

**Merit Systems Protection Board**  
**Performance and Accountability Report**  
**FY 2003**



**November 25, 2003**

## **FOREWORD**

With the enactment of the Accountability of Tax Dollars Act (Public Law 107-289) on November 7, 2002, the Merit Systems Protection Board (MSPB) became subject to a statutory requirement to file an annual audited financial statement with the President and Congress. The Director of the Office of Management and Budget (OMB) provided guidance to agencies newly subject to this requirement in a memorandum dated December 6, 2002. Under that OMB guidance, such agencies must now comply with OMB Bulletin 01-09, "Form and Content of Agency Financial Statements," which requires that the annual audited financial statement be combined with the annual performance report required by the Government Performance and Results Act (GPRA). Such a combined report is termed a Performance and Accountability Report (PAR). Subsequently, OMB made optional the requirement to file a PAR for FY 2003 for agencies covered by the Accountability of Tax Dollars Act (OMB memorandum from Mark W. Everson dated March 21, 2003). However, such agencies must file a PAR for FY 2004 and subsequent years.

To help prepare the agency to meet the PAR requirement next year, the Merit Systems Protection Board has chosen to file a PAR for FY 2003. This document, therefore, includes both the FY 2003 performance report required by GPRA and the FY 2003 financial report. The financial report section of the PAR also includes the annual report on internal controls required by the Federal Managers' Financial Integrity Act (FMFIA). In addition, the MSPB has incorporated into the PAR information that was previously included in the MSPB Annual Report, which will no longer be published as a separate document. Such information includes a discussion of the most significant Board and court decisions issued during the fiscal year, FY 2003 case processing statistics, and summaries of the Board's reports of merit systems studies that were issued during the fiscal year.

Although the deadline for submission of the FY 2003 PAR is January 30, 2004, OMB has announced that, beginning in November 2004, the annual PAR will be due on November 15 each year (45 days after the end of the fiscal year). This short deadline will preclude the MSPB's having the PAR printed before the due date. Therefore, beginning with this PAR for FY 2003, the MSPB will duplicate and bind copies of the PAR sufficient for the required distribution to the President, OMB, and Congress and will make the PAR available in electronic form on the MSPB website ([www.mspb.gov](http://www.mspb.gov)). The PAR will be printed at a later date, and copies may be ordered from the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419.

## TABLE OF CONTENTS

Section	Page
<b>Management Discussion and Analysis.....</b>	<b>1</b>
Mission .....	1
Jurisdiction .....	1
Board Members .....	4
Board Organization.....	6
Performance Goals and Results .....	8
Financial Statements.....	10
Systems, Controls, and Legal Compliance .....	11
Trends and Issues.....	13
<b>FY 2003 Performance Report.....</b>	<b>16</b>
Strategic Plan Goal 1 To consistently provide fair, timely, and efficient adjudication of cases filed with the Board.....	16
Objective 1 – Issue high quality decisions.....	16
Objective 2 – Issue timely decisions at both the regional office and Board headquarters levels .....	17
Objective 3 – Hold increase in overall average case processing cost to no more than the percentage increase in operating costs, adjusted for the changes in the number of decisions issued .....	19
Objective 4 – Obtain customer input regarding the adjudicatory process .....	20
Strategic Plan Goal 2 To make effective use of alternative methods of dispute resolution in Board proceedings .....	22
Objective 1 – Continue the successful use of alternative dispute resolution (ADR) procedures in MSPB proceedings at both the regional office and Board headquarters levels .....	22
Strategic Plan Goal 3 To provide information, analyses, and recommendations on Federal personnel programs, policies, and initiatives to policymakers, Federal agencies and employees, and others with an interest in Federal human resources management .....	25
Objective 1 – Conduct governmentwide merit systems studies that provide information on, and analyses of, the state of Federal merit systems and the Federal workforce to policymakers, Federal agencies and employees, and others with an interest in Federal human resources management; raise the level of consciousness and initiate or participate in the debate about implementing and maintaining effective human resources management programs, policies, and practices that adhere to the merit system principles .....	25

Objective 2 – Determine through merit systems studies the extent to which Executive Branch departments and agencies operate in a manner consistent with the statutory merit system principles and the extent to which prohibited personnel practices occur in the Federal workplace.....	32
Strategic Plan Goal 4 To strengthen the MSPB’s internal systems and processes to support a continually improving, highly effective and efficient organization with the flexibility to meet program needs.....	34
Objective 1 – Develop and implement an integrated electronic case processing system that allows appellants and agencies to file and receive documents electronically and streamlines internal case processing .....	34
Objective 2 – Improve electronic access via the Internet and other available resources to MSPB case-related decisions, procedures and guidance.....	36
Objective 3 – Identify, test, and implement, as appropriate, new technologies that will increase efficiency, reduce costs, and improve customer service .....	38
Strategic Plan Goal 5 To develop the MSPB’s human resources to ensure a continually improving, highly effective and efficient organization with the flexibility to meet program needs .....	39
Objective 1 – Recruit, train, and retain skilled, highly motivated employees to effectively and efficiently accomplish the MSPB mission.....	39
<b>FY 2003 Financial Report.....</b>	<b>42</b>
Financial Statements for the Years Ended September 30, 2003 and 2002 .....	42
Notes to the Financial Statements for the Years Ended September 30, 2003 and 2002.....	49
Independent Auditor’s Reports.....	56
Management Representation Letter .....	59
<b>Significant Board Decisions Issued in Fiscal Year 2003 With Related Opinions Issued by the United States Court of Appeals for the Federal Circuit .....</b>	<b>62</b>
<b>FY 2003 Case Processing Statistics .....</b>	<b>67</b>
<b>Summaries of Merit Systems Studies Issued in FY 2003 .....</b>	<b>79</b>
<b>For Additional Information.....</b>	<b>82</b>

**Merit Systems Protection Board  
Performance & Accountability Report  
FY 2003**

**MANAGEMENT DISCUSSION AND ANALYSIS**

**Mission**

The Merit Systems Protection Board (MSPB) is an independent quasi-judicial agency established to protect Federal merit systems against partisan political and other prohibited personnel practices and to ensure adequate protection for employees against abuses by agency management. The Board carries out its statutory mission principally by:

- Adjudicating employee appeals of personnel actions over which the Board has jurisdiction, such as removals, suspensions, furloughs, and demotions;
- Adjudicating appeals of administrative decisions affecting an individual's rights or benefits under the Civil Service Retirement System or the Federal Employees' Retirement System;
- Adjudicating employee complaints filed under the Whistleblower Protection Act (WPA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and the Veterans Employment Opportunities Act (VEOA);
- Adjudicating cases brought by the Special Counsel, principally complaints of prohibited personnel practices and Hatch Act violations;
- Adjudicating requests to review regulations of the Office of Personnel Management (OPM) that are alleged to require or result in the commission of a prohibited personnel practice—or reviewing such regulations on the Board's own motion;
- Ordering compliance with final Board orders where appropriate; and
- Conducting studies of the Federal civil service and other merit systems in the Executive Branch to determine whether they are free from prohibited personnel practices.

**Jurisdiction**

*Appellate Jurisdiction*

Agency personnel actions that Federal employees may appeal to the Board include: adverse action (removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less); performance based removal or reduction in grade; denial of within-grade increase; termination of a probationary employee; separation, demotion, or furlough for more than 30 days by reduction in force; employment suitability determination; and denial of various restoration,

reinstatement, or reemployment rights. Administrative determinations affecting retirement rights or interests under the Civil Service Retirement System or the Federal Employees' Retirement System are also appealable to the Board.

When an issue of discrimination prohibited by the Civil Rights Act of 1964 or other applicable anti-discrimination law is raised in connection with an appealable personnel action, the Board has jurisdiction over both the appealable action and the discrimination issue. Such appeals are termed "mixed cases." In these cases, an appellant may ask the Equal Employment Opportunity Commission (EEOC) to review the final decision of the Board. If the EEOC disagrees with the Board's decision on the discrimination issue, the case is returned to the Board. The Board may concur with EEOC, affirm its previous decision, or affirm its previous decision with modifications. If the Board does not concur in the EEOC decision, the case is referred to a Special Panel for a final decision. (A Special Panel is convened when needed and is composed of a Chairman appointed by the President, one member of the Board, and one EEOC commissioner.)

Under the Whistleblower Protection Act, personnel actions that are not normally appealable to the Board may result in an appeal under certain circumstances. Included are actions that may be the subject of a prohibited personnel practice complaint to the Special Counsel, such as appointments, promotions, details, transfers, reassignments, and decisions concerning pay, benefits, awards, education, or training. Such an action may be appealed to the Board only if the appellant alleges that the action was taken because of whistleblowing and the appellant first filed a complaint with the Special Counsel and the Special Counsel did not seek corrective action from the Board.

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Board has jurisdiction over complaints alleging a violation of Chapter 43 of Title 38, United States Code, relating to the employment and reemployment rights and benefits of persons covered by that chapter, principally persons who have served in a uniformed service. The Act includes a prohibition of discrimination against an individual because of service in a uniformed service, or application or obligation for such service. USERRA was amended in November 1998 to extend the Board's jurisdiction to claims that accrued under the predecessor veterans' reemployment rights statute prior to the October 1994 effective date of USERRA. The Board has ruled that the substantive provisions of USERRA are not retroactive to such claims.

Under the Veterans' Employment Opportunities Act, a preference eligible employee may file an appeal with the Board alleging a violation of any law or regulation relating to veterans' preference, after first filing a complaint with the Department of Labor (DOL) and allowing DOL 60 days to try to resolve the matter. In addition, a violation of veterans' preference is a prohibited personnel practice, allowing the Special Counsel to petition the Board to order disciplinary action against an employee who commits such a violation.

The Presidential and Executive Office Accountability Act (PEOAA) authorizes appeals to the Board by employees in the Executive Office of the President based on violations of a number of workplace laws, including the Family and Medical Leave Act, the Fair Labor Standards Act, the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act,

and USERRA. A mandatory period of counseling and mediation in the employing office must be completed before an appeal may be filed with the Board. In addition, an employee covered by the PEOAA who is subject to a personnel action appealable to the Board and who alleges discrimination prohibited by the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act, or the Americans with Disabilities Act may either file a complaint with EEOC under the PEOAA procedure or file a mixed case appeal with the Board.

For the Board to have jurisdiction over an appeal, it must possess jurisdiction over both the action and the individual filing the appeal. The employees and others (e.g., applicants for employment, annuitants in retirement cases) who may appeal specific actions vary in accordance with the law and regulations governing the action. For some actions, classes of employees, such as political appointees, and employees of specific agencies are excluded.

#### *Original Jurisdiction*

Cases that arise under the Board's original jurisdiction include:

- Corrective and disciplinary actions brought by the Special Counsel against agencies or Federal employees who are alleged to have committed prohibited personnel practices, or to have violated certain civil service laws, rules or regulations;
- Disciplinary actions brought by the Special Counsel alleging violation of the Hatch Act;
- Requests for stays of personnel actions alleged by the Special Counsel to result from prohibited personnel practices;
- Certain proposed actions brought by agencies against administrative law judges;
- Requests for review of regulations issued by the Office of Personnel Management, or of implementation of OPM regulations by an agency; and
- Informal hearings in cases involving proposed performance-based removals from the Senior Executive Service.

## **Board Members**

### **Chairman**



**SUSANNE T. MARSHALL** was appointed by President Bush on August 6, 2002, to serve as Chairman of the Merit Systems Protection Board. She had served as Acting Chairman of the Board since February 7, 2002, when President Bush designated her Vice Chairman. (Under the Board's governing statute, the Vice Chairman serves as Acting Chairman when the position of Chairman is vacant.) She has been a member of the Board since November 17, 1997, following her nomination by President Clinton and confirmation by the Senate. From December 1985 until her appointment to the Board, she served on the Republican staff of the Committee on Governmental Affairs of the United States Senate as both Professional Staff and Deputy Staff Director. While on the committee staff, she was responsible for a variety of legislative issues under the committee's jurisdiction, including Federal workforce policies, civil service matters, and postal issues. From 1983 to 1985, she was Republican Staff Assistant to the House Government Operations Committee. She was Legislative Assistant to a Member from Georgia from 1981 to 1982. Ms. Marshall attended the University of Maryland branch campus in Munich, Germany, and the American University.

**Member**



**NEIL A.G. McPHIE** was appointed by President Bush to serve as a member of the Merit Systems Protection Board on April 23, 2003. Prior to joining the Board, he was Senior Assistant Attorney General in the Office of the Attorney General of Virginia. Among other responsibilities, he defended employment discrimination claims brought under Federal law and wrongful discharge claims brought under state law. Previously, he was Executive Director of the Virginia Department of Employment Dispute Resolution (EDR). In that position, he directed implementation of EDR's statewide grievance, mediation, training and consultation programs. He was an Assistant Attorney General in the Office of the Attorney General of Virginia from 1982 to 1988. From 1976 until he joined the Attorney General's Office, he was a Trial and Appellate Attorney in the Office of the General Counsel at the U.S. Equal Employment Opportunity Commission. He received his J.D. degree from Georgetown University Law Center in 1976. He received a B.A. in Economics from Howard University in 1973, graduating magna cum laude. He is a member of Phi Beta Kappa. He is admitted to the bars of the District of Columbia, Virginia, New York and Iowa, the United States Supreme Court, the United States District Court for the District of Columbia, several of the United States circuit courts of appeals, and district courts in Virginia.

## **Member**

The third position on the Board was vacant throughout FY 2003.

The bipartisan Board consists of a Chairman, a Vice Chairman, and a 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 overlapping, non-renewable 7-year terms.

## **Board Organization**

The **Board Members** adjudicate the cases brought to the Board. The **Chairman**, by statute, is the chief executive and administrative officer of the Board. Office heads report to the Chairman through the Chief of Staff.

The **Office of Regional Operations (ORO)** oversees the ten MSPB regional and field offices, which receive and process appeals and related cases. Administrative judges in the regional and field offices are responsible for adjudicating assigned cases and for issuing fair and well reasoned initial decisions.

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 administrative law judges, MSPB employee appeals, and other cases assigned by the Board. (The functions of this office are currently performed by administrative law judges at the National Labor Relations Board under an interagency agreement.)

The **Office of Appeals Counsel (OAC)** conducts legal research and prepares proposed decisions for the Board in cases where a party petitions for review of a judge's initial decision and in most other cases decided by the Board. The office conducts the Board's petition for review settlement program, 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 (OCB)** receives and processes cases filed at Board headquarters, rules on certain procedural matters, and issues the Board's decisions and orders. The office serves as the Board's public information center, coordinates media relations, produces public information publications, operates the Board'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 the Board's records and directives systems, legal research programs, and the Government in the Sunshine Act program.

The **Office of the General Counsel (OGC)**, as legal counsel to the Board, provides advice to the Board and MSPB offices on matters of law arising in day-to-day operations. The office represents the Board in litigation, prepares proposed decisions for the Board on assigned cases, and coordinates the Board's legislative policy and congressional relations functions. The office also drafts regulations, conducts the Board's ethics program, and plans and directs audits and investigations.

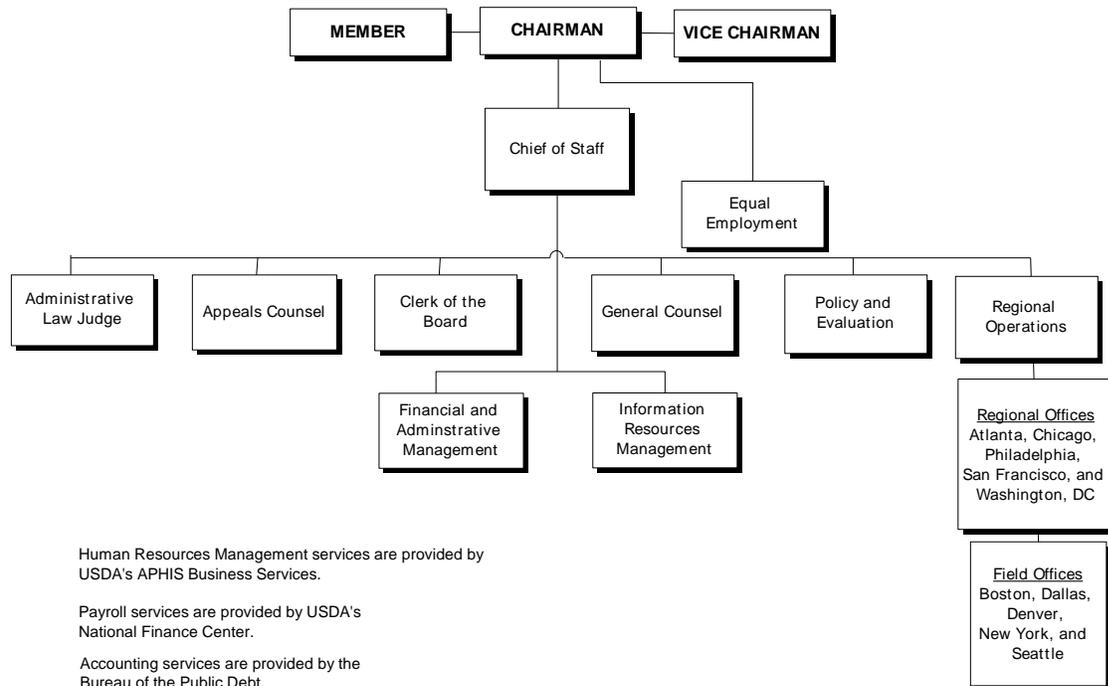
The **Office of Policy and Evaluation (OPE)** carries out the Board's statutory responsibility to conduct special studies of the civil service and other merit systems. Reports of these studies are directed to the President and the Congress and are distributed to a national audience. The office responds to requests from Federal agencies for information, advice, and assistance on issues that have been the subject of Board studies. The office also provides oversight of the agency's human resources management function and administers the cross-servicing agreement with the U.S. Department of Agriculture's APHIS Business Services for human resources management services.

The **Office of Equal Employment Opportunity (EEO)** plans, implements, and evaluates the Board's equal employment opportunity programs. It processes complaints of alleged discrimination and furnishes advice and assistance on affirmative action initiatives to the Board's managers and supervisors.

The **Office of Financial and Administrative Management (FAM)** administers the budget, procurement, property management, physical security, and general services functions of the Board. It develops and coordinates internal management programs and projects, including review of internal controls agencywide. It also administers the agency's cross-servicing agreements with the U.S. Department of Agriculture's National Finance Center for payroll services and the Department of the Treasury's Bureau of the Public Debt for accounting services.

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

**Merit Systems Protection Board**



**Performance Goals and Results**

The MSPB Performance Plan for FY 2003-FY 2004 consisted of 21 performance goals under the 5 strategic goals of the agency's Strategic Plan, FY 2001-FY 2006. The MSPB met or substantially met 18 of these goals—for a success rate of 86 percent.

Strategic Plan Goal 1, Adjudication – All but two of the eight performance goals under this Strategic Plan goal were met. The goals not met were Goal 1.2.2, average processing time for petitions for review at headquarters, and Goal 1.2.3, number of cases pending at headquarters for more than 300 days. The Board's ability to meet these goals continues to be affected significantly by vacancies on the Board.

Strategic Plan Goal 2, Alternative Dispute Resolution – All of the three performance goals under this Strategic Plan goal were met.

Strategic Plan Goal 3, Merit Systems Studies – All but one of the four performance goals under this Strategic Plan goal were met or substantially met. Goal 3.2.1, conducting a Merit Principles

Survey and analyzing and evaluating the results, was not met because of a management decision to defer the next survey until FY 2004.

Strategic Plan Goal 4, Management and Administration – All of the three performance goals under this Strategic Plan goal were met or substantially met.

Strategic Plan Goal 5, Human Resources – All of the three performance goals under this Strategic Plan goal were met.

In the FY 2003 Performance Report section of this report, the performance goals for FY 2003 are those described in the MSPB FY 2003 (Revised Final) and FY 2004 (Final) Performance Plan submitted to the Congress on February 3, 2003. The performance goals for FY 2004, as described in this report, reflect revisions in certain goals that the MSPB made at the beginning of the current fiscal year. Further revisions may be made as the agency develops its Revised Final Performance Plan for FY 2004, which must be completed by December 31, 2003.

***Certification of Completeness and Reliability of Performance Data  
FY 2003***

As required by 31 U.S.C. § 3516(e), I have assessed the completeness and reliability of the performance data on which the Performance Report section of the PAR is based. I have determined that the data is complete; actual performance data for FY 2003 is reported for every performance goal in the FY 2003 Performance Plan. I have also determined that the data is reliable; all data reported has been obtained from final FY 2003 statistical reports from the agency's case management system, final FY 2003 financial reports, and reports submitted by the agency's program managers to the Chief of Staff. There are no material inadequacies in either the completeness or reliability of the data.

Susanne T. Marshall, Chairman

## Financial Statements

### Balance Sheet

The balance sheet presents as of September 30, 2003, amounts of future economic benefits owned or managed by the reporting entity exclusive of items subject to stewardship reporting (assets), amounts owed by the entity (liabilities), and amounts which comprise the difference (net position).

#### ASSET SUMMARY (In Thousands)

Fund Balance With Treasury	\$ 7,198
Accounts Receivable, Net	3
General Property Plant and Equipment	6,245
Total Assets	\$ 13,446

#### LIABILITIES SUMMARY (In Thousands)

	FY 2003
Accounts Payable	\$ 336
Other	3,563
Total Liabilities	\$ 3,899

#### NET POSITION SUMMARY (In Thousands)

	FY 2003
Unexpended Appropriations	\$ 5,383
Cumulative Results of Operations	4,164
Total Net Position	\$ 9,547

*Statement of Net Cost*

The Statement of Net Cost is designed to show separately the components of the net cost of the reporting entity's operations for the period.

Net cost of operations is the gross cost incurred by the reporting entity less any exchange revenue earned from its activities. The gross cost of a program consists of the full cost of the outputs produced by that program plus any non-production costs that can be assigned to the program (non-production costs are costs linked to events other than the production of goods and services).

*Statement of Changes in Net Position*

The Statement of Changes in Net Position reports the change in net position during the report period. Net position is affected by changes to Cumulative Results of Operations and Unexpended Appropriations. The statement format is designed to display both components of net position separately to enable the user to better understand the nature of changes to net position as a whole.

*Statement of Budgetary Resources*

The Statement of Budgetary Resources and related disclosures provide information about how budgetary resources were made available as well as their status at the end of the period.

*Statement of Financing*

The Statement of Financing is the bridge between the Merit Systems Protection Board's budgetary and financial accounting. The Statement of Financing articulates the relationship between obligations derived and net cost of operations derived from proprietary accounts by identifying and explaining differences between these two numbers.

***Certification of Completeness and Reliability of Financial Data  
FY 2003***

As required by OMB Bulletin 01-09, I have assessed the completeness and reliability of the financial data presented in this report and have determined that there are no material inadequacies in either the completeness or reliability of the data. Details of this assessment are contained in our Management Representation Letter to the auditor, Brown & Company CPAs, PLLC, dated October 24, 2003.

Susanne T. Marshall, Chairman

**Systems, Controls, and Legal Compliance**

In accordance with the Federal Managers' Financial Integrity Act (FMFIA), the Merit Systems Protection Board has an internal management control system, which helps provide assurance that funds are being used in accordance with the agency's mission and that they are

achieving their intended results. This system also assures that resources are protected from waste, fraud and mismanagement, and that laws and regulations are followed.

During FY 2003, the MSPB continued its agreement with the Bureau of the Public Debt (BPD) for that agency to process financial transactions, make administrative payments, and prepare various financial reports required by the Department of the Treasury and the Office of Management and Budget. This agreement continued into and through FY 2003. The BPD uses the latest financial software and uses other software for processing travel and other expenses. This financial review arrangement promotes the accuracy and timeliness of MSPB's financial records.

### *Management Controls*

MSPB's management review of the system of internal accounting and administrative control was evaluated in accordance with the applicable Federal guidance. The objectives of the system are to provide reasonable assurance that:

- Obligations and costs are in compliance with applicable laws;
- Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation;
- Revenues and expenditures applicable to operations are properly recorded and accounted for to permit the preparation of reliable accounting, financial, and statistical reports; and
- Accountability over the assets is maintained.

The evaluation of management controls extends to every responsibility and activity undertaken by MSPB and is applicable to financial, administrative and operational controls. Furthermore, the concept of reasonable assurance recognizes that: (1) the cost of management controls should not exceed the projected derived benefits; and (2) the benefits consist of reductions in the risks of failing to achieve the stated objectives. The expected benefits and related costs of control procedures should be addressed using estimates and managerial judgment. Moreover, errors and irregularities may occur and not be detected because of inherent limitations in any system of internal accounting and administrative control, including those limitations resulting from resource constraints, restrictions and other factors. Finally, projection of any evaluation of the system to future periods is subject to risk that procedures may be inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

### *Federal Managers' Financial Integrity Act*

The FMFIA of 1982 (Integrity Act) mandates that agencies establish controls that reasonably ensure that: (1) obligations and costs comply with applicable law; (2) assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and (3) revenues and expenditures are properly recorded and accounted for. This Act encompasses program, operational and administrative areas, as well as accounting and financial management. The Act requires the

Chairman to provide an assurance statement on the adequacy of management controls and conformance of financial systems with government-wide standards.

***FMFIA Assurance Statement  
Fiscal Year 2003***

The Merit Systems Protection Board evaluated its management controls and financial systems for FY 2003, as required by the Federal Managers' Financial Integrity Act. On the basis of MSPB's comprehensive management control program, I am pleased to certify, with reasonable assurance, that MSPB's systems of accounting and internal control are in compliance with the provisions of this Act.

Susanne T. Marshall, Chairman

In November 2002, the Congress enacted the Accountability for Tax Dollars Act of 2002 (Pub. L. 107-289), which requires annual audits of covered agencies. The Act requires the first audit to be performed of FY 2003 financial statements. The Chairman directed that the requirements of the Act be implemented on an accelerated basis. Thus, FY 2002 operations were audited. The results of the audit identified additional information about the Board's management control program, which were not available when the initial FMFIA assurance statement was issued. The Board is actively pursuing remediation of identified issues.

**Trends and Issues**

In the past year, the most significant trend affecting the Merit Systems Protection Board—and the civil service generally—was the accelerated movement away from the Title 5 civil service system. Since the mid-1990s, several agencies within Cabinet departments have gained significant statutory exemptions from Title 5 requirements. However, with the enactment of statutory authorities for the Department of Homeland Security (DHS) and the Department of Defense (DOD) to establish unique personnel systems for those departments, almost 1 million Federal employees will be taken out of the Title 5 system in the near future. When the systems in those departments are fully implemented, well over half the Federal workforce will no longer be part of the traditional civil service.

Most of the agency-specific personnel flexibilities enacted in recent years have concentrated on giving the particular agency exemptions from Title 5 rules governing hiring, classification, and pay. With the exception of the Federal Aviation Administration (FAA), employees in agencies that obtained personnel flexibilities did not lose their right to appeal major adverse personnel actions to the MSPB. Even in the FAA, the MSPB appeal rights that were lost when the FAA personnel system was established in 1996 were restored by Congress just four years later. Under the legislation authorizing DHS and DOD to establish personnel systems, however, each is free to establish an internal appeals process. The statutory authority for DHS does not require any participation by the Board in the appeals process, while the DOD authority includes only a limited appellate review role for the Board.

While both DHS and DOD are expected to use their statutory authorities to establish unique rules for processing appeals of adverse personnel actions, it is not certain that either will establish

an internal process. The laws authorizing their personnel systems leave sufficient flexibility for the departments to remain with MSPB and to have appeals filed by their employees adjudicated under the unique rules that each department develops. In the case of DOD, the law appears to assume that DOD will establish an internal appeals process. It permits employees challenging certain types of actions—removals, reductions in pay, suspensions for more than 14 days, and furloughs of 30 days or less—to seek review by the full Merit Systems Protection Board of a decision issued in the DOD appeals process. However, the Board’s review authority under the law is more limited than the authority it has to review initial decisions issued by MSPB administrative judges. The law governing the DHS personnel system does not contain a similar provision for appellate review by the Board. However, DHS could provide by regulation for appeals to MSPB under rules developed by the department or for appellate review by the Board of decisions issued in an internal appeals process. Given the national security mission of these departments, it may be necessary for the Board to establish a separate “fast track” for processing appeals filed by their employees.

The laws authorizing both the DHS and DOD personnel systems make certain provisions of Title 5 non-waivable and do not authorize waiver of provisions in any other title of the United States Code. Therefore, it appears that the Board would retain jurisdiction over certain types of appeals even if each department establishes an internal appeals process. Such appeals include individual right of action (IRA) appeals filed by whistleblowers who have exhausted the procedures of the Office of Special Counsel, Veterans Employment Opportunities Act (VEOA) appeals filed by preference eligibles who have exhausted the procedures of the Department of Labor, appeals filed under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and appeals of administrative decisions made by the employing agency that affect an employee’s rights or benefits under the Civil Service Retirement System or the Federal Employees Retirement System.

Even though the Board would retain some jurisdiction over DOD and DHS appeals, the MSPB estimates that the workload of its regional offices would decline by more than 20 percent if both departments establish internal appeals systems. This loss of workload has obvious implications for staffing in the regional offices. However, if DOD or DHS provides by regulation for appeals to MSPB at the regional level, and the agency establishes a “fast track” for processing those appeals, the impact on regional office staffing would be minimized. At headquarters, there would be some loss of workload if DHS does not remain with MSPB, but the appellate review authority the Board will have for DOD appeals could actually increase the headquarters workload. This would be likely to occur if DOD employees petition the full Board for review of decisions issued in a DOD appeals system at a greater rate than they currently petition for review of decisions issued by MSPB judges. This is not an unlikely scenario, given that a petition for Board review would allow a DOD employee to obtain outside, independent review of a decision issued in a DOD system. If there are fewer settlements of appeals in an internal DOD system than MSPB judges achieve, this also could result in a greater rate of petitions for Board review. Should the headquarters workload increase as a result of the appellate review authority for DOD appeals, the Board might need to shift resources from the regional offices to headquarters to ensure timely processing. In short, the impact of the DOD and DHS personnel legislation on the MSPB’s resource needs, both human and financial, cannot be determined with any degree of certainty at this time.

Where the Board's other statutory mission—merit systems studies—is concerned, it appears that there will be an even greater need for studies of the operation of these new personnel systems to ensure that they are operating in accordance with merit system principles and free of prohibited personnel practices. The DHS and DOD personnel authorities, like the personnel flexibilities granted to other agencies in recent years, provide that the Title 5 provisions governing merit system principles and prohibited personnel practices may not be waived, modified, or otherwise affected. Therefore, as agency-specific merit systems spread in the Federal Government, the extent to which those systems adhere to merit principles and deter prohibited personnel practices will become an important standard by which the operation of those systems can be measured.

Most observers agree that with more than half of the employees in the Executive Branch working under merit systems with significant exemptions from Title 5, other agencies will soon seek, and perhaps obtain, the same kinds of personnel flexibilities that DOD, DHS, and others have already gained. The challenge for the Board is to preserve its role as chief protector of Federal merit systems in the 21<sup>st</sup> century civil service that is being developed. The Board will maintain that role, of course, only to the extent that Congress provides for it in legislation granting Title 5 exemptions to agencies or to the extent that those agencies elect to remain in the MSPB appeals system.

**FY 2003 PERFORMANCE REPORT**

**Budget Activity: Adjudication (Strategic Plan Goals 1 and 2) – \$29.6 Million**

**Strategic Plan Goal 1  
To consistently provide fair, timely, and efficient adjudication  
of cases filed with the Board**

<b>Objective 1 – Issue high quality decisions</b>	
<b>Performance Goals</b>	<b>Experience</b>

<p><b>Goal 1.1.1</b> Maintain/reduce low percentage of cases decided by the Board on petition for review (PFR) that are reversed and/or remanded to MSPB judges for a new decision</p> <p><b>FY 2003 Goal</b> – 10 % or less <b>FY 2004 Goal</b> – 10 % or less</p>	<p><b>FY 2000 Actual</b> – 12 % <b>FY 2001 Actual</b> – 12.6 % <b>FY 2002 Actual</b> – 8 % <b>FY 2003 Actual</b> – 11 %</p>
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This goal was met. The percentage of PFRs reversed and/or remanded to MSPB judges in FY 2003 was 11 percent—within 10 percent of the goal. In accordance with OMB instructions for agency Performance Reports (OMB Circular A-11 (2003), section 230.2(c)), this goal is considered met because the performance goal was set at an approximate target level, and the deviation from that level is slight. Results for this goal can be affected by a number of factors, including normal year-to-year variations in cases reviewed by the Board, decisions issued by the Board or the Federal Circuit that change prior precedent, new Board regulations and policy pronouncements, vacancies on the Board, and changes in the membership of the Board. The goal for FY 2004 is maintained at 10 percent or less.

<p><b>Goal 1.1.2</b>                  Maintain/reduce low percentage of proposed decisions submitted by headquarters legal offices to the Board that are returned for rewrite</p> <p><b>FY 2003 Goal</b> – 12 % or less  <b>FY 2004 Goal</b> – 12 % or less</p>	<p><b>FY 2000 Actual</b> – 9 %  <b>FY 2001 Actual</b> – 15 %  <b>FY 2002 Actual</b> – 8 %  <b>FY 2003 Actual</b> – 6 %</p>
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This goal was met. Although the result achieved in FY 2003 was below the low end of the recent range of 8 to 15 percent, results for this goal can be affected by the same factors described above for Goal 1.1.1. The goal for FY 2004 is maintained at 12 percent or less.

<p><b>Goal 1.1.3</b>                  Maintain high percentage of Board decisions unchanged on review by the U.S. Court of Appeals for the Federal Circuit (Court dismisses case or affirms Board decision)</p> <p><b>FY 2003 Goal</b> – 93 % or greater  <b>FY 2004 Goal</b> – 93 % or greater</p>	<p><b>FY 2000 Actual</b> – 96 %  <b>FY 2001 Actual</b> – 96 %  <b>FY 2002 Actual</b> – 93 %  <b>FY 2003 Actual</b> – 94 %</p>
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This goal was met. The percentage of final Board decisions that remained unchanged (decision affirmed or case dismissed) on review by the U.S. Court of Appeals for the Federal Circuit in FY 2003 was within the historical range of 93 to 96 percent and reflects normal year-to-year variations. The goal for FY 2004 is maintained at 93 percent or greater.

<p><b>Objective 2 – Issue timely decisions at both the regional office and Board headquarters levels</b></p>	
<p><b>Performance Goals</b></p>	<p><b>Experience</b></p>

<p><b>Goal 1.2.1</b>                  Maintain average case processing time for initial decisions issued in regional offices</p> <p><b>FY 2003 Goal</b> – 100 days or less  <b>FY 2004 Goal</b> – 100 days or less</p>	<p><b>FY 2000 Actual</b> – 89 days  <b>FY 2001 Actual</b> – 92 days  <b>FY 2002 Actual</b> – 96 days  <b>FY 2003 Actual</b> – 94 days</p>
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This goal was met. The average case processing time for initial decisions issued in the regional offices in FY 2003 is consistent with the results in recent years. The goal for FY 2004 assumes

that results can be maintained at 100 days or less, assuming relative stability in case receipts and regional office staffing.

<p><b>Goal 1.2.2</b></p> <p>Maintain/reduce average case processing time for decisions on PFRs issued by the Board</p> <p><b>FY 2003 Goal</b> – 190 days or less</p> <p><b>FY 2004 Goal</b> – See narrative below *</p>	<p><b>FY 2000 Actual</b> – 176 days</p> <p><b>FY 2001 Actual</b> – 214 days</p> <p><b>FY 2002 Actual</b> – 205 days</p> <p><b>FY 2003 Actual</b> – 295 days</p>
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This goal was not met. The Board’s ability to meet this goal continues to be affected significantly by vacancies on the Board. When the Board has a full complement of three members, cases at headquarters are closed by a unanimous vote or a majority vote of the Board. When the Board has only two members, there is a quorum, but no majority is possible unless both members agree. If the two members cannot agree, the Board’s regulations permit the issuance of a “split-vote” order, which makes an initial decision under review final but not precedential. When the Board has only one member, as it did for almost two months during FY 2003, no decisions can be issued. Currently, one member of the Board is serving under a recess appointment received in April 2003; his nomination is awaiting confirmation by the Senate. The term of the current Chairman ends on March 1, 2004. There is one vacancy on the Board for which no nominee has been submitted to the Senate for confirmation; this position has been vacant since December 2001. Achievement of this goal, therefore, depends to a great extent on Board vacancies being filled in a timely manner.

\* In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been revised to use average age of pending PFRs, rather than average case processing time for PFRs, as the performance measure. The intent is to promote the processing of PFRs at headquarters on a first in/first-out basis and to provide a greater incentive for the Board and the headquarters legal offices to close overage cases. The goal for FY 2004 is an average age of pending PFRs at year-end of 175 days or less.

<p><b>Goal 1.2.3</b></p> <p>Reduce number of cases pending at headquarters for more than 300 days</p> <p><b>FY 2003 Goal</b> – 46 cases or fewer</p> <p><b>FY 2004 Goal</b> – 46 cases or fewer</p>	<p><b>FY 2000 Actual</b> – 53 cases pending more than 300 days at year-end</p> <p><b>FY 2001 Actual</b> – 45 cases pending more than 300 days at year-end</p> <p><b>FY 2002 Actual</b> – 61 cases pending more than 300 days at year-end</p> <p><b>FY 2003 Actual</b> – 73 cases pending more than 300 days at year-end</p>
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This goal was not met. As with Goal 1.2.2, the Board’s ability to meet this goal continues to be affected significantly by vacancies on the Board. During the first five months of FY 2003, the Board had two members and could issue decisions (other than “split-vote” orders) only when

both agreed. Then, for almost two months, the Board could not issue decisions at all because it had only one member. As a result, the inventory of cases pending for more than 300 days increased significantly, reaching a high of 350 cases at the end of May. Thanks to an extraordinary effort by the Board members and their staffs, the inventory of cases pending for more than 300 days was reduced to 73 cases by the end of the fiscal year. While it appears likely that Board vacancies will continue to affect achievement of this goal in FY 2004, the previously established target for FY 2004 is maintained to provide continued encouragement to the Board members and the headquarters legal offices to reduce the number of pending overage cases.

**Objective 3 – Hold increase in overall average case processing cost to no more than the percentage increase in operating costs, adjusted for the changes in the number of decisions issued**

**Performance Goals**

**Experience**

In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been renumbered Objective 4.

**Goal 1.3.1**

Hold increase in overall average case processing cost to no more than the percentage increase in operating costs, adjusted for the changes in the number of decisions issued

**FY 2000 Actual** – \$2,876 (Adjusted)

**FY 2001 Actual** – \$2,820 (Adjusted)

**FY 2002 Actual** – \$2,821 (Adjusted)

**FY 2003 Actual** – \$2,731 (Adjusted)

**FY 2003 Goal** – \$2,821 plus percentage increase in operating costs, adjusted for the changes in the number of decisions issued

**FY 2004 Goal** – \$2,731 plus percentage increase in operating costs, adjusted for the changes in the number of decisions issued

This goal was met. The average case processing cost in FY 2003—adjusted for year-to-year variations in the number of cases processed and to amortize the cost of the electronic case processing system—was about 3 percent less than in FY 2002. As in past years, the success of the Board’s settlement programs was a significant factor in containing case processing costs. The goal established for FY 2004 calls for continuing to hold the increase in the average case processing cost to no more than the percentage increase in the operating costs that most affect case processing—salaries and benefits, travel expenses, and the cost of court reporting services—adjusted for year-to-year variations in the number of cases processed and to amortize the cost of the electronic case processing system.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 1.4.1.

**Objective 4 – Obtain customer input regarding the adjudicatory process**

**Performance Goals**

**Experience**

In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been renumbered Objective 6.

**Goal 1.4.1**

Continue to evaluate and implement, as appropriate, suggestions received from customer surveys regarding the adjudicatory process

**FY 2003 Goal** – Seek feedback from persons appearing before the Board and provide that feedback to ORO for use in improving adjudicatory processes and developing best practices (Regional and Field Office staff)

**FY 2004 Goal** – Conduct customer survey of agency representatives in appeals to MSPB to determine their views regarding the adjudicatory process; evaluate results; implement suggestions as appropriate

**FY 2000 Actual** – Conducted survey on experience of parties and MSPB judges with bench decisions and video hearings

**FY 2001 Actual** – Evaluated and published results of survey on experience of parties and MSPB judges with bench decisions and video hearings; bench decisions and video hearings incorporated into MSPB adjudicatory procedures

**FY 2002 Actual** – Conducted survey of customers of new video explaining MSPB appeals process; report on findings prepared by OPE and reviewed by ORO

**FY 2003 Actual** – ORO and regional/field office staff received feedback on “customer satisfaction” at outreach events and through participation in such organizations as Federal Executive Boards, Small Agency Council, and bar organizations; feedback was discussed in bi-weekly teleconferences between ORO Director and Regional Directors; practitioners made presentations and responded to questions at legal conference; “best practices” session held at legal conference; ORO continued developing “best practices” guidance

This goal was met. In addition to seeking and obtaining customer feedback at outreach events, at the MSPB Legal Conference, and through participation in various organizations, ORO continued its work on development of “best practices” guidance for the regional offices. This work included a survey of selected administrative judges. As a result of the survey, ORO is considering asking each regional office to submit its own “best practices” for dissemination and discussion before any final guidance is established. ORO also submitted a proposal for a

settlement judge program as a “best practice” to the Chairman, but no decision had been made by the end of the fiscal year.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 1.6.1 and revised to include informal feedback in addition to customer surveys. The FY 2004 goal has been revised to reflect specific plans for conducting a survey of agency representatives in that year.

**Strategic Plan Goal 2**  
**To make effective use of alternative methods of dispute resolution**  
**in Board proceedings**

In the MSPB FY 2004-FY 2005 Performance Plan, this strategic goal has been combined with Strategic Plan Goal 1.

**Objective 1 – Continue the successful use of alternative dispute resolution (ADR) procedures in MSPB proceedings at both the regional office and Board headquarters levels**

**Performance Goals**

**Experience**

In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been moved to Strategic Plan Goal 1, where it is Objective 3.

**Goal 2.1.1**

Maintain rate of settlement of appeals that are not dismissed at 50 % or higher

**FY 2003 Goal** – 50 % or higher

**FY 2004 Goal** – 50 % or higher

**FY 2000 Actual** – 55 %

**FY 2001 Actual** – 57 %

**FY 2002 Actual** – 54 %

**FY 2003 Actual** – 54 %

This goal was met. The settlement rate for appeals that were not dismissed in FY 2003 falls within the expected range. The goal for FY 2004 is maintained at 50 percent or higher.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 1.3.1

**Goal 2.1.2**

Maintain rate of settlement of cases selected for the PFR Settlement Program at 25% or higher

**FY 2003 Goal** – 25 % or higher

**FY 2004 Goal** – 25 % or higher

**FY 2000 Actual** – 24 %

**FY 2001 Actual** – 27 %

**FY 2002 Actual** – 26 %

**FY 2003 Actual** – 44 %

This goal was met. The settlement rate for petitions for review (PFRs) selected for the PFR Settlement Program at headquarters in FY 2003 was higher than in prior years. Although OAC received a substantial increase in the number of requests for settlement assistance in FY 2003, most were in PFR cases that were deemed inappropriate for settlement and, therefore, were not selected for the PFR Settlement Program. As a result of OAC's greater selectivity in screening PFRs to identify those with significant settlement potential, fewer cases were selected for the

program. Given the experience of prior years, it is uncertain whether this higher settlement rate can be maintained. Therefore, the goal for FY 2004 is maintained at 25 percent or higher.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 1.3.2.

<p><b>Goal 2.1.3</b> Implement pilot program to test use of transformative mediation in resolving appeals</p> <p><b>FY 2003 Goal</b> – Conduct additional training for mediators; conduct training for MSPB staff in the regional offices that will serve as pilot sites; conduct outreach to potential participants in the mediation process; accept cases for mediation; evaluate results achieved by pilot program</p> <p><b>FY 2004 Goal</b> – Based on evaluation of results of the MAP pilot, determine whether the program should be continued, modified, or terminated</p>	<p><b>FY 2000 Actual</b> – Not applicable (new goal in FY 2001)</p> <p><b>FY 2001 Actual</b> – Conducted mediation training at MSPB Legal Conference; established ADR Working Group, which met with ADR experts, prepared statement of work for mediation training and development of an ADR program, and selected contractor</p> <p><b>FY 2002 Actual</b> – Worked with contractor to develop Mediation Appeals Project (MAP); announced MAP to all MSPB employees and solicited applications to be a mediator; selected mediators and conducted training; promoted MAP through outreach activities; established MAP marketing program; first two co-mediations completed by MAP-trained mediators working with contractor</p> <p><b>FY 2003 Actual</b> – Completed MAP training of 15 mediators; each mediator completed 3 to 5 co-mediations with contractor; 50 percent of completed co-mediations resulted in settlement of the appeal; plenary session on MAP held at legal conference to report results of MAP training and co-mediations completed; responsibility for continued implementation of MAP transferred to Regional Directors of Atlanta RO and Central RO; initial evaluation of MAP completed</p>
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This goal was met. The Mediation Appeals Project (MAP) was developed and launched in FY 2002. Under MAP, the parties to an appeal filed with an MSPB regional or field office are offered the opportunity to submit their dispute to a trained mediator. If the dispute cannot be resolved through that mediation, the appeal is returned to the regular adjudication process. The MAP is a supplement to, not a replacement for, the Board’s existing settlement programs.

All of the activities planned for MAP in FY 2003 were completed, including an evaluation by OPE of MAP results during its first year of operation. Late in the fiscal year, responsibility for continued implementation of the MAP was transferred from headquarters to the Regional Directors of the Atlanta and Central regional offices. During the next phase of MAP, the trained

mediators are to conduct individual mediations in appeals referred from the Atlanta, Central, Northeastern, and Washington regional offices. At the end of the fiscal year, the new managers were establishing procedures and refining the MAP process to ensure that, at the conclusion of the pilot period, the Board can evaluate the results and decide whether to continue the MAP program or any other form of mediation.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 1.3.3 and the FY 2004 goal has been revised.

**Budget Activity: Merit Systems Studies (Strategic Plan Goal 3) – \$1.4 Million**

**Strategic Plan Goal 3**  
**To provide information, analyses, and recommendations on Federal personnel programs, policies, and initiatives to policymakers, Federal agencies and employees, and others with an interest in Federal human resources management**

In the MSPB FY 2004-FY 2005 Performance Plan, this strategic goal has been renumbered Strategic Plan Goal 2 and has been revised.

**Objective 1 – Conduct governmentwide merit systems studies that provide information on, and analyses of, the state of Federal merit systems and the Federal workforce to policymakers, Federal agencies and employees, and others with an interest in Federal human resources management; raise the level of consciousness and initiate or participate in the debate about implementing and maintaining effective human resources management programs, policies, and practices that adhere to the merit system principles**

<b>Performance Goals</b>	<b>Experience</b>
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In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been revised.

<p><b>Goal 3.1.1</b>                  Conduct studies of human resources management matters in the Federal Government and issue reports of findings and recommendations for action, where appropriate</p> <p><b>FY 2003 Goal</b> – See next page  <b>FY 2004 Goal</b> – See next page</p>	<p><b>FY 2000 Actual</b> – Conducted ongoing program of merit systems studies, including issuance of 2 major reports and 5 editions of newsletter; responded to about 250 individual and institutional requests for data runs, advisory assistance and other studies-related information</p> <p><b>FY 2001 Actual</b> – See next page  <b>FY 2002 Actual</b> – See next page  <b>FY 2003 Actual</b> – See next page</p>
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<p><b>Goal 3.1.1 (continued)</b></p> <p><b>FY 2003 Goal</b> – Develop long-term research agenda for in-depth studies, focusing on broad HRM issues; publish at least 6 major reports and a quarterly newsletter; conduct less intensive studies on current topics of particular interest to the President and Congress; improve access to CPDF; explore use of electronic surveys; formalize collaborative relationships with other research organizations</p> <p><b>FY 2004 Goal</b> – Review long-term research agenda and adjust, as necessary; publish at least 6 reports and a quarterly newsletter; conduct less intensive studies on current topics of particular interest to the President and Congress; continue to formalize collaborative relationships with other research organizations</p>	<p><b>FY 2001 Actual</b> – Conducted ongoing program of merit systems studies, including issuance of 1 major study report and 4 editions of newsletter (3 additional major study reports were completed and submitted to the Board for approval); responded to about 250 individual and institutional requests for data runs, advisory assistance and other studies-related information</p> <p><b>FY 2002 Actual</b> – Conducted ongoing program of merit systems studies, including issuance of 4 major study reports and 4 editions of newsletter; responded to about 250 individual and institutional requests for data runs, advisory assistance and other studies-related information</p> <p><b>FY 2003 Actual</b> – Conducted ongoing program of merit systems studies, including issuance of 3 major study reports and 3 editions of newsletter; developed comprehensive research agenda after soliciting, receiving and evaluating stakeholder and internal suggestions; conducted less intensive studies on various topics and presented preliminary results, including presentations to Department of Homeland Security personnel system design team; established regular transmissions from OPM’s Central Personnel Data File (CPDF), trained staff in use of data, and used data to support newsletter articles and research; met with OPM staff regarding lessons learned from OPM experience with electronic surveys, and finalized contract for MSPB to conduct a web-based survey; strengthened collaboration with other research organizations, including agreement to share draft work before finalization and to meet quarterly to share updates on research in progress</p>
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This goal was substantially met. The MSPB issued two reports on merit systems studies and three editions of the *Issues of Merit* newsletter during the fiscal year, and a third approved report was pending for printing at year-end. (See “Summaries of Merit Systems Studies Issued in FY 2003” for a discussion of these reports and various study topics covered in the newsletter.) While the number of reports and newsletters issued during the fiscal year fell short of the target for this component of the goal, all remaining components of the goal were met. A long-term research agenda was developed after considering stakeholder input from various focus groups, information obtained in meetings with human resources directors, and over 2,000 comments obtained from a survey on the MSPB website. Presentations on various human resources matters were made to the design team charged with developing a new personnel system for the Department of Homeland Security. Technical improvements affecting how the MSPB conducts its studies were achieved through the establishment of regular transmissions of data from the CPDF and the finalization of a contract to conduct a web-based survey. Formalized collaboration with other research organizations, such as OPM, GAO, NAPA and the Partnership for Public Service, allowed the MSPB to comment on and influence reports issued by those organizations.

The FY 2003 target for the number of reports on merit systems studies and editions of the newsletter to be issued was predicated on the expectation that vacant positions in OPE would be filled early in the fiscal year. In fact, the positions were not filled until the final quarter of the fiscal year, and OPE lost two staff members prior to that time. With OPE staffing stabilized, the MSPB expects that the goal for the number of reports and editions of the newsletter to be issued in FY 2004 can be met.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 2.1.2.

<p><b>Goal 3.1.2</b></p> <p>Ensure that reports of studies are made widely available, particularly to target audiences, and disseminate findings through such means as personal appearances, personal contacts, publication of articles by OPE staff, and collaboration with other research organizations to increase impact of studies</p> <p><b>FY 2003 Goal</b> – Target management groups and other audiences for outreach presentations on studies; ensure that appropriate association membership lists are included in mailing list for studies; expand exposure through FEBs in collaboration with MSPB regional and field offices; improve website presence of studies, expand website links to research partners, and provide self-service updates to mailing list</p> <p><b>FY 2004 Goal</b> – Target management groups and other audiences for outreach presentations on studies; ensure that appropriate association membership lists are included in mailing list for studies; expand exposure through FEBs in collaboration with MSPB regional and field offices; improve website presence of studies, expand website links to research partners, and provide self-service updates to mailing list</p>	<p><b>FY 2000 Actual</b> – Approximately 12,000 copies of reports and newsletters distributed; estimated 35,000 downloads from the MSPB website and other websites; over 30 formal presentations made to groups; 3 articles by OPE staff published in professional journals; ongoing contacts similar to FY 1999</p> <p><b>FY 2001 Actual</b> – More than 55,000 copies of reports and newsletters distributed in printed form and downloaded from the MSPB website and other websites; over 30 formal presentations made to groups; more than 500 discussions with individuals</p> <p><b>FY 2002 Actual</b> – Over 100,000 copies of reports and newsletters distributed in printed form and downloaded from the MSPB website and other websites; more than 500 subscribers to Studies listserve since its implementation early in FY 2002; 23 formal presentations made to groups, including meetings held with Federal Executive Boards (FEBs) in Chicago, Denver, and San Antonio; approximately 350 discussions with individuals</p> <p><b>FY 2003 Actual</b> – Continued outreach targeted to Federal Executive Boards and associations of managers with presentations in seven cities; made approximately 30 formal presentations to groups representing a wide range of stakeholders and participated in several national conferences; substantially updated mailing lists for distribution of reports and newsletters; in collaboration with OCB, redesigned Studies page on MSPB website; succeeded in effort to get organizations and news services to include links to MSPB website on their websites; promoted self-service LISTSERV to customers</p>
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This goal was met. The goal focuses on specific efforts to target outreach activities on studies to key audiences, such as the Senior Executives Association, the Federal Managers Association, Federal Executive Boards, and others. In FY 2003, outreach to Federal Executive Board audiences included presentations in Portland (OR), Oklahoma City, Chicago, Boston, Philadelphia, Miami, and Minneapolis. Participation in national conferences included major program responsibility for the International Personnel Management Association Federal Section conference. The goal also supports expanded efforts to use the MSPB website to increase the exposure of the Board's studies, as well as to make other website enhancements such as expanded links to research partners and self-service updates to the studies mailing list.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 2.1.4.

<p><b>Goal 3.1.3</b></p> <p>Evaluate impact of studies, newsletters, and other products through feedback from customer surveys, tracking use of recommendations or references in studies, policy papers, professional literature and the media</p> <p><b>FY 2003 Goal</b> – Recommendations in studies are used and opinion makers cite them in studies, policy papers, professional literature, and the media</p> <p><b>FY 2004 Goal</b> – Devise alternative means to measure outcomes and impact of studies; conduct formal survey that repeats key questions of earlier customer surveys; recommendations in studies are used and opinion makers cite them in studies, policy papers, professional literature, and the media</p>	<p><b>FY 2000 Actual</b> – Informal survey results and volunteered feedback remained positive; MSPB studies continued to have large and positive impact, as measured by references in professional literature, media and respected research organizations</p> <p><b>FY 2001 Actual</b> – Submitted request for blanket authority to conduct customer surveys to OMB and received approval; submitted survey instrument to OMB for review; list of citations and references to MSPB studies and recommendations by Congress, GAO, NAPA, the professional literature, the media, and other credible sources was developed, indicating the MSPB studies continue to have large and positive impact</p> <p><b>FY 2002 Actual</b> – Conducted customer survey, compiled returns, completed report; customer satisfaction survey results and collection of citations indicate substantial positive impact; sent selected studies from earlier studies to Volcker Commission on civil service reform</p> <p><b>FY 2003 Actual</b> – Received favorable reviews from agencies, universities, and other organizations on reports issued in FY 2003; numerous references to reports made in the media; OPE staff invited to make presentations on reports; advance information about report on vacancy announcements used in testimony before Congress by contractor hired by OPM to improve central vacancy announcement process and USAJobs website; QuickHire requested permission to reprint report on vacancy announcements at their expense; MSPB reports contributed to enactment of legislation allowing agencies to use category rating instead of “rule of three”</p>
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This goal was met. Among the numerous favorable reviews of MSPB reports of merit systems studies issued during the fiscal year was a congratulatory letter from the OPM Director regarding the report on use of structured interviews. The report on vacancy announcements was highlighted in testimony before Congress by the contractor hired by OPM to improve the central vacancy announcement process and the USAJobs website, and QuickHire, a private company working with various Federal agencies on staffing issues, requested permission to reprint 5,000 copies of the report at their expense. In addition, the OPE Director and members of the OPE staff were invited to discuss the reports on a radio program.

The Board's work over the years on studies of human resources management issues resulted in OPE staff being invited to make presentations to the design team developing a new personnel system for the Department of Homeland Security. The Board's work also influenced the enactment of legislation (as part of the Homeland Security Act) that allows agencies to use category rating rather than the "rule of three" when considering applications for employment.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 2.1.1 and the FY 2004 goal has been revised.

**Objective 2 – Determine through merit systems studies the extent to which Executive Branch departments and agencies operate in a manner consistent with the statutory merit system principles and the extent to which prohibited personnel practices occur in the Federal workplace**

**Performance Goals**

**Experience**

In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been revised.

**Goal 3.2.1**

Conduct a triennial Merit Principles Survey, including questions intended to determine whether agencies adhere to the merit system principles and the extent to which prohibited personnel practices occur in the workplace, and report findings

**FY 2003 Goal** – Conduct 2003 Merit Principles Survey and analyze and evaluate results

**FY 2004 Goal** – Conduct electronic 2004 Merit Principles Survey; analyze and evaluate results; issue report as one of the reports under Goal 2.1.2 (formerly Goal 3.1.1)

**FY 2000 Actual** – 2000 Merit Principles Survey conducted; analyzing and evaluating results begun

**FY 2001 Actual** – Completed analyzing and evaluating results of the 2000 Merit Principles Survey; released findings through the *Issues of Merit* newsletter and OPE staff presentations and discussions

**FY 2002 Actual** – Prepared report on 2000 Merit Principles Survey

**FY 2003 Actual** – Began work on next Merit Principles Survey, including developing questions and planning for conducting survey electronically using web-based technology; met with OPM staff regarding lessons learned from OPM experience with electronic surveys, and finalized contract for MSPB to conduct a web-based survey; postponed conducting survey, and analyzing and evaluating results, until FY 2004

This goal was not met. The Merit Principles Survey that was to be conducted in FY 2003 has been rescheduled for FY 2004 so that the survey can be used to establish a baseline for the evaluation of new personnel systems. Under authority granted by the Homeland Security Act, the Department of Homeland Security is currently developing a new personnel system for its employees. Similar authority has been granted to the Department of Defense with respect to its civilian employees. New personnel systems in these two departments alone would affect almost 1 million civil service employees. Accordingly, the MSPB decided during FY 2003 that it would be prudent to postpone its next Merit Principles Survey until 2004. The postponement also allows additional time for planning for the web-based administration of the survey.

Although not part of the FY 2003 goal, the final report on the Board's 2000 Merit Principles Survey was completed, approved, and was pending for printing at the end of the fiscal year.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 2.2.1 and revised to substitute "periodic" for "triennial," and the FY 2004 goal has been revised.

**Budget Activity: Management Support (Strategic Plan Goals 4 and 5) – \$3.2 Million**

**Strategic Plan Goal 4**  
**To strengthen the MSPB’s internal systems and processes to support a continually improving, highly effective and efficient organization with the flexibility to meet program needs**

In the MSPB FY 2004-FY 2005 Performance Plan, the former strategic goals numbered 4 and 5 have been combined, revised, and renumbered Strategic Plan Goal 3.

<b>Objective 1 – Develop and implement an integrated electronic case processing system that allows appellants and agencies to file and receive documents electronically and streamlines internal case processing</b>	
<b>Performance Goals</b>	<b>Experience</b>

In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been moved to Strategic Plan Goal 1, where it is Objective 5.

<p><b>Goal 4.1.1</b>                  Develop integrated electronic case processing system that offers electronic access to customers as required by the Government Paperwork Elimination Act (GPEA) and streamlines internal case processing in accordance with MSPB’s long-term Strategic IT Plan</p> <p><b>FY 2003 Goal</b> – See next page  <b>FY 2004 Goal</b> – See next page</p>	<p><b>FY 2000 Actual</b> – Document management system (Docs Open) and document assembly system (Hot Docs) implemented; preliminary design of case management system (Law Manager) begun</p> <p><b>FY 2001 Actual</b> – Case management system design finalized to include interfaces with Docs Open, Hot Docs, and Lotus Notes; fill-in versions of Appeal Form and PFR Form developed and placed on website; work on revising Appeal Form to provide basis for electronic filing application begun; Action Plan for implementation of electronic filing developed and distributed internally; meeting with potential contractors to develop electronic filing application begun</p> <p><b>FY 2002 Actual</b> – See next page  <b>FY 2003 Actual</b> – See next page</p>
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<p><b>Goal 4.1.1 (continued)</b></p> <p><b>FY 2003 Goal</b> – Implement the following components of the electronic case processing system: (1) Law Manager - new case management system that integrates case tracking with document management, document assembly, and electronic calendar; and (2) e-Appeal – web-based application that appellants may use to file an appeal</p> <p><b>FY 2004 Goal</b> – Continue implementation of electronic case processing system by: (1) implementing Law Manager as the new case management system and making enhancements based on user experiences; (2) enhancing e-Appeal to include additional filings by parties and electronic publishing of MSPB orders and decisions through electronic distribution directly to the parties</p>	<p><b>FY 2002 Actual</b> – Continued work with contractor on development of case management system, including testing of partial implementations and data conversions; completed revisions to Appeal Form, distributed internally for comment, evaluated comments, revised form to create Appeal Forms Package that will serve as basis for electronic filing application, and published for public comments in accordance with the PRA; wrote Statement of Work (SOW) and Functional Requirements Document (FRD) for development of electronic filing application (e-Appeal)</p> <p><b>FY 2003 Actual</b> – Met with Law Manager contractor and FEDSIM (GSA) official responsible for contract to discuss contractor’s failure to meet contract deadline for completion of Law Manager; signed new firm fixed-price contract for completion of Law Manager in FY 2003; signed contract for development of e-Appeal; worked with contractor to develop e-Appeal; conducted internal “beta” testing of e-Appeal; submitted e-Appeal and revised paper Appeal Form to OMB for PRA approval; published notice in <i>Federal Register</i> announcing PRA submission to OMB; launched e-Appeal and published electronic filing regulations in <i>Federal Register</i> on October 20, 2003, to meet statutory deadline for GPEA compliance (October 21, 2003)</p>
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This goal was substantially met. Virtually all work on e-Appeal and the electronic filing regulations was completed during FY 2003, awaiting only OMB approval of the PRA submission and finalization of the regulations for publication at year-end. The e-Appeal application, which permits appellants or their representatives to file appeals electronically, was launched and revised regulations authorizing electronic filing and receipt of documents in MSPB adjudicatory proceedings were published in the *Federal Register* on October 20, 2003. Together, e-Appeal and the electronic filing regulations enabled the Board to comply with GPEA by the statutory deadline of October 21, 2003.

The Law Manager application was not implemented during FY 2003 because the contractor was unable to complete the contract on schedule. Under the new firm fixed-price contract signed in March 2003, the contractor was to deliver Law Manager by September 2003, and implementation was expected early in FY 2004. However, the contractor has continued to underestimate the complexity of the existing case management system, all the functions of which are to be included in the new system. The most recent delay by the contractor pushes implementation of Law Manager well into FY 2004, with training in the new system now anticipated for January 2004 and implementation in February 2004.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 1.5.1 and the FY 2004 goal has been revised.

<b>Objective 2 – Improve electronic access via the Internet and other available resources to MSPB case-related decisions, procedures and guidance</b>	
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<b>Performance Goals</b>	<b>Experience</b>
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In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been renumbered Objective 4 under Strategic Plan Goal 3 and has been revised.

<p><b>Goal 4.2.1</b></p> <p>Make final Board decisions, reports and other publications, the MSPB Appeal Form and other forms, Board regulations, the OPE newsletter, and other information available on the MSPB website; provide information to customers in electronic form when requested</p> <p><b>FY 2003 Goal</b> – See next page</p> <p><b>FY 2005 Goal</b> – See next page</p>	<p><b>FY 2000 Actual</b> – Redesigned MSPB website launched; continued to provide all information as before, but new search tool for Board decisions included, and link to GPO Access files of Board regulations replaced by MSPB files that are continuously updated as regulations are revised; information provided to customers in electronic form when requested</p> <p><b>FY 2001 Actual</b> – Began adding key precedential Board decisions issued from inception of MSPB (1979) to 1994 to the decisions database on the MSPB website; testing of listservs for decisions and studies completed and implementation begun; fill-in versions of Appeal Form and PFR Form developed and placed on website; conversion to electronic distribution of decisions to publishers completed; information provided to customers in electronic form when requested</p> <p><b>FY 2002 Actual</b> – See next page</p> <p><b>FY 2003 Actual</b> – See next page</p>
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<p><b>Goal 4.2.1 (continued)</b></p> <p><b>FY 2003 Goal</b> – Complete adding <i>all</i> pre-1994 Board decisions to decisions database on website; redesign website to improve access to information; continue to provide information to customers in electronic form when requested</p> <p><b>FY 2004 Goal</b> – Continue to provide information on the MSPB website and add new information in response to customer needs; continue to provide information to customers in electronic form when requested; identify and review selected governmentwide e-Government initiatives and determine whether they would be beneficial to MSPB operations; determine steps necessary to comply with E-Government Act of 2002 and develop implementation plan</p>	<p><b>FY 2002 Actual</b> – Completed adding key precedential Board decisions issued from inception of MSPB (1979) to 1994 to the decisions database on the MSPB website; began adding <i>all</i> pre-1994 decisions to website database; listservs for decisions and studies implemented; information provided to customers in electronic form when requested</p> <p><b>FY 2003 Actual</b> – Completed and implemented redesigned MSPB website; all decisions issued by Board at headquarters are being distributed electronically to publishers; issued RFP for contract to complete project of adding all pre-1994 Board decisions to MSPB website, but bids received did not produce an affordable solution; determined that with use of MSPB staff only, adding additional pre-1994 decisions to website will have to continue over the next 2 years, as staffing allows</p>
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This goal was substantially met. The website redesign was completed early in the fiscal year, all decisions issued by the Board at headquarters are being distributed electronically to publishers, and information is routinely distributed in electronic form when requested. Completion of the task of adding all pre-1994 Board decisions to the MSPB website has been deferred.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 3.4.1 and expanded to focus on the Administration’s governmentwide e-Government initiatives and compliance with the E-Government Act of 2002. The FY 2004 goal has been revised accordingly.

**Objective 3 – Identify, test, and implement, as appropriate, new technologies that will increase efficiency, reduce costs, and improve customer service**

**Performance Goals**

**Experience**

In the MSPB FY 2004-FY 2005 Performance Plan, this objective has been renumbered Objective 5 under Strategic Plan Goal 3 and has been revised.

**Goal 4.3.1**

Make improvements in information technology security program and comply with requirements of the Federal Information Security Management Act of 2002

**FY 2003 Goal** – Provide security awareness training to all staff; revise security plans for implementation of new case management system and electronic filing application; continue to enhance security and contingency planning

**FY 2004 Goal** – Provide security awareness training to all staff; revise security plans as needed, based on experience with electronic filing application, for implementation of enhancements to application and implementation of electronic publishing; continue to enhance contingency planning as funds permit

**FY 2000 Actual** – Not applicable (new goal in FY 2002)

**FY 2001 Actual** – Not applicable (new goal in FY 2002)

**FY 2002 Actual** – Conducted security awareness training for all employees; sent one IRM employee to security training; completed Security Plan; updated Risk Analysis; completed Contingency Plan for major systems

**FY 2003 Actual** – Completed all information security initiatives in accordance with FY 2003 Plan of Action & Milestones (POA&Ms) submitted to OMB—except for background investigations being conducted by OPM and cancellation of one item; contracted independent auditor to conduct information security review and complete IG portion of 2003 FISMA Report; filed FISMA Report with OMB and Congress; provided security awareness training to all staff

This goal was met. In accordance with the agency’s FY 2003 POA&Ms, IRM: (1) updated the IT Security Program Manual; (2) improved physical access controls to the computer room, computer lab, and IT storage room; (3) improved control over Lotus Notes and remote user IDs and passwords; (4) upgraded three servers; (5) prepared and tested backup/recovery procedures for all major systems; (6) implemented Rules of Behavior for use of IT resources; (7) selected and ordered an intrusion detection system; (8) continued work on documentation of procedures; (9) initiated OPM background investigations of IT staff; (10) updated the Security Plan and certified and accredited the e-Appeal application for operation; (11) purchased security hardware/software (to be implemented in FY 2004) for internal network monitoring and improved daily backup; and (12) upgraded the firewall.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 3.5.1.

**Strategic Plan Goal 5**  
**To develop the MSPB’s human resources to ensure a continually improving, highly effective and efficient organization with the flexibility to meet program needs**

In the MSPB FY 2004-FY 2005 Performance Plan, the former strategic goals numbered 4 and 5 have been combined, revised, and renumbered Strategic Plan Goal 3.

<b>Objective 1 – Recruit, train, and retain skilled, highly motivated employees to effectively and efficiently accomplish the MSPB mission</b>	
<b>Performance Goals</b>	<b>Experience</b>

In the MSPB FY 2004-FY 2005 Performance Plan, this objective, revised, is Objective 1 under Strategic Plan Goal 3.

<p><b>Goal 5.1.1</b>                  Strengthen employee and management development programs and increase opportunities for MSPB employees</p> <p><b>FY 2003 Goal</b> – See next page</p> <p><b>FY 2004 Goal</b> – See next page</p>	<p><b>FY 2000 Actual</b> – 6 employees sent to OPM’s Management Development Centers; OAC attorneys detailed to Vice Chairman/Acting Chairman on rotating basis, which gave each employee a broader understanding of the various MSPB organizations and how they interact; OAC attorneys detailed on rotating basis to OCB for Expedited PFR Pilot Program</p> <p><b>FY 2001 Actual</b> – 6 employees sent to OPM’s Management Development Centers and 4 employees sent to Federal Executive Institute (FEI); 1 OAC attorney detailed to Dallas field office for 2 months; 1 regional office attorney detailed to ORO for 6 months; OAC and OGC attorneys detailed to Chairman and Vice Chairman; OAC attorneys detailed on rotating basis to OCB for Expedited PFR Pilot Program</p> <p><b>FY 2002 Actual</b> – See next page</p> <p><b>FY 2003 Actual</b> – See next page</p>
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<p><b>Goal 5.1.1 (continued)</b></p> <p><b>FY 2003 Goal</b> – Develop core and advanced training and development programs for key MSPB occupations; provide training for employees in accordance with Individual Development Plans (IDPs); provide developmental details between offices; provide management training</p> <p><b>FY 2004 Goal</b> – Continue activities from FY 2003; develop mentoring programs for new employees in key MSPB occupations</p>	<p><b>FY 2002 Actual</b> – 5 employees sent to OPM’s Management Development Centers and 2 employees sent to Federal Executive Institute (FEI); details to Board members and ORO continued; OAC attorney detailed to OCB for Expedited PFR Pilot Program until 3/1/02 when responsibility for program was reassigned to OAC</p> <p><b>FY 2003 Actual</b> – Core and advanced curriculums were developed for paralegals, and progress was made on developing programs for managers; OPE collaborated with NAPA on study to identify core managerial training needs of supervisors and managers; session for paralegals held at legal conference, and work continues on planning another session to be held at the National Advocacy Center; provided additional training and detail opportunities (see narrative below); Individual Development Plans (IDPs) updated to reflect current training needs</p>
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This goal was met. During the fiscal year, 1 employee was sent to the Federal Executive Institute, 2 employees took courses at OPM’s Management Development Centers, 6 attended American Academy of Judicial Education courses, and 14 took courses at the National Judicial College. At headquarters, 6 OAC employees were on detail—1 to the Chairman, 3 to the Member, 1 to ORO, and 1 to OCB; the details to ORO and OCB were subsequently made permanent reassignments. An AJ from the Western region was detailed to serve as Acting RD of the Western Regional Office during the RD’s absence. One regional employee was provided a training opportunity to work with FAM on a headquarters project.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 3.1.1.

<p><b>Goal 5.1.2</b> Develop agency-wide recruitment strategies to ensure MSPB hires from a variety of sources to ensure a diverse, highly qualified workforce</p> <p><b>FY 2003 Goal</b> – Identify internal barriers to the movement of staff between MSPB offices</p> <p><b>FY 2004 Goal</b> – Identify sources to expand the candidate pool and target recruitment at those sources</p>	<p><b>FY 2000 Actual</b> – Not applicable (new goal in FY 2003)</p> <p><b>FY 2001 Actual</b> – Not applicable (new goal in FY 2003)</p> <p><b>FY 2002 Actual</b> – Not applicable (new goal in FY 2003)</p> <p><b>FY 2003 Actual</b> – OPE worked with ORO to offer pre-announcement lateral opportunities to AJs, resulting in movement of AJs between field locations; OPE worked with ORO and Washington Regional Office to conduct job analyses of administrative judge (AJ) positions and developed structured interview for AJ positions; OPE worked with OCB to accommodate movement of headquarters staff; OPE began exploring use of automated systems for recruitment, including application and rating processes</p>
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This goal was met.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been renumbered Goal 3.3.1 and the FY 2004 goal has been revised.

<p><b>Goal 5.1.3</b> Conduct a biennial legal conference for MSPB administrative judges and headquarters attorneys</p> <p><b>FY 2003 Goal</b> – Conduct legal conference</p> <p><b>FY 2004 Goal</b> – See narrative below</p>	<p><b>FY 2000 Actual</b> – Made plans for 2001 legal conference</p> <p><b>FY 2001 Actual</b> – Legal conference held May 21-24, 2001</p> <p><b>FY 2002 Actual</b> – Began planning 2003 legal conference</p> <p><b>FY 2003 Actual</b> – Legal conference held May 5-8, 2003</p>
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This goal was met.

In the MSPB FY 2004-FY 2005 Performance Plan, this goal has been discontinued. Future activities with respect to the MSPB legal conferences will be reported under the general goal for training and development programs (Goal 3.1.1 in the MSPB FY 2004-FY 2005 Performance Plan; formerly Goal 5.1.1).

**FY 2003 FINANCIAL REPORT**

**Financial Statements for the Years Ended September 30, 2003 and 2002**

**BALANCE SHEET  
AS OF SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	<b>2003</b>	<b>2002</b>
<b>ASSETS:</b>		
Intragovernmental:		
Fund Balance With Treasury (Note 2)	\$ 7,197,643	\$ 6,194,387
Total Intragovernmental	<u>7,197,643</u>	<u>6,194,387</u>
Cash (Note 1)	-	59,111
Accounts Receivable, Net (Note 1)	2,827	140
General Property, Plant and Equipment, Net (Note 3)	6,245,366	4,524,411
Other	155	-
Total Assets	<u>\$ 13,445,991</u>	<u>\$ 10,778,049</u>
<b>LIABILITIES:</b>		
Intragovernmental:		
Accounts Payable (Note 4)	\$ 4,810	\$ 464
Other (Note 4)	421,218	1,594,543
Total Intragovernmental	<u>426,028</u>	<u>1,595,007</u>
Accounts Payable (Note 4)	331,765	181,885
Payroll Accrual and Other (Note 4)	1,090,839	1,045,869
Unfunded Leave (Note 4)	2,050,032	2,043,812
Total Liabilities	<u>3,898,664</u>	<u>4,866,573</u>
<b>NET POSITION:</b>		
Unexpended Appropriations (Note 5)	5,383,556	3,430,784
Cumulative Results of Operations (Note 5)	4,163,771	2,480,692
Total Net Position	<u>\$ 9,547,327</u>	<u>\$ 5,911,476</u>
Total Liabilities and Net Position	<u>\$ 13,445,991</u>	<u>\$ 10,778,049</u>

The accompanying notes are an integral part of these statements.

**STATEMENT OF NET COST  
FOR THE YEARS ENDED SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	<u>2003</u>	<u>2002</u>
<b>PROGRAM COSTS:</b>		
Intragovernmental Gross Costs	\$ 6,004,491	\$ 3,653,024
Less: Intragovernmental Earned Revenue	(2,608,931)	(2,528,688)
Intragovernmental Net Costs	<u>3,395,560</u>	<u>1,124,336</u>
Gross Costs With the Public	27,075,824	29,799,591
Less: Earned Revenues From the Public	-	-
Net Costs With the Public	<u>27,075,824</u>	<u>29,799,591</u>
Total Net Cost	<u>30,471,384</u>	<u>30,923,927</u>
Costs Not Assigned To Programs	-	-
Less Earned Revenues Not Attributable To Programs	-	-
Net Cost Of Operations	<u>\$ 30,471,384</u>	<u>\$ 30,923,927</u>

The accompanying notes are an integral part of these statements.

**STATEMENT OF CHANGES IN NET POSITION  
FOR THE YEARS ENDED SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	<b>2003 Cumulative Results Of Operations</b>	<b>2003 Unexpended Appropriations</b>	<b>2002 Cumulative Results Of Operations</b>	<b>2002 Unexpended Appropriations</b>
Beginning Balances	\$2,480,692	\$ 3,430,784	\$ (1,540,606)	\$ 5,783,386
Prior Period Adjustments			503,250	
Beginning Balances, as Adjusted	2,480,692	3,430,784	(1,037,356)	5,783,386
Budgetary Financing Sources:				
Appropriations Received	-	32,027,000	-	30,555,000
Other Adjustments (recissions, etc)		(239,600)		(66,566)
Appropriations Used	29,834,628	(29,834,628)	32,841,036	(32,841,036)
Other Financing Sources:				
Imputed Financing from Costs	2,319,835		1,600,939	
Absorbed by Others				
Total Financing Sources	32,154,463	1,952,772	34,441,975	(2,352,602)
Net Cost of Operations	30,471,384		30,923,927	
Ending Balances	\$ 4,163,771	\$ 5,383,556	\$ 2,480,692	\$ 3,430,784

The accompanying notes are an integral part of these statements.

**STATEMENT OF BUDGETARY RESOURCES  
FOR THE YEARS ENDED SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	<u>2003</u>	<u>2002</u>
<b>BUDGETARY RESOURCES:</b>		
Budget Authority:		
Appropriations	\$ 32,027,000	\$ 30,555,000
Unobligated Balance:		
Beginning of Period	1,152,230	553,800
Spending Authority from Offsetting Collections:		
Earned		
Collected	2,608,931	2,528,688
Anticipated for Rest of Year, Without Advances	-	-
Subtotal	<u>35,788,161</u>	<u>33,637,488</u>
Recoveries of Prior-Year Obligations:		
Actual	2,253,372	1,270,487
Anticipated		
Permanently Not Available	(239,601)	(66,566)
Total Budgetary Resources	<u>\$ 37,801,932</u>	<u>\$ 34,841,409</u>

The accompanying notes are an integral part of these statements.

**STATEMENT OF BUDGETARY RESOURCES  
FOR THE YEARS ENDED SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	<b>2003</b>	<b>2002</b>
<b>STATUS OF BUDGETARY RESOURCES:</b>		
Obligations Incurred:		
Direct	\$ 34,044,501	\$ 31,160,491
Reimbursable	2,608,931	2,528,688
Subtotal	36,653,432	33,689,179
Unobligated Balance:		
Apportioned	151,932	73,991
Anticipated	-	-
Unobligated Balance Not Available	996,568	1,078,239
 Total Status of Budgetary Resources	 \$ 37,801,932	 \$ 34,841,409

**RELATIONSHIP OF OBLIGATIONS TO OUTLAYS:**

Obligated Balance, Net, Beginning of Period	\$ 5,101,269	\$ 10,709,894
Obligated Balance, Net, End of Period:		
Undelivered Orders	(4,234,901)	(2,278,507)
Accounts Payable	(1,814,242)	(2,822,762)
 Outlays:		
Disbursements	33,452,186	38,027,317
Collections	(2,608,931)	(2,528,688)
Subtotal	30,843,255	35,498,629
Less: Offsetting Receipts	-	-
 Net Outlays	 \$30,843,255	 \$ 35,498,629

The accompanying notes are an integral part of these statements.

**STATEMENT OF FINANCING  
FOR THE YEARS ENDED SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	2003	2002
<b>Resources Used to Finance Activities:</b>		
Budgetary Resources Obligated		
Obligations Incurred	\$ 36,653,432	\$ 33,689,179
Less: Spending Authority from Offsetting Collections and Recoveries	(4,862,303)	(3,799,175)
Obligations Net of Offsetting Collections and Recoveries	31,791,129	29,890,004
Other Resources		
Imputed Financing from Costs Absorbed by Others	2,319,835	1,600,939
Net Other Resources Used to Finance Activities	2,319,835	1,600,939
 Total Resources Used to Finance Activities	 34,110,964	 31,490,943
 <b>Resources Used to Finance Items not Part of the Net Cost of Operations:</b>		
Change in Budgetary Resources Obligated for Goods, Services and Benefits Ordered But Not Yet Provided	(1,956,501)	2,951,079
Resources That Fund Expenses Recognized in Prior Periods	-	(234,396)
Resources That Finance the Acquisition of Assets	(1,882,268)	(3,897,272)
Other Resources or Adjustments to Net Obligated Resources That Do Not Affect Net Cost of Operations	-	503,202
Total Resources Used to Finance Items Not Part of the Net Cost of Operations	(3,838,769)	(677,387)
 Total Resources Used to Finance the Net Cost of Operations	 30,272,195	 30,813,556
 <b>Components of the Net Cost of Operations That will not Require or Generate Resources in the Current Period:</b>		
Components Requiring or Generating Resources in Future Periods:		
Increase in Annual Leave Liability	6,220	-
Other	34,390	-
Total Components of Net Cost of Operations That will not Require or Generate Resources in the Current Period	40,610	-
 Components Not Requiring or Generating Resources:		
Depreciation and Amortization	161,313	110,464
Other	(2,734)	(93)
Total Components of Net Cost of Operations That will not Require or Generate Resources	199,189	110,371
 <b>Net Cost of Operations</b>	 \$ 30,471,384	 \$ 30,923,927

The accompanying notes are an integral part of these statements.

**STATEMENT OF CUSTODIAL ACTIVITY  
FOR THE YEARS ENDED SEPTEMBER 30, 2003 AND 2002  
(IN DOLLARS)**

	<u>2003</u>	<u>2002</u>
<b>REVENUE ACTIVITY</b>		
Sources of Cash Collections		
Miscellaneous	\$ 23,165	\$ 130
Total Cash Collections	<u>23,165</u>	<u>130</u>
Accrual Adjustments		
Total Custodial Revenue	<u>23,165</u>	<u>130</u>
 <b>DISPOSITION OF COLLECTIONS</b>		
Transferred to Others (by Recipient)	23,165	130
Increase/(Decrease) in Amounts Yet to be Transferred	-	-
Retained by the Reporting Entity	-	-
Net Custodial Activity	<u>\$ -</u>	<u>\$-</u>

The accompanying notes are an integral part of these statements.

**Notes to the Financial Statements for the Years Ended September 30, 2003 and 2002**

**NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*A. Reporting Entity*

The Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board was established by the Civil Service Reform Act of 1978 (CSRA), with a mission of ensuring that employees are protected against abuses by agency management, that Executive branch agencies make employment decisions in accordance with the merit systems principles, and that Federal merit systems are kept free of prohibited personnel practices.

*B. Basis of Presentation*

These financial statements are provided to meet the requirements of the Government Management and Reform Act (GMRA) of 1994. The statements consist of the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, Statement of Budgetary Resources, Statement of Financing, and Statement of Custodial Activity.

These financial statements have been prepared to report the financial position and results of operations of MSPB. These statements were prepared from the books and records of MSPB in conformity with accounting principles generally accepted in the United States, and the Office of Management and Budget (OMB) Bulletin No. 01-09, Form and Content of Agency Financial Statements.

*C. Basis of Accounting*

Transactions are recorded on an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when liabilities are incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal constraints and controls over use of Federal funds.

To assist OMB in recommending and publishing comprehensive accounting standards and principles for agencies of the Federal Government, the Secretary of the Treasury, the Comptroller General of the United States, the Director of OMB, and the Joint Financial Management Improvement Program (JFMIP) established the Federal Accounting Standards Advisory Board (FASAB) in 1990. The American Institute of Certified Public Accountant's (AICPA) Council designated FASAB as the accounting standards authority for Federal Government entities.

*D. Revenues & Other Financing Sources*

MSPB receives funding through Congressional appropriation from the budget of the United States. Annual appropriations are used, within statutory limits, for operating and capital expenditures for essential personal property. Appropriations are recognized as revenues at the time the related program or administrative expenses are incurred. Appropriations expended for

capitalized property and equipment are recognized as expenses when an asset is consumed in operations. In addition to appropriated funding received, MSPB has in its appropriations language authorization to collect administrative expenses to adjudicate retirement appeals from the Civil Service Retirement and Disability Trust Fund. These transfers do not add to Government costs, but simply transfer the costs to individual agencies.

*E. Fund Balance with Treasury*

Funds with Department of the Treasury primarily represent appropriated funds that are available to pay current liabilities and finance authorized purchase commitments. See Note 2 for additional information.

*F. Cash*

As of September 30, 2003 and 2002, cash on hand totaled \$-0- and \$59,111, respectively.

*G. Accounts Receivable, Net*

MSPB records accounts receivable as services are provided to customers. All amounts are considered collectible; therefore, no estimate is formulated for the allowance of uncollectible accounts. Generally, accounts receivable consists of either amounts receivable from Federal agencies for services provided, or from miscellaneous advances submitted to employees for travel expenses. As of September 30, 2003 and 2002, accounts receivable totaled \$2,827 and \$140, respectively.

*H. General Property, Plant, and Equipment, Net*

MSPB's property, plant and equipment is recorded at cost and is depreciated using the straight-line method over the estimated useful life of the asset. Major alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred. MSPB's capitalization threshold is \$50,000 for individual purchases and \$500,000 for bulk purchases. The service life for office equipment is 10 years. See Note 3 for additional information.

*I. Liabilities*

Liabilities represent the amount of monies or other resources likely to be paid by MSPB as a result of transactions or events that have already occurred. No liability can be paid, however, absent an appropriation. Liabilities for which an appropriation has not been enacted are, therefore, classified as not covered by budgetary resources, and there is no certainty that the appropriation will be enacted. Also, liabilities can be abrogated by the Government, acting in its sovereign capacity.

*J. Accounts Payable*

Accounts payable consists of amounts owed to other Federal agencies and trade accounts payable.

*K. Annual, Sick, and Other Leave*

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. Each year, the balance in the accrued leave account is adjusted to reflect current pay rates. To the extent current or prior year appropriations are not available to fund annual leave earned but not taken, funding will be obtained from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

*L. Retirement Plans*

MSPB employees participate in the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). FERS was established by the enactment of Public Law 99-335. Pursuant to this law, FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired before January 1, 1984 elected to join either FERS and Social Security or remain in CSRS.

All employees are eligible to contribute to the Thrift Savings Plan (TSP). For those employees participating in the FERS, a TSP account is automatically established and MSPB makes a mandatory 1 percent contribution to this account. In addition, MSPB makes matching contributions, ranging from 1 to 4 percent, for FERS eligible employees who contribute to their TSP accounts. Matching contributions are not made to the TSP accounts established by CSRS employees.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. In these instances, MSPB remits the employer's share of the required contribution.

MSPB does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, is the responsibility of the Office of Personnel Management.

*M. Imputed Costs / Financing Sources*

Federal Government entities often receive goods and services from other Federal Government entities without reimbursing the providing entity for all the related costs. In addition, Federal Government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. MSPB recognized imputed costs and financing sources in fiscal years 2003 and 2002 to the extent directed by the OMB.

*N. Use of Estimates*

The preparation of financial statements requires management to make estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. Such estimates and assumptions could change in the future as more information becomes known, which could impact the amounts reported and disclosed herein.

*O. Expired Accounts and Canceled Authority*

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account into which the annual authority is placed is called the expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period but not previously reported. At the end of the fifth expired year, the expired account is canceled.

**NOTE 2. FUND BALANCE WITH TREASURY**

	<u>2003</u>	<u>2002</u>
Fund Balances		
Appropriated Funds	\$ <u>7,197,643</u>	\$ <u>6,194,387</u>
Status of Fund Balance with Treasury		
Unobligated Balance Available	\$ 151,932	\$ 73,991
Unobligated Balance not yet Available	996,568	1,078,238
Obligated Balance not yet Disbursed	<u>6,049,143</u>	<u>5,042,158</u>
Total	\$ <u>7,197,643</u>	\$ <u>6,194,387</u>

**NOTE 3. GENERAL PROPERTY, PLANT, AND EQUIPMENT**Schedule of Property, Plant, and Equipment as of September 30, 2003

<u>Description</u>	<u>Acquisition Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>
Leasehold Improvements	\$ 1,201,851	(\$289,664)	\$ 912,187
Office Equipment	213,847	( 213,847)	-0-
Internal Use Software	<u>5,422,187</u>	<u>(89,008)</u>	<u>5,333,179</u>
TOTALS	<u>\$ 6,837,885</u>	<u>(\$592,519)</u>	<u>\$ 6,245,366</u>

Schedule of Property, Plant, and Equipment as of September 30, 2002

<u>Description</u>	<u>Acquisition Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>
Leasehold Improvements	\$ 739,994	(\$149,713)	\$ 590,281
Office Equipment	213,847	( 213,847)	-0-
Construction in Progress	53,109	-0-	53,109
Internal Use Software	<u>3,948,667</u>	<u>(67,646)</u>	<u>3,881,021</u>
TOTALS	<u>\$ 4,955,617</u>	<u>(\$431,206)</u>	<u>\$ 4,524,411</u>

**NOTE 4. LIABILITIES**

The accrued liabilities for MSPB are comprised of program expense accruals, payroll accruals, and unfunded annual leave earned by employees. Program expense accruals represent expenses that were incurred prior to year-end but were not paid. Similarly, payroll accruals represent payroll expenses that were incurred prior to year-end but were not paid.

**NOTE 4. (CONTINUED)**

Schedule of Liabilities as of September 30

	2003	2002
Intragovernmental		
Accounts Payable	\$ 4,810	\$ 464
Payroll Taxes Payable	<u>421,218</u>	<u>1,594,543</u>
Total Intragovernmental	426,028	1,595,007
Accounts Payable	331,765	181,885
Payroll Accrual and Other	1,090,839	1,045,869
Unfunded Leave	<u>2,050,032</u>	<u>2,043,812</u>
 Total Liabilities	 <u>\$ 3,898,664</u>	 <u>\$ 4,866,573</u>

**NOTE 5. NET POSITION**

MSPB's net position is composed of unexpended appropriation and cumulative results of operations. Net position as of September 30, 2003 and 2002 consisted of the following:

	<u>2003</u>	<u>2002</u>
Unexpended Appropriations:		
Unobligated		
Available	\$ 151,932	\$ 73,991
Unavailable	996,568	1,078,239
Undelivered Orders	<u>4,235,056</u>	<u>2,278,554</u>
Total	\$ 5,383,556	\$ 3,430,784
Cumulative Results of Operations	<u>4,163,771</u>	<u>2,480,692</u>
Net Position	<u>\$ 9,547,327</u>	<u>\$ 5,911,476</u>

**NOTE 6. OPERATING LEASES**

MSPB occupies office space at four locations with lease agreements that are accounted for as operating leases. The first agreement for office headquarters began on June 1, 2000, and expires on May 31, 2010. Annual lease payments of \$1,504,295 are increased annually by 3 percent of the Base Rental rate in effect for the prior lease year. In the sixth year of the lease, the Base Rental Rate shall increase \$2.50 per square foot. The second lease began on February 15, 2000, and expires on February 14, 2005. Annual lease payments of \$103,592 remain constant for the lease term specified above. A third lease began on September 15, 2000, and expires on September 14, 2010. Annual lease payments of \$152,216 are increased 2.5 percent over the prior year adjusted annual rent. In year six, the payment will increase \$1.50 per rented square foot over the annual rent for the previous 12 months. The final lease agreement commencing on November 1, 2001, and terminating on December 31, 2011, has a base annual rental rate of \$98,802. The base rent is increased annually 2 percent over the prior year adjusted annual rent. This lease contains renewal rights for an additional five years. MSPB also leases warehouse space for an annual amount of \$22,800. This lease expires on March 31, 2013. MSPB's other office locations are rented through GSA according to occupancy agreements. These occupancy agreements may be terminated at any time by MSPB with four months notice.

Schedule of Future Minimum Lease Payments

2004	\$ 2,056,945
2005	2,052,583
2006	2,165,470
2007	2,359,284
2008	2,427,345
After Five Years	<u>4,334,334</u>
<b>TOTAL FUTURE PAYMENTS</b>	<u><b>\$15,395,961</b></u>

## Independent Auditor's Reports



**BROWN & COMPANY CPAs, PLLC**  
CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS

### INDEPENDENT AUDITOR'S REPORT ON THE FINANCIAL STATEMENTS

U.S. Merit Systems Protection Board  
Washington, D.C.

We have audited the accompanying balance sheet of the U.S. Merit Systems Protection Board as of September 30, 2003, and the related statement of net cost and results of operations and changes in net position, and the combined statement of budgetary resources and financing for the year ended September 30, 2003. These principal statements are the responsibility of the U.S. Merit Systems Protection Board. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 01-02, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 01-02 require that we plan and perform the audit to obtain reasonable assurance about whether the principal statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the principal statements referred to above present fairly, in all material respects, the financial position of the U.S. Merit Systems Protection Board as of September 30, 2003, the results of its operations, changes in its net position, budgetary resources, and financing for the year ended September 30, 2003 in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued a report dated October 24, 2003 on our consideration of the U.S. Merit Systems Protection Board's internal control over financial reporting and a report dated October 24, 2003 on its compliance with laws and regulations.

The information in "Management's Discussion and Analysis" is presented for the purpose of additional analysis and is required by OMB Bulletin No. 01-09. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and, accordingly, express no opinion on it.

*Brown & Company*

Arlington, Virginia  
October 24, 2003

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**BROWN & COMPANY CPAs, PLLC**

**CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS**

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

U.S. Merit Systems Protection Board  
Washington, D.C.

We have audited the principal statements (hereinafter referred to as "financial statements") of the U.S. Merit Systems Protection Board (the Merit Systems) as of and for the year ended September 30, 2003, and have issued our report thereon dated October 24, 2003. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 01-02, *Audit Requirements for Federal Financial Statements*.

In planning and performing our audit, we considered the Merit Systems' internal control over financial reporting by obtaining an understanding of the Merit Systems' internal control, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 01-02. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control. Consequently, we do not provide an opinion on internal control.

In addition, with respect to internal control related to performance measures reported in "Management's Discussion and Analysis," we obtained an understanding of the design of significant internal controls relating to the existence and completeness assertions, as required by OMB Bulletin No. 01-02. Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on such controls.

This report is intended solely for the information and use of the management of the Merit Systems, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Arlington, Virginia  
October 24, 2003

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**BROWN & COMPANY CPAs, PLLC**

**CERTIFIED PUBLIC ACCOUNTANTS AND MANAGEMENT CONSULTANTS**

**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS**

U.S. Merit Systems Protection Board  
Washington, D.C.

We have audited the principal statements (hereinafter referred to as "financial statements") of the U.S. Merit Systems Protection Board (the Merit Systems) as of and for the year ended September 30, 2003, and have issued our report thereon dated October 24, 2003. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 01-02, *Audit Requirements for Federal Financial Statements*.

The management of the Merit Systems is responsible for complying with laws and regulations applicable to the Merit Systems. As part of obtaining reasonable assurance about whether the Merit Systems' financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 01-02, including the requirements referred to in the Federal Financial Management Improvement Act (FFMIA) of 1996. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the Merit Systems.

The results of our tests of compliance disclosed no instances of noncompliance with other laws and regulations discussed in the preceding paragraph exclusive of FFMIA that are required to be reported under *Government Auditing Standards* or OMB Bulletin No. 01-02.

Under FFMIA, we are required to report whether the Merit Systems' financial management systems substantially comply with the Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level. To meet this requirement, we performed tests of compliance with FFMIA section 803(a) requirements.

The results of our tests disclosed no instances in which the Merit Systems' financial management systems did not substantially comply with the three requirements discussed in the preceding paragraph.

Providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit, and, accordingly, we do not express such an opinion.

This report is intended solely for the information and use of the management of the Merit Systems, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Arlington, Virginia  
October 24, 2003

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## Management Representation Letter



**U.S. MERIT SYSTEMS PROTECTION BOARD**  
Office of the Chairman  
1615 M Street, NW  
Washington, DC, DC 20036

Phone: (202) 653-6772, ext. 1310; Fax: (202) 653-7299

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### Chief of Staff

October 24, 2003

### **MANAGEMENT REPRESENTATION LETTER**

Mr. Tyrone Brown, Managing Member  
Brown & Company CPAs, PLLC  
2300 Clarendon Blvd., Suite 1000  
Arlington, VA 22201

Dear Mr. Brown:

This letter is in connection with your audit of the U.S. Merit Systems Protection Board (Merit System) Principal Statements (also referred to as “financial statements”) as of September 30, 2003 and for the year then ended for the purposes of (1) expressing an opinion as to whether the Principal Statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America, and (2) reporting whether the agency’s financial management systems substantially comply with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level as of September 30, 2003.

We confirm, to the best of our knowledge and belief, the following representations made to you during your audit, that these representations are as of the date of your auditor’s report, and pertain to the period covered by the financial statements.

1. We are responsible for the fair presentation of the Principal Statements and Required Supplementary Stewardship Information in conformity with accounting principles generally accepted in the United States of America.
2. The financial statements are fairly presented in conformity with accounting principles generally accepted in the United States of America.
3. We have made available to you all
  - financial records and related data;
  - where applicable, minutes of meetings of the Board or summaries of actions of recent meetings for which minutes have not been prepared, and
  - communications from the Office of Management and Budget (OMB) concerning noncompliance with or deficiencies in financial reporting practices.

4. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements or disclosed in the notes to the financial statements.
5. Merit Systems has satisfactory title to all owned assets, including stewardship property, plant and equipment: such assets have no liens or encumbrances, nor have any assets been pledged.
6. We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
7. Guarantees under which the agency is contingently liable have been properly reported or disclosed.
8. Related party transactions and related accounts receivable or payable, including assessments, loans, and guarantees have been properly recorded and disclosed.
9. All intra-entity transactions and balances have been appropriately identified and eliminated for financial reporting purposes, unless otherwise noted. All intra-governmental transactions and balances have been appropriately recorded, reported, and disclosed. We have reconciled intra-governmental transactions and balances with the appropriate trading partners for the four fiduciary transactions identified in Treasury's *Intra-governmental Fiduciary Transactions Accounting Guide*, and other intra-governmental assets, liability and revenue amounts as required by OMB Bulletin 01-09.
10. There are no known:
  - possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency:
  - material liabilities or gain or loss contingencies that are required to be accrued or disclosed, that have not been accrued or disclosed; or
  - unasserted claims or assessments that are probable of assertion and that must be disclosed, that have not been disclosed.
11. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
12. No material events or transactions have occurred subsequent to September 30, 2003 that have not been properly recorded in the Principal Statements and Required Supplementary Stewardship Information or disclosed in the notes thereto.
13. There has been no material fraud (intentional misstatements or omissions of amounts or disclosures in financial statements and misappropriation of assets that could have a material affect on the Principal Statements or Required Supplementary Stewardship Information) or any known fraud involving management or employees who have significant roles in internal control.
14. We are responsible for establishing and maintaining internal control.
15. Pursuant to the Federal Managers' Financial Integrity Act, we have assessed the effectiveness of Merit Systems' internal control in achieving the following objectives:
  - Reliability of financial reporting – transactions are properly recorded, processed, and summarized to permit the preparation of the Principal Statements and Required Supplementary Stewardship Information in accordance with accounting principles generally accepted in the United States of America, and that assets are safeguarded against loss from unauthorized acquisition, use, or disposition:

- Compliance with applicable laws and regulations – transactions are executed in accordance with: (i) laws governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements, and (ii) any other laws, regulations, and government-wide policies identified by the Office of Management and Budget (OMB) in Appendix C of OMB’s Audit Bulletin; and
  - Reliability of performance reporting – transactions and other data that support reported performance measures are properly recorded, processed, and summarized to permit the preparation of performance information in accordance with criteria stated by management.
16. Those controls in place on September 30, 2003 provided reasonable assurance that the foregoing objectives are met.
  17. We are responsible for implementing and maintaining financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger (SGL) at the transaction level.
  18. We have assessed the financial management systems to determine whether they comply substantially with these Federal financial management systems requirements. Our assessment was based on guidance issued by OMB.
  19. The financial management systems complied substantially with Federal financial management systems requirement, applicable Federal accounting standards, and the SGL at the transaction level as of September 30, 2003.
  20. We are responsible for the Merit Systems’ compliance with applicable laws and regulations.
  21. We have identified and disclosed to you all laws and regulations that have a direct and material effect on the determination of financial statement amounts.
  22. We have disclosed to you all known instances of noncompliance with laws and regulations.

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Richard Banchoff

## **SIGNIFICANT BOARD DECISIONS ISSUED IN FISCAL YEAR 2003 WITH RELATED OPINIONS ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

In FY 2003, the Merit Systems Protection Board issued several significant decisions. Some of these decisions are noteworthy because they changed or clarified existing case law. In its decisions, the Board attempted to follow the plain language of the applicable statutes, as well as the legislative intent. It also tried to take a commonsense, practical approach to deciding the issues presented to it.

This summary begins with a case in which the Board reexamined longstanding precedent on what constitutes a constructive removal of an administrative law judge. The summary then discusses cases interpreting the Whistleblower Protection Act of 1989 and the Veterans Employment Opportunities Act of 1998. The summary concludes with a discussion of Board decisions that applied a flexible concept of constitutional due process, discussed when attorney fees should be awarded, sustained an agency action taken under performance standards developed for a demonstration project, clarified the circumstances under which an agency demotes an employee by reduction in force, reversed a prior holding that the Office of Personnel Management is bound by the terms of a settlement agreement to which it was not a party, and explained when a survivor annuity can be paid to a full-time student who does not attend classes in a school building.

In its 1985 decision in *In re Doyle*, 29 M.S.P.R. 170 (1985), the Board created a theory that an administrative law judge (ALJ) could be “constructively” removed even though he still held the position of ALJ. The *Doyle* theory held that even though an ALJ still occupied an ALJ position, he could be “constructively” removed if the agency interfered with his qualified judicial independence. The Board reexamined that theory in *Tunik v. Social Security Administration*, 93 M.S.P.R. 482 (July 27, 2003).

In *Tunik*, the Board started with the plain meaning of the term “removal” in 5 U.S.C. § 7521, which governs the procedures that an agency must follow before removing an ALJ. The Board applied the relevant rules of statutory construction and harmonized the term “removal” in section 7521 with the way that the term “removal” has been interpreted in 5 U.S.C. § 7512, which applies to employees other than ALJs. In so doing, the Board concluded that it does not have jurisdiction over a removal or “constructive” removal of an ALJ unless the ALJ has been separated or involuntarily reassigned from the position of ALJ. The Board thus overruled *Doyle*.

In FY 2003, the Board issued four opinions of particular interest implicating the Whistleblower Protection Act (WPA). The Board in *White v. Department of the Air Force*, 2003 WL 22175176 (Sept. 11, 2003), looked at the plain meaning of the statute to determine the legal standard for ascertaining whether an appellant had a reasonable belief that he made a protected disclosure. The Board found that the statute does not include a requirement that an appellant provide “irrefragable proof” to rebut a presumption that agency officials perform their duties correctly, fairly, in good faith, and in accordance with law and regulations. Thus, the Board

found that any statement to the contrary in the opinion issued by the United States Court of Appeals for the Federal Circuit in *Lachance v. White*, 174 F.3d 1378 (Fed. Cir. 1999), was dictum.

The Board went on in *White* to state that the test for determining reasonable belief is an objective one. The test is whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the appellant could reasonably have concluded that the agency's actions constituted gross mismanagement. Applying this test, the Board found that Mr. White did not prove that he had a reasonable belief that agency officials grossly mismanaged a quality education program.

In *Greenspan v. Department of Veterans Affairs*, 94 M.S.P.R. 247 (Sept. 15, 2003), the Board further clarified its decision in *Rusin v. Department of the Treasury*, 92 M.S.P.R. 298 (2002). It did so by stating that an appellant establishes the Board's jurisdiction over his individual right of action (IRA) appeal if he shows that he exhausted his Special Counsel remedy and, irrespective of how many protected disclosures and personnel actions are alleged, he makes a nonfrivolous allegation that he made at least one protected disclosure which was a contributing factor in at least one personnel action.

The Board in *Berkowitz v. Department of the Treasury*, 2003 WL 22299183 (Sept. 30, 2003), reversed the administrative judge's finding of lack of jurisdiction over the IRA appeal. The Board found that the appellant made a non-frivolous allegation that he had a reasonable belief of a violation of law when he reported that the agency was improperly spending appropriated funds and misleading Congress.

The Board in *Czarkowski v. Department of the Navy*, 93 M.S.P.R. 514 (July 7, 2003), agreed with the administrative judge that the appellant was exempt from coverage under the WPA. This was so because the evidence showed that the organizational unit in which she worked had been determined by the President, or his designee, to have as its principal function "the conduct of foreign intelligence or counterintelligence activities." Since the statute at 5 U.S.C. § 2302(a)(2)(C)(ii) excludes employees who work in such units from coverage under the WPA, the Board lacked jurisdiction over the appellant's IRA appeal. In response to a concern that the Board's decision would "damage national security" by silencing whistleblowers, the Board noted the clear language of the statute and the fact that Congress has provided whistleblower protection to employees not covered by the WPA by enacting laws such as the 1998 Intelligence Community Protection Act.

In FY 2003, the Board issued a trio of significant cases involving the Veterans Employment Opportunities Act (VEOA). The Board in *Abrahamsen v. Department of Veterans Affairs*, 94 M.S.P.R. 377 (Sept. 23, 2003), clarified the jurisdictional test for VEOA cases. There, the Board said that it has jurisdiction over a VEOA appeal if the appellant (1) shows that he exhausted his remedy with the Department of Labor, and (2) makes nonfrivolous allegations that (i) he is a preference eligible within the meaning of the VEOA statute, (ii) the action(s) at issue took place on or after the October 30, 1998, enactment date of VEOA, and (iii) the agency violated his rights under a specific statute or regulation relating to veterans' preference.

The two other VEOA cases—*Waddell v. U.S. Postal Service*, 94 M.S.P.R. 411 (Sept. 24, 2003), and *Williams v. Department of the Navy*, 94 M.S.P.R. 400 (Sept. 24, 2003)—involved issues of timeliness. The Board in *Waddell* found that no statute or regulation gives it the authority to review a decision by the Department of Labor (DOL) to waive the timeliness of a VEOA complaint filed with the Secretary of Labor. Thus, if the DOL waives the untimeliness of a VEOA complaint and issues a decision on the merits, the appellant has exhausted his DOL remedy for purposes of establishing the Board’s jurisdiction over his VEOA appeal.

The Board in *Williams* was faced with the question of whether the statute bars the Board’s consideration of any VEOA appeal which is filed more than 15 days after the appellant receives notice from DOL that his DOL complaint could not be resolved. The VEOA statute at 5 U.S.C. § 3330a(d)(1) provides that “in no event” may a Board appeal be filed more than 15 days after the date on which the complainant receives written notice from DOL that it was unable to resolve his complaint. The Board held that the language in the statute is plain and allows for no circumstances under which a Board appeal can be filed later than the 15th day after which the appellant receives the DOL notice.

The Board had an opportunity to discuss the concept of “due process” in *Rawls v. U.S. Postal Service*, 2003 WL 22299163 (Sept. 30, 2003). There, the Board stated that due process is a flexible concept that depends on the nature of the case and the procedural protections required by the specific situation. In *Rawls*, although the agency did not issue a notice proposing to suspend the appellant before suspending him for his arrest on a charge of first-degree murder, it did afford him a post-suspension opportunity to grieve the suspension immediately. The agency also did not issue a notice proposing to remove the appellant for being convicted of a crime. Again, however, the agency offered the appellant a chance to file a grievance before the proposed removal was effected. The Board found that the appellant was given an opportunity to tell his side of the story, by filing a grievance, before the effective date of the removal, as well as a right, which he exercised, to file a Board appeal after the removal action was taken. Under those circumstances, the Board found that the agency did not deny the appellant minimum due process.

Entitlement to attorney fees was the issue in *Arnold v. Department of the Air Force*, 94 M.S.P.R. 17 (Aug. 6, 2003). The Equal Employment Opportunity Commission (EEOC) found that the appellant was a “prevailing party” for purposes of an award of attorney fees and sent the case back to the Board. The Board found that, at least in this case, it had to concur in EEOC’s decision that, under discrimination law, the appellant was a “prevailing party.” That did not end the inquiry, however. The Board still had to determine whether, under civil service law at 5 U.S.C. § 7701(g)(2), the appellant was entitled to fees. That statute gives the Board the same discretion as Federal district courts to decide whether an award of fees is reasonable under the circumstances. The circumstances in *Arnold* showed that the discrimination issue was conclusively decided before the appellant filed his Board appeal, and that the appellant received no more relief from the Board than he had received from his employing agency prior to filing a Board appeal. Given these facts, the Board held that the appellant was not entitled to attorney fees incurred in proceedings before the Board.

The appeal in *Guillebeau v. Department of the Navy*, 93 M.S.P.R. 379 (Mar. 28, 2003), involved performance standards created in an OPM-approved personnel demonstration project.

The Board reversed the administrative judge's finding that the agency failed to prove that the appellant did not meet those performance standards. The Board noted that in establishing the demonstration project, OPM allowed the agency to waive the requirement that it establish critical elements to measure an employee's performance. Rather, the appellant's performance was measured by "requirements and expectations" that apply to "organizational goals, strategies and values." The Board found that the agency proved that the appellant simply failed to complete her work assignments during the time that she was given to show acceptable performance. Thus, the appellant was properly removed.

On a somewhat related topic, the United States Court of Appeals for the Federal Circuit agreed with the Board in *Scarnati v. Department of Veterans Affairs*, 344 F.3d 1246 (Fed. Cir. Sept. 25, 2003), that the Department of Veterans Affairs has discretionary authority to appoint health care personnel under 38 U.S.C. § 7401(1) without regard to civil service requirements.

The appellants in the consolidated appeals in *Burger v. U.S. Postal Service*, 93 M.S.P.R. 582 (July 30, 2003) (*Burger II*), claimed that the Postal Service demoted them by reduction in force (RIF). The Board clarified its earlier decision in *Burger v. U.S. Postal Service*, 88 M.S.P.R. 579 (2001) (*Burger I*). It did so by relying on the Federal Circuit's decision in *Harants v. U.S. Postal Service*, 130 F.3d 1466 (Fed. Cir. 1997). The Board found that the court in *Harants* held that, to show a RIF demotion, an appellant must establish the following: (1) He bid to and accepted a lower-grade position after the agency actually informed him that his original position had in fact been abolished, and (2) his bid to and acceptance of the lower-grade position occurred after the agency expressly notified him that he would not be assigned to a position at the same grade as his former position. Finding that none of the appellants made the required showing, the Board dismissed all of their appeals for lack of jurisdiction.

Two months after the Board issued its opinion in *Burger II*, the Federal Circuit decided *Marcino v. U.S. Postal Service*, 344 F.3d 1199 (Fed. Cir. Sept. 22, 2003). The administrative judge in *Marcino* found that the appellant's acceptance of a level 5 position was voluntary because the appellant was never separated from his level 6 position, and he was not told that there was no possibility of reassignment to a new position at grade level 6. Chairman Marshall agreed with the administrative judge in the split-vote order in *Marcino v. U.S. Postal Service*, 93 M.S.P.R. 237 (Jan. 23, 2003). The court also agreed with the administrative judge, stating, as the Board had done in *Burger II*, that the Board does not have jurisdiction over an alleged RIF demotion unless the agency informed the employee that his position had been abolished and that he would not be reassigned to a position at the same grade level.

The Board decided two retirement appeals of particular note in FY 2003—*Parker* and *Seth-Morris*. The case of *Parker v. Office of Personnel Management*, 93 M.S.P.R. 529 (July 11, 2003), was before the Board on a request from the Office of Personnel Management that the Board reconsider its earlier decision to award the appellant an annuity. On reconsideration, the Board found that the appellant was not entitled to an annuity because OPM was not required to credit him with service time which his employing agency attempted to give him under a settlement agreement. In so finding, the Board overruled *Jordan v. Office of Personnel Management*, 77 M.S.P.R. 610 (1998), in which it had found that OPM is conclusively bound by the terms of a settlement agreement to which OPM was not a party. Rather, the Board held that

OPM, as the administrator of the Retirement Fund, has the authority, subject to Board review, to refuse to give effect to a personnel action taken as a result of a settlement agreement when OPM decides that the action is an artifice designed to evade the statutory requirements for entitlement to an annuity, which was the situation in this appeal.

In *Seth-Morris v. Office of Personnel Management*, 94 M.S.P.R. 166 (Sept. 9, 2003), the Board disagreed with OPM that the term “in residence in a high school” in 5 U.S.C. § 8341 means that a full-time student has to attend classes in a high school building to be entitled to survivor benefits. The student in *Seth-Morris* was enrolled full time in a fully accredited “alternative high school program” run by the county school system, had to pick up his assignments once a week and meet regularly with his teachers, but was allowed to complete his class work and assignments at home. The evidence showed that the student finished a regular high school course of study in the normal four years and graduated with the rest of his class. The Board found that, under these facts, Congress intended that the student receive full-time student survivor benefits even though he did not attend class in a school building. It therefore reversed OPM’s decision to deny the appellant’s application for a full-time student survivor annuity for her son.

**FY 2003 CASE PROCESSING STATISTICS**

**SUMMARY OF CASES DECIDED BY MSPB IN FY 2003**

<b>Cases Decided in MSPB Regional/Field Offices (RO)/FOs):</b>	
Appeals <sup>1</sup>	6,601
Addendum Cases <sup>2</sup>	514
Stay Requests <sup>3</sup>	112
<b>TOTAL Cases Decided in RO/FOs</b>	<b>7,227</b>
<b>Cases Decided by Administrative Law Judges (ALJs) – Original Jurisdiction Only <sup>4</sup></b>	<b>15</b>
<b>Cases Decided by the Board:</b>	
Appellate Jurisdiction:	
Petitions for Review (PFRs) – Appeals	973
Petitions for Review (PFRs) – Addendum Cases	117
Reviews of Stay Request Rulings	0
Requests for Stay of Board Order	5
Reopenings <sup>5</sup>	9
Court Remands	13
Compliance Referrals	28
EEOC Non-concurrence Cases	3
Arbitration Cases	4
Subtotal – Appellate Jurisdiction	1,152
Original Jurisdiction <sup>6</sup>	22
<b>TOTAL Cases Decided by the Board <sup>7</sup></b>	<b>1,174</b>
<b>TOTAL Cases Decided (Board, ALJs, RO/FOs)</b>	<b>8,416</b>

See next page for footnotes.

**FOOTNOTES TO TABLE**

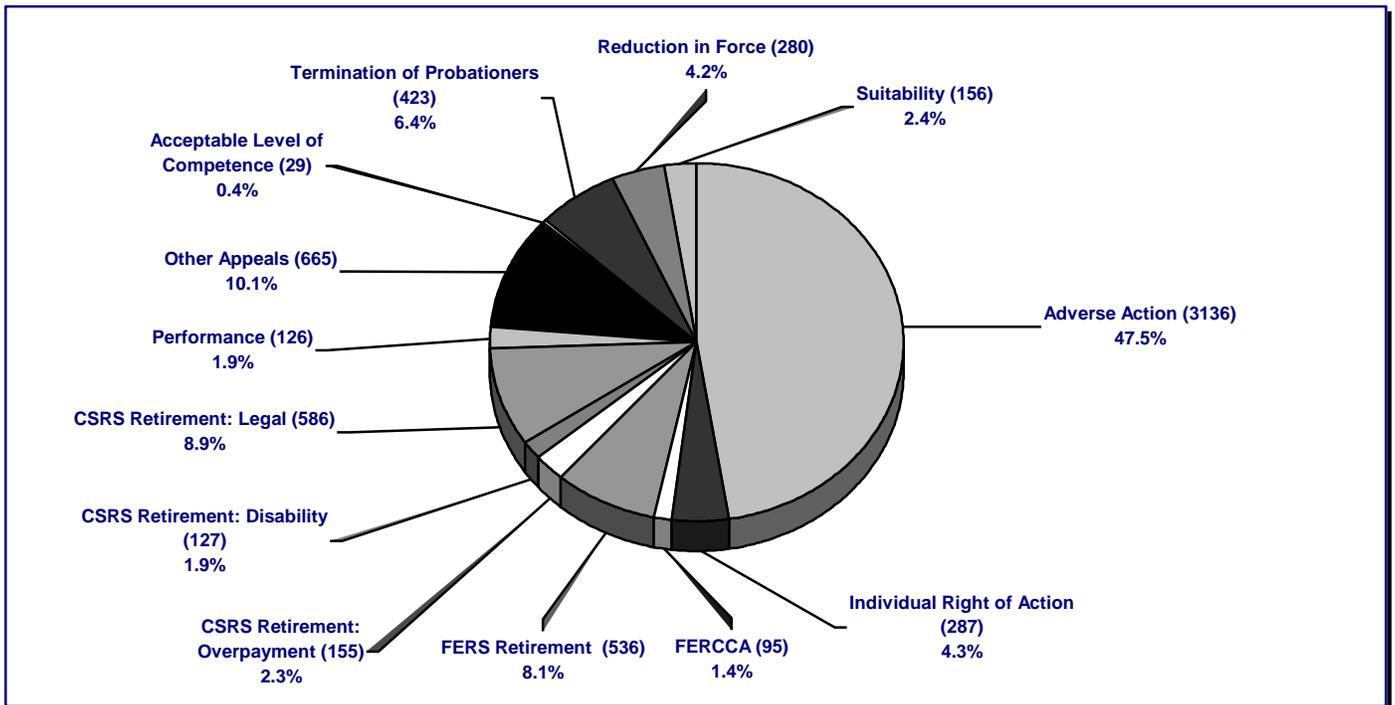
- 1 Includes 48 appeals decided at headquarters by Office of Regional Operations (ORO).
- 2 Includes 14 addendum cases decided at headquarters—10 by ORO and 4 by ALJs. Case type breakdown: 127 requests for attorney fee awards, 5 requests for compensatory damages (discrimination cases only), 280 petitions for enforcement, 83 Board remand cases, and 19 court remand cases.
- 3 Includes 70 stay requests in whistleblower cases and 42 in non-whistleblower cases.
- 4 Initial Decisions issued by ALJ. Case type breakdown: 2 OSC disciplinary actions (non-Hatch Act), 1 Hatch Act case, and 3 actions against ALJs; 4 requests for attorney fee awards and 2 petitions for enforcement in OSC disciplinary actions (non-Hatch Act); 1 petition for enforcement and 1 Board remand in actions against ALJs; 1 informal hearing in a proposed SES removal. (In SES removal cases, a report is issued but there is no decision by an ALJ or the Board.)
- 5 Includes 3 cases reopened by the Board on its own motion and 6 cases where OPM requested reconsideration.
- 6 Final Board decisions. Case type breakdown: 2 OSC stay requests, 1 Hatch Act case, 1 PFR in a Hatch Act case, 8 PFRs in actions against ALJs, 1 PFR on a request for an attorney fee award in an action against an ALJ, and 9 requests for regulation review.
- 7 In addition to the 1,174 cases closed by the Board with a decision or order, there were 3 interlocutory appeals decided by the Board in FY 2003. Interlocutory appeals typically raise difficult issues or issues not previously addressed by the Board.

**REGIONAL CASE PROCESSING – FY 2003**

<b>DISPOSITION OF APPEALS DECIDED IN FY 2003 BY TYPE OF CASE</b>										
<b>Type of Case</b>	<b>Decided</b>		<b>Dismissed</b>		<b>Not Dismissed</b>		<b>Settled</b>		<b>Adjudicated</b>	
Adverse Action by Agency	3136	1416	45%	1720	55%	1160	67%	560	33%	
Termination of Probationers	423	372	88%	51	12%	41	80%	10	20%	
Reduction in Force	280	181	65%	99	35%	34	34%	65	66%	
Performance	126	38	30%	88	70%	65	74%	23	26%	
Acceptable Level of Competence (WIGI)	29	11	38%	18	62%	14	78%	4	22%	
Suitability	156	40	26%	116	74%	82	71%	34	29%	
CSRS Retirement: Legal	586	255	44%	331	56%	14	4%	317	96%	
CSRS Retirement: Disability	127	58	46%	69	54%	5	7%	64	93%	
CSRS Retirement: Overpayment	155	61	39%	94	61%	49	52%	45	48%	
FERS Retirement	536	184	34%	352	66%	144	41%	208	59%	
FERCCA	95	55	58%	40	42%	2	5%	38	95%	
Individual Right of Action	287	191	67%	96	33%	50	52%	46	48%	
Other	665	588	88%	77	12%	41	53%	36	47%	
<b>Total</b>	<b>6601</b>	<b>3450</b>	<b>52%</b>	<b>3151</b>	<b>48%</b>	<b>1701</b>	<b>54%</b>	<b>1450</b>	<b>46%</b>	

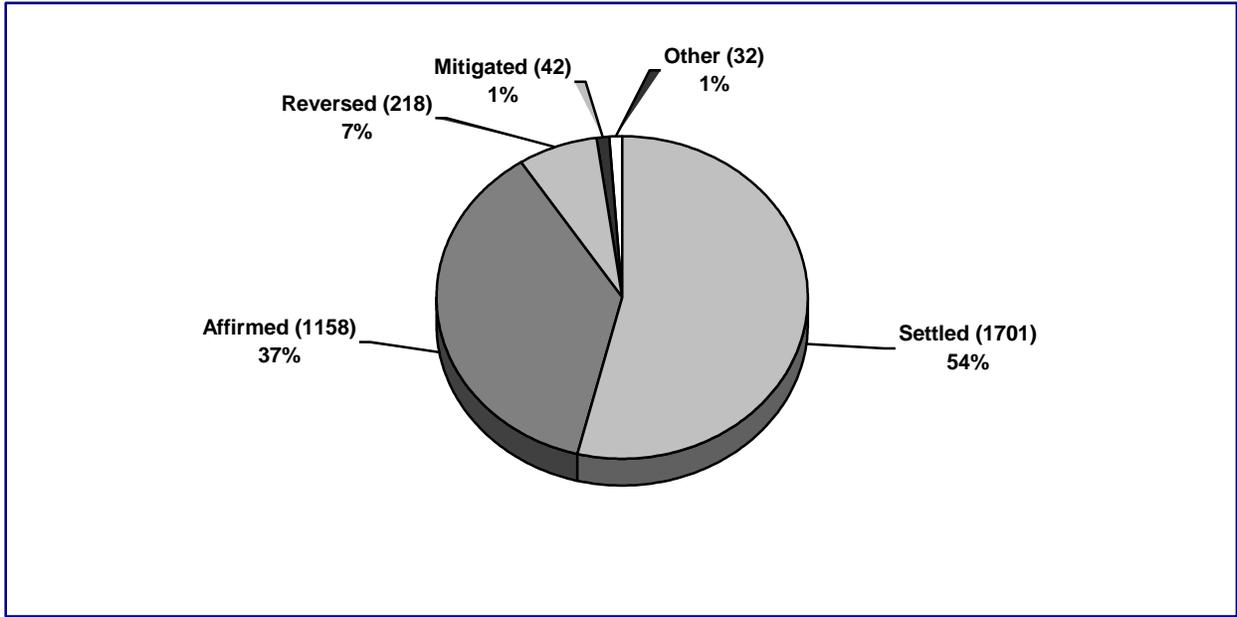
**Dismissed** and **Not Dismissed** columns are percentages of **Decided** column.  
**Settled** and **Adjudicated** columns are percentages of **Not Dismissed** column.

**TYPES OF APPEALS DECIDED IN FY 2003**



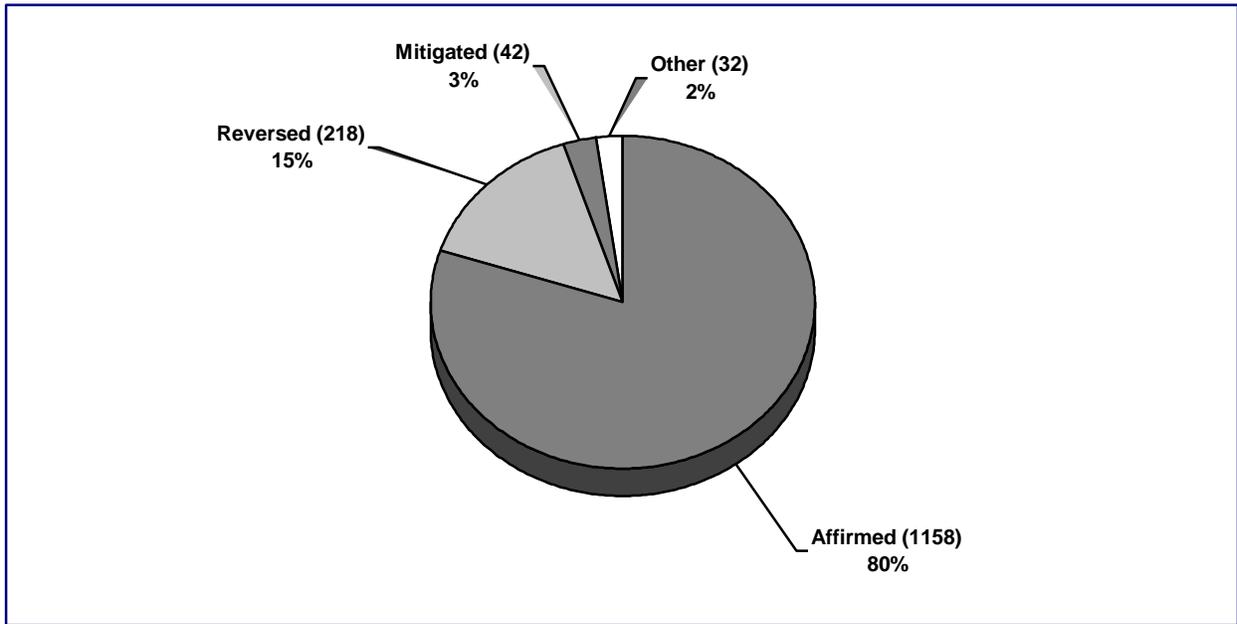
Total Number of Appeals: 6,601  
(Percentages do not total 100 because of rounding)

**DISPOSITION OF APPEALS IN FY 2003  
THAT WERE NOT DISMISSED**



Total Number of Appeals that were Not Dismissed: 3,151

**DISPOSITION OF APPEALS ADJUDICATED ON THE MERITS  
(i.e., Not Dismissed or Settled) IN FY 2003**



Based on 1,450 appeals adjudicated on the merits

APPEALS DECIDED IN FY 2003 BY AGENCY									
	Decided	Dismissed <sup>1</sup>		Not Dismissed <sup>1</sup>		Settled <sup>2</sup>		Adjudicated <sup>2</sup>	
US Postal Service	1447	862	59.6%	585	40.4%	396	67.7%	189	32.3%
Office, Personnel Mgmt*	1414	542	38.3%	872	61.7%	230	26.4%	642	73.6%
Veterans Affairs	534	300	56.2%	234	43.8%	179	76.5%	55	23.5%
Army	419	234	55.8%	185	44.2%	112	60.5%	73	39.5%
Navy	389	212	54.5%	177	45.5%	104	58.8%	73	41.2%
Justice	380	211	55.5%	169	44.5%	110	65.1%	59	34.9%
Defense	306	171	55.9%	135	44.1%	67	49.6%	68	50.4%
Treasury	303	167	55.1%	136	44.9%	89	65.4%	47	34.6%
Air Force	242	122	50.4%	120	49.6%	70	58.3%	50	41.7%
Agriculture	215	112	52.1%	103	47.9%	69	67.0%	34	33.0%
Interior	191	83	43.5%	108	56.5%	67	62.0%	41	38.0%
Transportation	146	98	67.1%	48	32.9%	19	39.6%	29	60.4%
Homeland Security	122	81	66.4%	41	33.6%	33	80.5%	8	19.5%
Health & Human Serv	73	33	45.2%	40	54.8%	31	77.5%	9	22.5%
Social Security Adm	69	35	50.7%	34	49.3%	26	76.5%	8	23.5%
Labor	45	26	57.8%	19	42.2%	13	68.4%	6	31.6%
General Service Adm	38	26	68.4%	12	31.6%	8	66.7%	4	33.3%
Commerce	35	22	62.9%	13	37.1%	10	76.9%	3	23.1%
Energy	34	15	44.1%	19	55.9%	16	84.2%	3	15.8%
Housing & Urban Dev	28	16	57.1%	12	42.9%	6	50.0%	6	50.0%
Smithsonian Inst	17	3	17.6%	14	82.4%	12	85.7%	2	14.3%
EPA	15	9	60.0%	6	40.0%	2	33.3%	4	66.7%
FDIC	15	5	33.3%	10	66.7%	0	.0%	10	100.0%
NASA	12	7	58.3%	5	41.7%	2	40.0%	3	60.0%
EEOC	11	7	63.6%	4	36.4%	3	75.0%	1	25.0%
State	9	4	44.4%	5	55.6%	2	40.0%	3	60.0%
Adm Office of US Courts	7	5	71.4%	2	28.6%	0	.0%	2	100.0%
NARA	7	2	28.6%	5	71.4%	4	80.0%	1	20.0%
SBA	7	2	28.6%	5	71.4%	4	80.0%	1	20.0%
Education	6	0	.0%	6	100.0%	3	50.0%	3	50.0%
Corp for National & Community Service	5	3	60.0%	2	40.0%	1	50.0%	1	50.0%
GPO	5	2	40.0%	3	60.0%	2	66.7%	1	33.3%
Securities & Exchange Com	5	3	60.0%	2	40.0%	2	100.0%	0	.0%
TVA	5	4	80.0%	1	20.0%	0	.0%	1	100.0%
Other	4	4	100.0%	0	.0%	0	.0%	0	.0%

<b>APPEALS DECIDED IN FY 2003 BY AGENCY (continued)</b>										
	<b>Decided</b>	<b>Dismissed<sup>1</sup></b>	<b>Dismissed<sup>1</sup></b>	<b>Not Dismissed<sup>1</sup></b>	<b>Settled<sup>2</sup></b>	<b>Settled<sup>2</sup></b>	<b>Adjudicated<sup>2</sup></b>	<b>Adjudicated<sup>2</sup></b>	<b>Adjudicated<sup>2</sup></b>	<b>Adjudicated<sup>2</sup></b>
Armed Forces Retirement Home	3	3	100.0%	0	.0%	0	.0%	0	0	.0%
Broadcasting Board of Governors	3	2	66.7%	1	33.3%	1	100.0%	0	0	.0%
FEMA	3	0	.0%	3	100.0%	1	33.3%	2	2	66.7%
Nuclear Regulatory Com	3	1	33.3%	2	66.7%	2	100.0%	0	0	.0%
Boundary & Water Com: US/MEX	2	1	50.0%	1	50.0%	0	.0%	1	1	100.0%
CIA	2	2	100.0%	0	.0%	0	.0%	0	0	.0%
Court Serv & Offend Super Agency for DC	2	0	.0%	2	100.0%	1	50.0%	1	1	50.0%
National Credit Union Adm	2	0	.0%	2	100.0%	0	.0%	2	2	100.0%
NLRB	2	0	.0%	2	100.0%	0	.0%	2	2	100.0%
Peace Corps	2	1	50.0%	1	50.0%	0	.0%	1	1	100.0%
Architect of the Capitol	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
Bd for International Broadcasting	1	0	.0%	1	100.0%	1	100.0%	0	0	.0%
Export/Import Bank of US	1	0	.0%	1	100.0%	0	.0%	1	1	100.0%
Farm Credit Adm	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
Fed Housing Finance Bd	1	0	.0%	1	100.0%	1	100.0%	0	0	.0%
Fed Trade Comm	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
Gov of the District of Columbia	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
Library of Congress	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
National Science Foundation	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
National Transportation Safety Bd	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
National Foundation for Arts & Humanities	1	0	.0%	1	100.0%	1	100.0%	0	0	.0%
Office of Administration	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
Office of Special Counsel	1	0	.0%	1	100.0%	1	100.0%	0	0	.0%
Panama Canal Comm	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
Presidio Trust	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
US International Development Agency	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
US International Trade Comm	1	1	100.0%	0	.0%	0	.0%	0	0	.0%
<b>TOTAL</b>	<b>6601</b>	<b>3450</b>	<b>52.3%</b>	<b>3151</b>	<b>47.7%</b>	<b>1701</b>	<b>54.0%</b>	<b>1450</b>	<b>1450</b>	<b>46.0%</b>

\* Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of the Civil Service Retirement System and the Federal Employees Retirement System.

<sup>1</sup> Percentages in columns "Dismissed" and "Not Dismissed" are of "Decided."

<sup>2</sup> Percentages in columns "Settled" and "Adjudicated" are of "Not Dismissed."

<b>APPEALS ADJUDICATED* IN FY 2003 BY AGENCY</b>										
	<b>Adjudicated</b>		<b>Affirmed</b>		<b>Reversed</b>		<b>Mitigated Modified</b>		<b>Other</b>	
US Postal Service	189	154	81.5%	23	12.2%	12	6.3%	0	.0%	
Office, Personnel Mgmt	642	474	73.8%	140	21.8%	3	.5%	25	3.9%	
Veterans Affairs	55	43	78.2%	9	16.4%	3	5.5%	0	.0%	
Army	73	61	83.6%	9	12.3%	3	4.1%	0	.0%	
Navy	73	66	90.4%	6	8.2%	1	1.4%	0	.0%	
Justice	59	47	79.7%	7	11.9%	3	5.1%	2	3.4%	
Defense	68	60	88.2%	5	7.4%	2	2.9%	1	1.5%	
Treasury	47	41	87.2%	2	4.3%	4	8.5%	0	.0%	
Air Force	50	45	90.0%	2	4.0%	3	6.0%	0	.0%	
Agriculture	34	26	76.5%	7	20.6%	1	2.9%	0	.0%	
Interior	41	35	85.4%	3	7.3%	3	7.3%	0	.0%	
Transportation	29	28	96.6%	1	3.4%	0	.0%	0	.0%	
Homeland Security	8	3	37.5%	1	12.5%	1	12.5%	3	37.5%	
Health & Human Serv	9	7	77.8%	0	.0%	2	22.2%	0	.0%	
Social Security Adm	8	7	87.5%	0	.0%	0	.0%	1	12.5%	
Labor	6	4	66.7%	2	33.3%	0	.0%	0	.0%	
General Service Adm	4	4	100.0%	0	.0%	0	.0%	0	.0%	
Commerce	3	3	100.0%	0	.0%	0	.0%	0	.0%	
Energy	3	3	100.0%	0	.0%	0	.0%	0	.0%	
Housing & Urban Dev	6	5	83.3%	1	16.7%	0	.0%	0	.0%	
Smithsonian Inst	2	2	100.0%	0	.0%	0	.0%	0	.0%	
EPA	4	4	100.0%	0	.0%	0	.0%	0	.0%	
FDIC	10	10	100.0%	0	.0%	0	.0%	0	.0%	
NASA	3	3	100.0%	0	.0%	0	.0%	0	.0%	
EEOC	1	1	100.0%	0	.0%	0	.0%	0	.0%	
State	3	3	100.0%	0	.0%	0	.0%	0	.0%	
Adm Office of US Courts	2	2	100.0%	0	.0%	0	.0%	0	.0%	
NARA	1	1	100.0%	0	.0%	0	.0%	0	.0%	
SBA	1	0	.0%	0	.0%	1	100.0%	0	.0%	
Education	3	3	100.0%	0	.0%	0	.0%	0	.0%	
Corp for National & Community Service	1	1	100.0%	0	.0%	0	.0%	0	.0%	
GPO	1	1	100.0%	0	.0%	0	.0%	0	.0%	
TVA	1	1	100.0%	0	.0%	0	.0%	0	.0%	
FEMA	2	2	100.0%	0	.0%	0	.0%	0	.0%	
Boundary & Water Com: US/MEX	1	1	100.0%	0	.0%	0	.0%	0	.0%	
Court Serv & Offend Super Agency For DC	1	1	100.0%	0	.0%	0	.0%	0	.0%	
National Credit Union Adm	2	2	100.0%	0	.0%	0	.0%	0	.0%	
NLRB	2	2	100.0%	0	.0%	0	.0%	0	.0%	
Peace Corps	1	1	100.0%	0	.0%	0	.0%	0	.0%	
Export - Import Bank of US	1	1	100.0%	0	.0%	0	.0%	0	.0%	
<b>TOTAL</b>	<b>1450</b>	<b>1158</b>	<b>79.9%</b>	<b>218</b>	<b>15.0%</b>	<b>42</b>	<b>2.9%</b>	<b>32</b>	<b>2.2%</b>	

Percentages may not total 100 because of rounding.

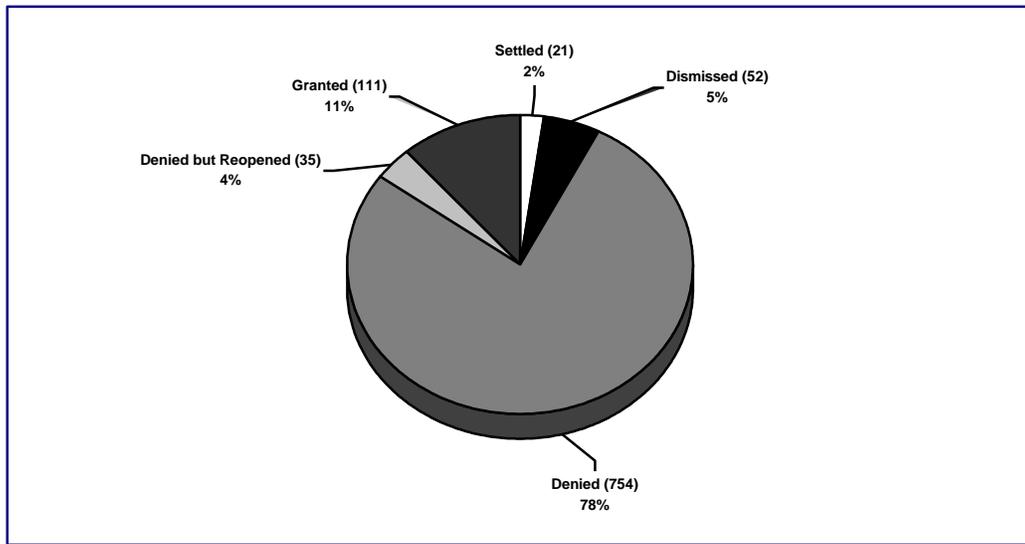
\* ADJUDICATED means adjudicated on the merits, i.e., not dismissed or settled.

**HEADQUARTERS CASE PROCESSING – FY 2003**

**DISPOSITION OF PETITIONS FOR REVIEW OF INITIAL DECISIONS ON APPEALS  
DECIDED IN FY 2003 BY TYPE OF CASE**

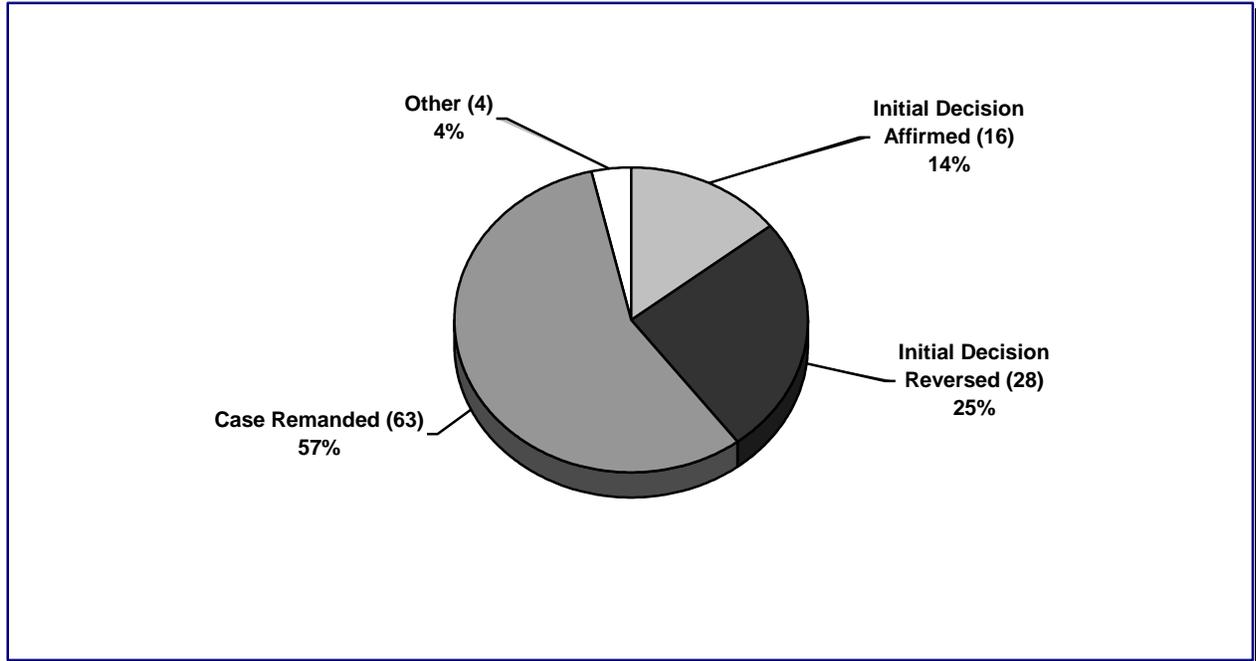
Type of Case	Decided		Dismissed		Settled		Denied		Denied Reopened		Granted	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Adverse Action by Agency	469		18	3.8%	13	2.8%	380	81.0%	10	2.1%	48	10.2%
Termination of Probationers	39		2	5.1%	0	.0%	37	94.9%	0	.0%	0	.0%
Reduction in Force	38		3	7.9%	0	.0%	26	68.4%	1	2.6%	8	21.0%
Performance	19		0	.0%	1	5.3%	17	89.5%	0	.0	1	5.3%
Acceptable Level of Competence (WIGI)	4		0	.0%	0	.0%	3	75.0%	1	25.0%	0	.0%
Suitability	17		1	5.9%	1	5.9	10	58.8%	2	11.8%	3	17.6%
CSRS Retirement: Legal	86		5	5.8%	1	1.2%	60	69.8%	3	3.5%	17	19.8%
CSRS Retirement: Disability	32		1	3.1%	0	.0%	28	87.5%	0	.0%	3	9.4%
CSRS Retirement: Overpayment	20		2	10.0%	1	5.0%	12	60.0%	0	.0%	5	25.0%
FERS Retirement	58		6	10.3%	1	1.7%	43	74.1%	4	6.9%	4	6.9%
FERCCA	2		0	.0%	0	.0%	2	100.0%	0	.0%	0	.0%
Individual Right of Action	80		6	7.5%	2	2.5%	55	68.8%	8	10.0%	9	11.2%
Other	109		8	7.3%	1	.9%	81	74.3%	6	5.5%	13	11.9%
<b>Total</b>	<b>973</b>		<b>52</b>	<b>5.3%</b>	<b>21</b>	<b>2.2%</b>	<b>754</b>	<b>77.5%</b>	<b>35</b>	<b>3.6%</b>	<b>111</b>	<b>11.4%</b>

**DISPOSITION OF PETITIONS FOR REVIEW OF INITIAL DECISIONS ON APPEALS  
DECIDED IN FY 2003**



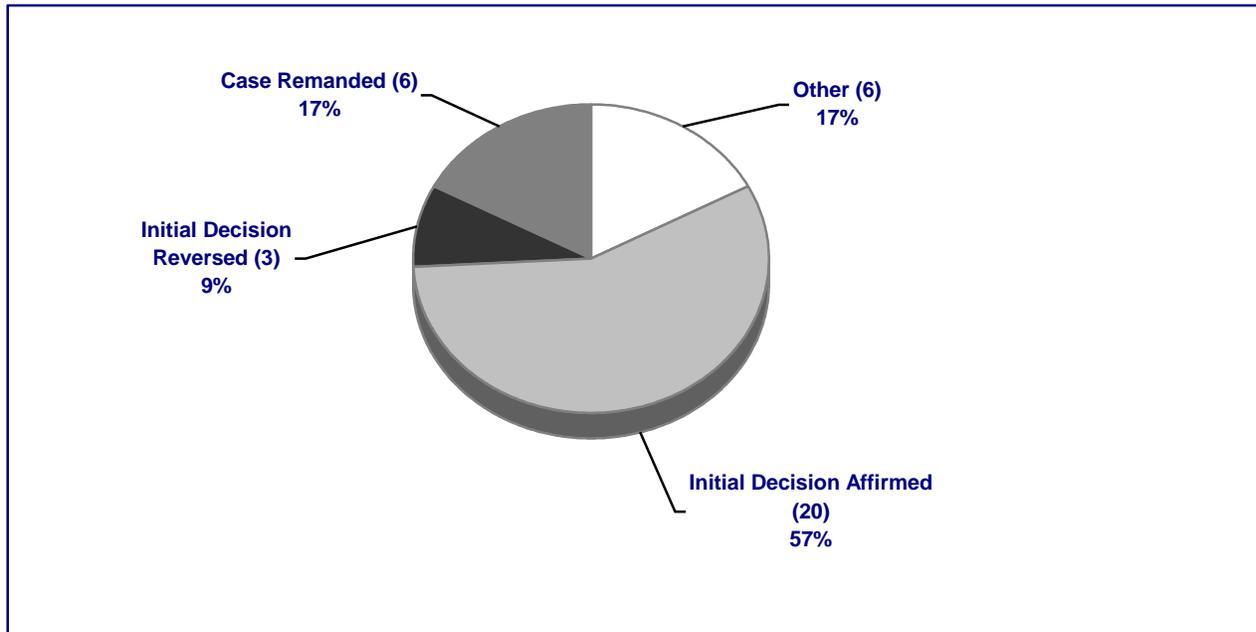
Total Number of Petitions for Review: 973

**DISPOSITION OF PETITIONS FOR REVIEW OF INITIAL DECISIONS ON APPEALS GRANTED IN FY 2003**



Based on 111 Petitions for Review Granted

**DISPOSITION OF PETITIONS FOR REVIEW OF INITIAL DECISIONS ON APPEALS DENIED BUT REOPENED IN FY 2003**



Based on 35 Petitions for Review Denied But Reopened

PETITIONS FOR REVIEW DECIDED IN FY 2003 BY AGENCY											
	Decided	Dismissed	Settled		Denied		Denied Reopened		Granted		
US Postal Service	211	14	6.6%	1	.5%	161	76.3%	8	3.8%	27	12.8%
Office, Personnel Mgmt*	192	14	7.3%	2	1.0%	144	75.0%	4	2.1%	28	14.6%
Veterans Affairs	82	3	3.7%	3	3.7%	60	73.2%	7	8.5%	9	11.0%
Army	70	6	8.6%	1	1.4%	54	77.1%	2	2.9%	7	10.0%
Navy	61	1	1.6%	0	.0%	55	90.2%	2	3.3%	3	4.9%
Defense	54	2	3.7%	2	3.7%	44	81.5%	0	.0%	6	11.1%
Justice	51	5	9.8%	2	3.9%	35	68.6%	5	9.8%	4	7.8%
Treasury	49	3	6.1%	1	2.0%	38	77.6%	2	4.1%	5	10.2%
Air Force	30	0	.0%	1	3.3%	26	86.7%	0	.0%	3	10.0%
Transportation	27	1	3.7%	2	7.4%	21	77.8%	1	3.7%	2	7.4%
Interior	24	0	.0%	2	8.3%	19	79.2%	0	.0%	3	12.5%
Health & Human Serv	17	0	.0%	1	5.9%	10	58.8%	0	.0%	6	35.3%
Agriculture	15	1	6.7%	0	.0%	11	73.3%	1	6.7%	2	13.3%
Social Security Adm	14	0	.0%	1	7.1%	12	85.7%	0	.0%	1	7.1%
Commerce	11	0	.0%	0	.0%	10	90.9%	0	.0%	1	9.1%
General Service Adm	11	0	.0%	1	9.1%	9	81.8%	0	.0%	1	9.1%
Housing & Urban Dev	7	0	.0%	0	.0%	6	85.7%	0	.0%	1	14.3%
Labor	7	0	.0%	0	.0%	7	100.0%	0	.0%	0	.0%
NASA	5	0	.0%	0	.0%	4	80.0%	1	20.0%	0	.0%
Boundary & Water Comm: US/MEX	3	0	.0%	0	.0%	3	100.0%	0	.0%	0	.0%
Energy	3	0	.0%	0	.0%	3	100.0%	0	.0%	0	.0%
SBA	3	0	.0%	0	.0%	2	66.7%	1	33.3%	0	.0%
TVA	3	0	.0%	0	.0%	2	66.7%	0	.0%	1	33.3%
Corp for National & Community Serv	2	0	.0%	0	.0%	2	100.0%	0	.0%	0	.0%
EPA	2	0	.0%	1	50.0%	1	50.0%	0	.0%	0	.0%

<b>PETITIONS FOR REVIEW DECIDED IN FY 2003 BY AGENCY (continued)</b>												
	<b>Decided</b>	<b>Dismissed</b>		<b>Settled</b>		<b>Denied</b>		<b>Denied Reopened</b>		<b>Granted</b>		
EEOC	2	0	.0%	0	.0%	2	100.0%	0	.0%	0	.0%	
GPO	2	1	50.0%	0	.0%	1	50.0%	0	.0%	0	.0%	
Architect of the Capitol	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
CIA	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Court Serv & Offend Super Agency for DC	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Education	1	1	100.0%	0	.0%	0	.0%	0	.0%	0	.0%	
FCC	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
FDIC	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Federal Housing Finance Bd	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Federal Mediation & Conciliation Serv	1	0	.0%	0	.0%	0	.0%	1	100.0%	0	.0%	
Government of DC	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
National Credit Union Adm	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
NLRB	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Nuclear Regulatory Com	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Peace Corps	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
Railroad Retirement Bd	1	0	.0%	0	.0%	0	.0%	0	.0%	1	100.0%	
Smithsonian Inst	1	0	.0%	0	.0%	1	100.0%	0	.0%	0	.0%	
<b>TOTAL</b>	<b>973</b>	<b>52</b>	<b>5.3%</b>	<b>21</b>	<b>2.2%</b>	<b>754</b>	<b>77.5%</b>	<b>35</b>	<b>3.6%</b>	<b>111</b>	<b>11.4%</b>	

Percentages may not total 100 because of rounding.

\* Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of the Civil Service Retirement System and the Federal Employees Retirement System.

## **SUMMARIES OF MERIT SYSTEMS STUDIES ISSUED IN FY 2003**

### **Help Wanted: A Review of Federal Vacancy Announcements**

Federal agencies posted over 150,000 vacancy announcements in FY 2001, more than half of which were open to external applicants. Because many of the jobs were open to external applicants who are unfamiliar with the Government's hiring system, it is important that vacancy announcements be an effective hiring tool. This report was based on a review of a random sample of 10,000 vacancy announcements posted on USAJOBS in FY 2001 and an assessment of a random sample of 100 vacancy announcements posted on March 6 and 7, 2002.

The MSPB review of the quality of vacancy announcements, unfortunately, shows that they are generally not good tools. They read poorly, are unattractive, and describe the jobs in a bureaucratic way, making it difficult to determine what the person would be doing in the job. Minimum qualifications are not specific, leaving applicants to wonder what exactly is required to qualify. Many vacancy announcements used language that is sometimes negative and threatening, or that can insult many applicants or deter them from applying. The MSPB review also showed that agencies impose burdensome requirements to apply and that their instructions on how to apply are vague. Announcements also provide poor service to applicants.

The most significant of the study's findings is that many of the problems identified are actually symptoms of other, more complicated problems faced by the Government's staffing system. The poor quality of vacancy announcements suggests that agencies lack a comprehensive recruiting and assessment strategy to ensure that they make good selections. The lack of such a strategy is compounded by agency human resources professionals' lack of expertise, especially in recruiting. The report offers some recommendations that would help resolve these problems.

### **The Federal Selection Interview: Unrealized Potential**

Structured interviews are twice as effective as unstructured interviews in predicting on-the-job performance. In a structured interview, all questions are related to the job to be filled, and the same questions are asked of each candidate for the job. Selecting the wrong person for a Federal job can cost from \$5,000 for an entry-level employee to \$300,000 for an employee who makes a \$100,000 salary. According to an MSPB survey, 95 percent of Federal supervisors say they rely on interviews to a "great" or "moderate" extent when making a selection.

Because selection interviews are widely used and influential, it is important that they be used effectively. The report recommended that agencies use structured interviews to assess candidates for Federal jobs. Agencies should decide in advance what purpose an interview is to serve and then design and conduct the interview accordingly. The report also recommended that agencies invest the resources needed to add structure to their selection interviews and that they evaluate their interview practices for effectiveness and possible improvement.

## **The Federal Workforce for the 21<sup>st</sup> Century: Results of the Merit Principles Survey 2000**

This report summarized the views of Federal employees before 9/11 and noted that delayed retirements, an improving economy, and increases in job opportunities may exacerbate skill gaps already evident as a result of the downsizing in the 1990s. While employees still believe they and their work units are highly productive, overall job satisfaction appears to be slipping and frustrations are evident in many of their survey responses. For example, respondents planning to retire in the coming year said that excessive job stress was the most important *work-related* factor in their decision to retire.

In other areas, employees expressed concerns about some aspects of their supervision and reported experiencing negative personnel management practices. Analyses show that views of satisfied employees differ markedly from those of dissatisfied employees and that perceptions of discrimination vary notably by race and national origin.

The report made a number of recommendations for agencies to address the issues uncovered. Agencies should ensure that managers closely monitor and address any skill imbalances in their strategic plans, that supervisors have both the ability and the desire to manage effectively and fairly, and that their organizations foster a culture where poor performance is dealt with and where employees can work freely and without fear of reprisal for exercising their appeal rights or reporting waste, fraud or abuse.

### **Issues of Merit Newsletter**

Through the quarterly newsletter *Issues of Merit*, the MSPB publicizes findings from current studies on a wide range of human capital issues. In FY 2003, newsletter topics included:

- Holistic commentary on issues of broad applicability, such as understanding the merit principles as the Government's core values, the need to take organizational culture seriously, and reflection on the Civil Service Reform Act's 25th anniversary;
- Advocacy on specific reform efforts, such as support for Recruitment One-Stop, the questionable wisdom of changing the appeal process to fix the problem of poor performers, and the arrival of category rating;
- Practical advice for human resources specialists and managers, such as how to fire poor performers, how to use competencies competently, how to include multiple hurdles to make better selection decisions, and how to write better vacancy announcements;
- Analysis of MSPB and other research, such as knowing more about the Contracting Officers Representatives (CORs) who provide day-to-day oversight of Government contracts, as well as understanding human resources reforms in the states and what it means for the Federal Government; and

- Informational articles to help readers understand critical topics, such as MSPB appeals, pay flexibilities available under Title 5, and what pay banding looks like in the Federal Government.

## **FOR ADDITIONAL INFORMATION**

The MSPB website contains information about the Board and its functions, where to file an appeal, and how the Board's adjudicatory process works.

At the website, you can get Board regulations, appeal and PFR forms, important telephone and FAX numbers, and e-mail addresses for the headquarters, regional, and field offices.

Complete decisions from July 1, 1994, and significant precedential decisions issued from 1979 to 1994 are available for downloading. The website also provides weekly Case Summaries—an easy way to keep up with changes in Board case law.

From the website, you can download recent Board reports and special studies on civil service issues.

You can also subscribe to one of two list servers (listservs) on the website—one to receive Board decisions as they are posted, and the other to receive notification when a merit systems studies report is issued.

The Board's website is

**<http://www.mspb.gov>**.

The Board's toll-free telephone number is **1-800-209-8960**.