U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk
1615 M Street, NW
Washington, DC 20419-0002

Phone: (202) 653-7200; Fax: (202) 653-7130; E-Mail: mspb@mspb.gov

Clerk of the Board

February 2, 2012

Mr. James V. Blair
Deputy Associate Solicitor for Administrative Legal Services (Acting)
U.S. Department of Labor
200 Constitution Avenue, NW, Room N2424
Washington, D.C. 20210

Dear Mr. Blair:

As we previously informed you, the U.S. Merit Systems Protection Board (MSPB) is undertaking a major revision to its regulations in 5 C.F.R. Parts 1201, 1208, and 1209. An internal working group at MSPB completed an in-depth review of those regulations and identified a number of proposed revisions, which were provided to you for your written comments. The MSPB's regulatory changes will eventually result in notice-and-comment rulemaking via the Federal Register, but we continue to seek input from our stakeholders in accordance with the public participation requirement in Executive Order 13563, "Improving Regulation and Regulatory Review." We specifically wish to give our stakeholders the opportunity to comment on MSPB's proposed changes to its regulations and offer their own suggestions before drafting a formal notice of proposed rulemaking.

The MSPB thanks you for your written response to the regulatory revisions now being considered. We want to follow up on your written input by providing an in-person meeting where MSPB staff will receive oral comments from individual stakeholders. The MSPB will conduct an informal meeting with stakeholders from 10:00 a.m. to noon on Tuesday, March 6, 2012, at MSPB Headquarters, Suite 500 (Hearing Room), 1615 M Street, NW, Washington, D.C., for this purpose. You will be given up to 10 minutes to present any additional comments or suggestions. Although the Chairman anticipates opening the meeting and greeting participants, neither she nor the other Board Members will participate in the discussion. We emphasize that no decisions have yet been made regarding the specific regulatory changes that will become part of the notice of proposed rulemaking, or the precise language of any proposed revisions to our regulations.

The MSPB's internal working group did not propose any changes to 5 C.F.R. § 1201.56, the regulation covering burdens of proof and affirmative defenses. However, in light of the complexity of many Federal Circuit and MSPB decisions involving the burden of proof required to establish MSPB jurisdiction over an appeal, e.g., "nonfrivolous allegations" or proof by

"preponderant evidence," the MSPB intends to consider appropriate revisions to 5 C.F.R. § 1201.56. Your comments on these issues at the meeting on March 6 are encouraged.

If you wish to attend and present comments on Tuesday, March 6, you should notify us no later than Monday, February 28. Please contact me by telephone at 202-653-7200 or by email at mspb@mspb.gov to confirm your spot and for further information. As we informed you in our previous letter, all written comments received from stakeholders will eventually be available on MSPB's website. In the meantime, we will provide other written stakeholders' comments to you by email upon request. Also, a transcript of the March 6 stakeholder meeting will later be made available to the public on MSPB's website.

We again thank you for taking the time to participate in this comprehensive review of the Board's regulations. We look forward to hearing from you on March 6.

Sincerely,

William D. Spencer
Clerk of the Board