area in procurement regarding issues with spending during the fourth quarter. These issues will be addressed in the next fiscal year. The MSPB began pilot testing a new electronic purchase requisition system which will provide for a more efficient procurement process and better tracking of orders from inception of order to receipt of item. Agency video conferencing equipment was updated to include Internet Protocol access which will allow MSPB to connect to sites that were previously unavailable with the older equipment.

Targets

FY 2010 Develop and administer an updated customer satisfaction survey; initiate an electronic procurement requisition system.

FY 2011 Continue to respond to feedback from customer satisfaction surveys and other sources. Evaluate first year of electronic procurement requisition system.

Review of Management Support Performance Goals and Measures

The performance goals align with MSPB's Strategic Plan for FY 2010-2015 and reflect MSPB's desire to strategically manage its support programs and achieve organizational excellence. The performance goals include managing MSPB's human resources, information technology, financial, budget, and other internal programs. Each of these three performance goals focuses on the intended outcomes of these internal management programs. The MSPB measures the performance of these support programs in terms of their effective and efficient operation, conformity with program laws and regulations, and internal customer satisfaction. This performance plan contains no significant changes to MSPB's management support performance goals and measures. The performance targets are consistent with the enacted budget for FY 2010 and the FY 2011 budget request.

The FY 2010 target for having the right people in the right place is to review MSPB processes based on the hiring makeover project which will include timely hiring, user-friendly vacancy announcements, and the exit interview questionnaire. The FY 2011 target is to continue to monitor the assessment process on an annual basis (measure 3.1.a). The FY 2010 target for ensuring that the agency's mission is enhanced by a diverse workforce includes updating, developing, implementing, and evaluating measurement goals or indicators for achieving diversity and inclusiveness in the broadest context across all occupations and grade levels. The FY 2011 target for this measure is to be determined based on FY 2010 results (measure 3.1.b). The FY 2010 target for increasing internal human resources customer satisfaction will focus on making changes as a result of the hiring make-over project. The FY 2011 target will be determined based on FY 2010 results (measure 3.1.c). The FY 2010 and FY 2011 targets for effectively implementing human capital authorities and flexibilities include continuing to comply with new and existing program requirements. In FY 2010, we will also focus on receiving full certification of the SES Performance Management Plan, and evaluating the first year of the e-OPF program (measure 3.1.d).

The FY 2010 and FY 2011 targets for the number of initial appeals filed electronically have been increased to 40% or greater and 42% or greater, respectively (measure 3.2.a). In addition, measure 3.2.a includes a target to measure the percentage of pleadings that are submitted electronically. FY 2010 and FY 2011 targets for the number of pleadings submitted electronically have been set at 28% or greater and 30% or greater, respectively, increased from FY 2009 baseline target of 25%. The target for resolution of help desk tickets has been adjusted to 86% or greater within one business day for both FY 2010 and FY 2011. Based on continuing analysis, we have determined

that the previous FY 2010 target of 90% was too aggressive, based in part on the increasing numbers of external help tickets (from e-Appeal and the MSPB website) being resolved that are not included in this measure (measure 3.2.b). The FY 2010 and FY 2011 targets for internal OIRM customer satisfaction has been set at 85% or more of staff surveyed indicating they were satisfied or very satisfied with OIRM meeting their needs (measure 3.2.c). The MSPB will also continue to comply with information management regulatory requirements in FY 2010 and FY 2011 (measure 3.2.d).

The FY 2010 and FY 2011 targets for maintaining accurate and legally sound budget accounts and accounting ledgers are to achieve unqualified opinions on the annual financial audit (measure 3.3.a). The FY 2010 target for customer satisfaction of employees with other support programs (i.e., payroll, travel, printing and procurement) is to develop and administer an updated satisfaction survey and initiate an electronic procurement requisition system. In FY 2011, the target is to continue to respond to feedback from customer satisfaction surveys and other sources, and to evaluate the first year of the electronic procurement requisition system (measure 3.3.b).

Performance Measurement

Quantitative and qualitative data will be used to assess MSPB's achievement of these performance goals. These data will be obtained from automated agency management and case processing systems, internal and external reviews and evaluations of agency processes, assessments of individual performance, and surveys of employees and internal program customers. Automated data systems are monitored for accuracy and contents may be summarized in various reports. Qualitative information is obtained from internal reports by senior staff and/or internal or external assessments of program operations. Surveys are performed using standard survey procedures.

Budget Schedules

Schedule P - Program and Financing (In Thousands of Dollars)

	FY 2009 Actual	FY 2010 Enacted	FY 2011 Request	Change
Obligations by program activity:				
Adjudication	$33,192	$35,286	$36,367	$1,081
Merit systems studies	2,443	2,536	2,628	92
Management support	5,209	5,116	5,205	89
Total new obligations	40,844	42,938	44,200	1,262
Budgetary resources available for obligation:				
New budget authority (gross)	41,399	42,938	44,200	0
Total new obligations (-)	- 40,844	- 42,938	- 44,200	0
Unobligated balance expiring/withdrawn	555	0	0	0
New budget authority (gross), detail:				
Appropriation	38,811	40,339	41,621	1,282
Offsetting collections (cash)	9	20	0	- 20
Transferred from the Civil Service Retirement & Disability Fund (24-8135)	2,579	2,579	2,579	0
Total new budget authority (gross)	41,399	42,938	44,200	1,262
Change in obligated balances:				
Obligated balance, start of year	5,080	4,590	4,590	0
Total new obligations	40,844	42,938	44,200	1,262
Total outlays (gross) (-)	- 40,900	- 42,938	- 44,200	- 1,262
Adjustments in expired accounts	- 434	0	0	0
Obligated balance, end of year	4,590	4,590	4,590	0
Outlays (gross), detail:				
Outlays from new discretionary Authority	36,674	38,738	40,000	1,262
Outlays from discretionary balances	4,226	4,200	4,200	0
Total outlays (gross)	40,900	42,938	44,200	1,262
Offsets:				
From Federal sources	- 2,588	- 2,599	- 2,579	- 20
Net budget authority and outlays:				
Budget authority	38,811	40,339	41,621	1,262
Outlays	38,312	40,339	41,621	1,262

Schedule O - Object Classification (In Thousands of Dollars)

	FY 2009 Actual	FY 2010 Enacted	FY 2011 Request	Change
Direct obligations:				
Personnel compensation:				
Full-time permanent	$22,255	$24,142	$24,494	$352
Other than full-time permanent	424	567	580	13
Other personnel compensation	596	635	654	19
Total personnel compensation	23,275	25,344	25,728	384
Civilian personnel benefits	5,488	6,068	6,341	273
Benefits for former personnel	4	0	0	0
Travel and transportation of persons	581	589	589	0
Transportation of things	64	60	60	0
Rental payments to GSA	1,087	1,996	4,077	2,081
Rental payments to others	2,669	2,022	223	- 1,799
Communications, utilities, and miscellaneous charges	399	425	715	290
Printing and reproduction	98	98	98	0
Advisory and assistance services	143	95	95	0
Other services	1,104	1,470	1,470	0
Other purchases of goods and services from government accounts	1,408	1,156	1,209	53
Operation & maintenance of facilities	7	7	7	0
Operation & maintenance of equipment	386	297	297	0
Supplies & Materials	216	194	194	0
Equipment	1,327	518	518	0
Direct Obligations...	38,256	40,339	41,621	1,282
Reimbursable Obligations...	2,588	2,599	2,579	- 20
Total New Obligations...	**$40,844**	**$42,938**	**$44,200**	**$1,262**

Schedule Q - Employment Summary

	FY 2009 Actual	FY 2010 Enacted	FY 2011 Request	Change
Direct:				
Civilian full-time equivalent employment	202	211	211	0
Reimbursable:				
Civilian full-time equivalent employment	15	15	15	0
Total...	**217**	**226**	**226**	**0**