



U.S. Merit Systems Protection Board

**Congressional
Budget
Justification
FY 2015**

**Submitted to the
Committee on Appropriations**

March 2014



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Chairman

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Chairman

March 7, 2014

The Honorable Ander Crenshaw
Chairman
Appropriations Subcommittee on Financial Services and General Government
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed is the appropriation justification for the U.S. Merit Systems Protection Board (MSPB) for fiscal year 2015. For FY 2015, we request funding in the amount of \$46,821,000 in appropriated funds and \$2,579,000 in reimbursements from the Civil Service Retirement and Disability Trust Fund; we also request an increase of 24 Full-Time Equivalents (FTE). MSPB will use its FY 2015 by pass request of \$49,400,000 and 250 FTE to support its mission to protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices.

Our request reflects the fact that our case load has increased dramatically. Because of sequestration, MSPB received over 32,000 furlough appeals in FY 2013. This was an increase of more than 525% over MSPB's typical workload and has affected our ability to process all appeals in a timely manner. Although it is not certain whether sequestration will resume in FY 2016, MSPB must have the necessary resources and trained staff in place to adjudicate additional furlough and reduction in force appeals should they occur. We also need adequate funding to continue the electronic enhancement that will allow us to process cases more efficiently.

MSPB has reduced costs and limited non-critical spending. However, the agency currently has more than 30 vacancies and a quarter of our staff, including half of our administrative judges, is eligible to retire within the next two years. Our requested funding for FY 2015 is essential to enable us to continue to perform our statutory functions in a timely manner and to maintain the high quality of both our decisions and our merit systems studies.

I look forward to discussing this request with you and your Subcommittee.

Sincerely,

Susan Tsui Grundmann

Cc: The Honorable Jose E. Serrano
Ranking Member, House Appropriations Subcommittee on
Financial Services and General Government

United States
Merit Systems Protection Board



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Table of Contents

Introduction	1
External Events impacting MSPB operations.....	1
FY 2015 Budget Request	4
Appropriation Language.....	4
Summary of FY 2015 Costs	4
Strategic Goals	4
FY 2015 request by Object Class	5
Request to increase agency FTE from 226 to 250 by Office.....	8
Board Organization.....	9
Schedule O Object Classification.....	14
Schedule Q Employment Summary	15
About MSPB	15
Adjudication	15
Mediation Appeals Program	16
Merit Systems Studies and OPM Oversight	17
Management Support.....	18
Information Technology.....	18
Human Resources	19
Financial Management	19
Equal Employment Opportunity	20
Organization Chart.....	20

The U.S. Merit Systems Protection Board Congressional Budget Justification for Fiscal Year 2015

Introduction

Fiscal Year (FY) 2013 was an unprecedented year for the U.S. Merit Systems Protection Board (MSPB or Board). Due to the sequestration in FY 2013, many agencies, particularly, the Department of Defense (“DoD”) furloughed thousands of Federal employees. As a result, MSPB received over 32,000 furlough appeals - an increase of more than 525% over MSPB’s typical workload. Although the automatic sequestration cuts have been suspended for two years, if sequestration cuts return in FY 2016, Federal agencies will be in the same position as they were in FY 2013. Federal agencies will then likely need to rely on furloughs and reductions in force (“RIF”) to manage the resulting budget cuts. This would again likely result in MSPB receiving thousands of furlough and RIF appeals, in addition to MSPB’s usual level of appeals. As a result, this FY 2015 Congressional Budget Justification requests \$46,821,000 in appropriated funds and \$2,579,000 in reimbursements from the Civil Service Retirement and Disability Trust Fund.

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

External events impacting MSPB operations

A number of significant external events have impacted MSPB that are likely to continue to affect MSPB’s mission to protect the Federal merit systems through FY 2015 and should be considered as Congress determines funding levels for the MSPB in FY 2015. At MSPB, we recognize the financial challenges facing our nation with increasing pressure to cut fiscal spending and to reduce the size of the Federal government. However, our agency has been impacted in a unique way. On March 1, 2013, government-wide “sequestration” was implemented and MSPB sustained a decrease of over \$2 million from its appropriation. As a result of sequestration, a number of Federal agencies furloughed staff, including the Department of Defense and its component military Departments. Hundreds of thousands of Federal employees were furloughed, and as expected, tens of thousands have exercised their statutory right to appeal their furloughs to the MSPB, resulting in historical increases in the number of initial appeals filed.¹ Every case filed must be processed and adjudicated and each appellant has a statutory right to a hearing, if requested.

MSPB’s regional and field offices received over 32,000 furlough appeals during FY 2013 and approximately 7,100 non-furlough appeals, for a total of over 39,000 appeals. This increase of more

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

than 525% of the 6,200 initial appeals MSPB receives on average each year (FY 2007-FY 2012) has significantly impacted the processing time for all appeals. Simply docketing, acknowledging, organizing, and consolidating these appeals and preparing to adjudicate them has been an overwhelming endeavor and has affected all offices of the agency, with the regional and field offices affected most directly. The only historical comparator for this volume of work at the Board is the Air Traffic Controller terminations that occurred in 1981. At that time, approximately 11,000 appeals were filed at the Board by terminated controllers. We would note, however, that in addition to the fact that the furloughs caused more than three times as many appeals to be filed than did the strike, in 1981 MSPB had about twice the number of full time equivalents (FTE) than the current staffing levels. Additionally, unlike the current furlough appeals, which are spread across various agencies government-wide, all 11,000 appeals came from the Federal Aviation Administration, and covered a uniform adverse action (termination).

Although there has been a two-year suspension of the across-the-board sequestration cuts which may significantly diminish the number of furlough appeals MSPB can expect to see in FY 2015, an increase of furlough appeals will likely recur if agencies continue to be faced with implementing adverse personnel actions to address ongoing budget reductions due to sequestration. Based on the number of furlough appeals currently in the regions, our petition for review (PFR) receipts at the full Board in headquarters in Washington, D.C. may increase significantly in the fourth quarter of FY 2014 and into FY 2015.

This would then significantly increase the work of the Clerk of the Board (“OCB”), which performs the ministerial functions connected with the PFR process, and the Office of Appeals Counsel (“OAC”), which performs the first substantive review of all PFRs and the drafting of decisions in those cases.

Also, if sequester cuts are restored in FY 2016, agencies may resume furloughing their employees or begin to reduce staffing levels through RIFs, and PFR receipts could remain at historic levels for years to come. We have already seen that large agencies are planning to take RIFs to more permanently deal with budget shortages. Employees subjected to RIFs may also appeal those actions to MSPB, and the rules governing RIFs are far more complicated than those governing adverse action furloughs. Thus, even if the overall number of appeals does not remain at a historical high level, we anticipate that the complexity of the workload is likely to rise significantly. We note that the Office of Personnel Management (OPM) recently announced a RIF of 300 employees.

Due to the likelihood that a significant amount of the furlough PFRs will be filed in late FY 2014, we anticipate higher than average receipts in FY 2014. With the expected increase in furlough appeals, RIF appeals, and PFRs, we believe that it is essential MSPB receives a corresponding increase in budget authority to fund staffing needs to meet this increased workload.

In addition to all of the work necessary to process and adjudicate the furlough appeals, other factors will also impact MSPB in FY 2015. For example, we anticipate a continued increase in federal employee retirements, which will likely increase the number of retirement appeals and PFR receipts by the full Board in headquarters. Moreover, significant changes in the law will have a direct impact on case processing. We anticipate that the Whistleblower Protection Enhancement Act (WPEA) will greatly increase the number of whistleblower cases that will proceed to a hearing. Indeed, the regional and field offices are already seeing an increase in the number and complexity of

WPEA hearings held. Additionally, the Hatch Act Modernization Act of 2012 may increase the number of Hatch Act cases OAC handles. Further, revisions to management flexibilities, such as the Pathways Program, are anticipated to continue. In the recent past, such revisions have generated numerous complex cases challenging various aspects of the revisions, such as the Outstanding Scholar Program, Federal Career Intern Program, and the National Security Personnel System.

The regions will be receiving all these appeals in the first instance, potentially causing a substantial increase in their workload. Beyond that, of course, is the effect those appeals will have on the work of OCB, OAC and the Board members. Even absent the thousands of furlough appeals, it would be reasonable to assume based on the other factors set forth above that headquarters could see a 25 percent increase in PFR receipts, which would mean that OAC could anticipate receiving 1,400 cases in each of FY 2014 and FY 2015. Due to their unprecedented volume, the initial appeal furlough cases will take many months to process in MSPB's regional offices. Accordingly, OAC may receive as many or more furlough PFRs in FY 2015 as it will in FY 2014.

The furlough appeals also had a serious impact on MSPB's information technology infrastructure and the Office of Information Resources Management (IRM). During the peak filing period, the number of appeals filed through MSPB's online filing system e-Appeal was 65 times what MSPB normally experiences on a busy day. The high volume of activity has caused enormous stress on MSPB's case processing systems, causing resources such as processors, memory, disk space and internet bandwidth to max out at various points. As a result, IRM staff have had to continuously monitor system resources, trap and correct errors when possible (i.e., bad file types), and reboot the system multiple times a day to recover system resources when necessary. IRM staff also processed a high number of external help desk support tickets as the number of first-time users of the e-Appeal system steadily increased. On the high-volume days, members of the IRM Technical Support team would spend all of their time responding to technical support issues. As a result, some projects related to maintaining, improving, and upgrading the MSPB technical infrastructure have been delayed.

There are also longer-term impacts from the massive increase of furlough appeals. Many of the planned system enhancements, upgrades and projects have been delayed while IRM staff focus on handling the electronically filed appeals and resolving related system support issues. As the furlough appeals are being processed by MSPB regional offices and additional pleadings are being filed, e-Appeal logons and document repository access are regularly exceeding 2,000 per day. The systems and infrastructure will need to be upgraded to handle the additional volume of electronically filed appeals and pleadings. This may include moving the data center from MSPB headquarters to a dedicated hosting site, expanding the server and storage capacity, and adding load balancing and failover capabilities. Internet bandwidth will also need to be expanded to accommodate the increased traffic. Additional help desk staff is needed to handle both external and internal support requests - this was already an issue given that external tickets had grown to twice the amount of internal tickets, even before furlough case-related tickets started arriving.

One additional consequence of MSPB's budget concerns is that we are severely limited in our ability to provide outreach and education that are essential to the effectiveness and efficiency of our adjudication and studies functions. MSPB employees are frequently sought after to speak to agency and appellant representatives and other stakeholders. Such outreach tends to improve the quality of representation for both parties and therefore helps to assure better adjudications.

As we assess our needs for FY 2015, any decreases in MSPB's budget authority will have a direct, adverse impact on our ability to perform our mission, which will cause an increase in case processing times at all stages. Prior to FY 2014, MSPB's shrinking budget authority resulted in position vacancies, which have already contributed to the slowing of case processing times. Given all of the foregoing factors, MSPB is requesting \$46,821,000 in appropriated funds and \$2,579,000 in reimbursements from the Civil Service Retirement and Disability Trust Fund.

FY 2015 Budget Request

Appropriation Language

For necessary expenses to carry out functions of the U.S. Merit Systems Protection Board pursuant to Reorganization Plan No. 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note), as amended, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, direct procurement of survey printing, and not to exceed \$2,000 for official reception and representation expenses, \$46,821,000 to remain available until September 30, 2016, together with not to exceed \$2,579,000, to remain available until September 30, 2016, for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts to be determined by the Merit Systems Protection Board. The Chairman is authorized to accept and use any gift or donation to carry out the work of the Board.

Summary of FY 2015 Costs

The MSPB requests \$46,821,000 in general funds in FY 2015 to provide for salaries and related expenses and to ensure that the agency continues to meet its strategic and annual performance goals. The agency also requests a transfer of \$2,579,000 from the Civil Service Retirement and Disability Fund to cover personnel compensation and benefit costs and other operating expenses associated with adjudicating retirement appeals. The MSPB has authority to adjudicate appeals from a final administrative action or order affecting the rights or interests of an individual under 5 U.S.C. § 8347(d) (the Civil Service Retirement System) and 5 U.S.C. § 8461(e) (the Federal Employees' Retirement System). Pursuant to 5 U.S.C. § 8348(a)(3), the Fund is made available, subject to such annual limitation as Congress may prescribe, for any expenses incurred by the MSPB in the administration of such appeals. The total FY 2015 request of \$49,400,000 will fund 250 FTE work-years of effort.

Strategic Goals

Our FY 2015 Performance Budget Justification is structured on the basis of the MSPB FY 2014–FY 2018 Strategic Plan. The agency's performance goals cover the critical components of two strategic goals, and our performance measures support MSPB's ability to manage and report performance over time. The strategic goals are:

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

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

FY 2015 request by Object Class

The MSPB’s FY 2015 budget request of \$49,400,000 reflects an **increase** of \$4,315,000 from our FY 2014 enacted funding level of \$45,085,000. With this level of funding, MSPB expects to support a staffing level of 250 FTE to continue to maintain quality services in support of the agency functions and meet the goals and objectives of the Strategic Plan. Our request includes inflationary adjustments common to most Federal agencies. With the requested amount, MSPB is prepared to undertake mission critical tasks and an array of new and continuing initiatives in FY 2015 that will allow MSPB to achieve its strategic goals in an efficient and cost-effective manner.

A discussion of our more significant increases over the FY 2014 enacted level request follows:

Personnel Compensation & Benefits – an increase of \$ 3,800,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
11	Personnel Compensation	\$26,420	\$29,485	\$3,065
12	Benefits	\$6,619	\$7,354	\$735

Approximately 80% of the agency’s funding is for personnel compensation and benefit costs. Thus, any reduction in resources affects our ability to hire and maintain a highly qualified staff at our requested FTE level. Our request assumes our authorized FTE will be increased to 250 and assumes a 1% pay raise in FY 2015.

Our ability to maintain adequate staffing levels was adversely impacted before the sequester cut and the sequester cut of \$2 million made it much more difficult to maintain staffing levels. The reduction in FTE levels has affected the organization’s ability to meet the agency’s mission. MSPB currently has more than 30 vacancies and is facing the prospect of having a significant number of employee retirements (approximately a quarter of our employees are eligible for retirement by FY 2015).

Although we are striving to meet our Performance Goals, reductions of funding will make it exceedingly difficult for the agency to meet the demands of a workload increase experienced in FY 2013 and that we expect to experience in the years to come due if Federal agencies furlough and reduce staff in order to meet funding reductions.

Travel & Transportation of Persons – an increase of \$28,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
21	Travel & Transportation of Persons	\$449	\$477	\$28

Management will continue to control travel costs. To meet our mission, AJs must frequently travel to hearing sites located a considerable distance from the various regional offices. Notably, travel costs are likely to increase in FY 2015 as the AJs travel to locations to conduct hearings on consolidated furlough appeals. Additionally, due to the WPEA stripping the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. of exclusive jurisdiction over appeals filed by whistleblowers, MSPB attorneys may be required to travel to various federal circuit courts of appeals to represent the agency, something that was not required previously. While we are making increasing use of video conferencing for hearings, we have little control over the number of hearings that might require travel.

Transportation of Things – an increase of \$5,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
22	Transportation of Things	\$75	\$80	\$5

This category covers freight related costs and various courier services.

Rent, Communications, & Utilities – an increase of \$98,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
23	Rent, Communications & Utilities	\$4,332	\$4,430	\$98

The agency makes rental payments to the General Services Administrations (GSA) for office space in our Washington Headquarters as well as all of our regional and field offices. The balance of our request for this object class will be for network contract services, the Internet, and mandated Managed Trusted Internet Protocol services as well as other telecommunication services such as voice over Internet protocol and video conferencing. We expect significant increases for telecommunications, resulting from the increase in case load due to the sequester and more cases being held through video conferencing.

Printing - an increase of \$10,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
24	Printing	\$190	\$200	\$10

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

Other Contractual Services – an increase of \$54,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
25	Other Contractual Services	\$3,591	\$3,645	\$54

This object class includes the Agency’s Reimbursable Service Agreements (RSA) with the Treasury Department’s Bureau of Public Debt for accounting, purchasing, and travel-related services and our RSA with the Department of Agriculture Animal and Plant Health Inspections Service for personnel services.

Other RSA's included in this object class fund our Administrative Law Judges (agreements with the Coast Guard and FTC), as well as agreements with the National Archives and Records Administration for records management storage.

The cost of employee training and various equipment related service agreements for IT hardware is included in this object class. The remaining balance of our request for this category includes consulting services, maintenance and operations of facilities and IT equipment, and miscellaneous services.

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

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
26	Supplies & Materials	\$170	\$200	\$30

An increase for office supplies is requested to meet the increased workload.

Equipment – an increase of \$56,000

MOC	Description	FY 2014 Enacted (000)	FY 2015 Request (000)	Increase (decrease) over FY 2014 (000)
31	Equipment	\$894	\$950	\$56

Most of our equipment expenditures will be for items that have exceeded their useful life such as laptops, copiers, printers and scanners, as well as annual renewals of various software license agreements. Funds are also needed in order to update our IT capabilities. Additional office equipment will need to be purchased if our request to increase our FTE to 250 is approved.

REQUEST TO INCREASE AGENCY FTE FROM 226 TO 250 BY OFFICE

The agency has its headquarters in Washington, DC with six regional and two field offices located throughout the United States. MSPB is currently authorized to employ 226 FTEs to conduct and support its statutory duties. However, MSPB has in recent fiscal years seen a decrease in actual levels of employees from 213 in FY 2010 to 196 in FY 2013.

At the time of this submission, MSPB has more than 30 vacant positions in addition to the 24 additional FTE we are requesting. These vacancies comprise approximately 13% of our current authorized FTE of 226. Severe budget uncertainties in the last several fiscal years forced MSPB to suspend filling some vacant positions. Vacant staff positions have adversely affected agency performance as MSPB continues to hold key positions vacant including administrative judges, legal counsels, attorneys, study analysts, administrative specialists and high-level management positions. Low staff numbers contribute to a backlog of cases and prevent succession planning for administrative judges. The agency has also recently experienced several retirements and can expect more, *as approximately a quarter of our employees are eligible to retire within the next year, including about half of our AJs*. Reductions in budgetary resources will hamper our ability to meet our performance goals and targets as well as delay the timely processing of appeals.

As noted, MSPB is requesting to be funded and authorized at 250 FTE, an increase of 24 FTEs from our present authorized level of 226. The discussion that follows identifies the additional FTE requested for the respective offices. Some of the additional FTE requested in this submission were identified in our FY 2014 By-Pass request to Congress. It should be noted that many of the offices requesting additional FTE are staffed below their current authorized FTE levels.

Board Organization³

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

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

The **Office of Appeals Counsel (OAC)** OAC is requesting 5 additional FTE (4 non-supervisory attorneys and 1 administrative support specialist). OAC conducts legal research and prepares proposed decisions for the Board for cases in which a party files a PFR of an initial decision issued by an Administrative Judges (AJ) and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of rulings made by AJs, makes recommendations on reopening cases on the Board's own motion, and provides research, policy memoranda, and advice to the Board on legal issues.

The OAC is central to the MSPB core mission of adjudicating disputes between employees and executive branch agencies that arise under the civil service laws. To be prepared to face these challenges while maintaining the balance between high quality and timely decisions, it will be

³ The **Office of the Administrative Law Judge (ALJ)** adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. The functions of this office are currently performed by ALJs at the Federal Trade Commission (FTC), and the Coast Guard, under interagency agreements.

crucial to ensure that there is a sufficient number of OAC adjudication staff who have the necessary competencies, knowledge, and training to perform their work efficiently. OAC has been understaffed for several years due to budgetary constraints, which has significantly contributed to its current inventory of almost 500 cases.

An appropriate number of administrative support personnel for 30 non-supervisory attorneys handling 2,000 cases are 4 employees in a mix of positions (paralegals, administrative officer, case tracker/legal assistant). Administrative support personnel handle crucial tasks such as proofreading and cite-checking decisions intended for publication as precedent, and processing incoming cases for the Office of the Clerk of the Board and the outgoing cases to the Board offices. A ratio of 1 to 7.5 administrative to professional ratio is appropriate for these tasks. OAC currently has 3 employees in administrative positions and is requesting 1 additional FTE for an administrative support specialist position.

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

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

OGC is requesting 2 additional FTE. Fully funding our FY 2015 request would permit OGC to fill current vacancies and hire two additional FTE (attorneys at the GS-13/14/15 level). The increase in staffing should ensure the important roles the OGC has in the day-to-day operations of MSPB are being met. The increase in FTE would enhance the performance of the office, permitting it to meet its duties to the agency in litigation; reviewing and responding to petitions for enforcement; coordinating the agency's legislative policy and congressional relations functions as well as reviewing and responding to OPM regulations.

Office of Regional Operations (ORO) – Additional FTE requested: 8

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

ORO is requesting 8 additional FTE. The quality of MSPB's customer service depends heavily on having a staff of highly skilled and well-trained AJs, led by actively involved Chief AJs, to adjudicate employee appeals. Adjudication and the Alternative Dispute Resolution (ADR) efforts that accompany it constitute the core statutory mission of the MSPB.

As noted, MSPB's six regional and two field offices have received over 32,300 furlough appeals – and more than 7,100 non-furlough appeals as well in FY 2013. This increase of nearly 525% of the appeals we typically receive in a year has severely affected the processing time-for all appeals – the

sheer burden of docketing that many cases is, quite literally, overwhelming. The result is that all of the tasks necessary even to get to the point where we were able to organize the appeals in a manner that allows them to be more efficiently adjudicated present a huge hurdle, even before the equally huge hurdle of adjudicating and trying to get the cases decided. In fact, at all stages of adjudication, the administrative burden of preparing and processing so many cases is huge – from the work needed to consolidate cases to planning and holding hearings, to the organizational skills needed to assure that all issues raised by each appellant are recognized and adjudicated in the initial decision.

The understaffing of the regional and field offices over a period of years has left the agency little prepared for the current wave of furlough related appeals and the problem will be exacerbated if we continue to lose AJs through retirements. In keeping with its focus on internal management, the Board must act now to assure the proper functioning of the regions as more and more of these most experienced AJs retire. As of this writing, three of our six Regional Directors, one of the two Chief Administrative Judges, and *almost half of the AJ staff are currently eligible* for retirement.. Without taking significant action now, we endanger the success of the Board's core statutory mission.

Office of the Clerk of the Board (COB) – Additional FTE requested: 2

The **Office of the Clerk of the Board (COB)** receives and processes cases filed at MSPB headquarters, rules on certain procedural matters, and issues MSPB decisions and orders. The office serves as MSPB's public information center, coordinates media relations, produces public information publications, operates MSPB's library and on-line information services, and administers the Freedom of Information Act (FOIA) and Privacy Act (PA) programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, legal research systems, the Government in the Sunshine Act program, and open government responsibilities.

COB is requesting 2 additional FTE. The FTE increases include a GS-11 Records Management Specialist to: (1) aid in the audit and inspection of all MSPB records and recordkeeping practices; (2) propose additions and alterations to the MSPB's retention schedules based on the information learned in the audit process; (3) process the backlog of inactive records stored at facilities around the country to ensure proper disposal of agency records; (4) prepare and implement records management training for all MSPB staff; and (5) ensure that recordkeeping requirements are considered in all new, manual and electronic record systems or requirements agency-wide.

Additionally, COB is requesting a GS-11 FOIA/PA Specialist to develop, implement, manage, and coordinate all requests for information in accordance with the FOIA and PA, to include developing and delivering agency-wide mandatory FOIA and PA training and preparing the Annual Federal Information Security Management Act Report and Annual FOIA Report.

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

The **Office of Policy and Evaluation (OPE)** carries out MSPB's statutory responsibility to conduct special studies of the civil service and other Federal merit systems. Reports of these studies are sent to the President and the Congress and are distributed to a national audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB

studies. The office reviews and reports on the significant actions of OPM. The office also conducts special projects and program evaluations for the agency and has responsibility for preparing MSPB's strategic and performance plans and performance reports required by the Government Performance and Results Act Modernization Act of 2010.

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

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

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

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

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

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

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

results of research and investigations; (e) announce regulations; and (f) provide training and operating manuals for the use of employees.

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

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

EEO currently has 1 FTE, the Director. EEO is requesting 1 additional FTE. During FY 2015, it is anticipated that eight agency employees will assist with EEO related services on a collateral duty basis. These include three collateral duty EEO counselors and five collateral duty Reasonable Accommodation Coordinators. An additional FTE in EEO would significantly strengthen EEO and better enable the agency to achieve Resource Management Plan goals of ensuring a representative, diverse workforce. Specifically, an additional FTE would enable EEO to develop, better promote, and implement diversity and inclusion initiatives within MSPB. Other responsibilities would include: identifying, developing and providing training relating to EEO, diversity and inclusion, and conflict resolution related training, which would help increase employee engagement and moral. Other significant duties would include: (1) transferring reasonable accommodation coordinator functions into a full-time position, which has several advantages over the function being performed on a collateral duty basis; (2) better promoting the use of the Schedule A Hiring Authority for individuals with disabilities (including developing a data base and procedure for referring qualified candidates to MSPB hiring officials); and (3) assisting the EEO Director with planning substantive commemorative events, such as Unity Day, maintaining the EEO portal website, and performing the barrier analyses required under MD 715. Without the addition of one FTE, EEO may be limited in its ability to consistently carry out new and bold initiatives and to take the program to a higher level, particularly in times when the complaint and reasonable accommodation caseloads increase.

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

	FY 2013 Actual	FY 2014 Enacted	FY 2015 Requested	Change
Direct obligations:				
Personnel compensation	22,618	26,420	29,485	3,065
Civilian personnel benefits	6,051	6,619	7,354	735
Travel of persons	209	449	477	28
Transportation of things	92	75	80	5
Rental payments to GSA	3,339	3,490	3,540	50
Rental payments to others	240	110	110	0
Communications, utilities, and miscellaneous charges	462	732	780	48
Printing and reproduction	51	190	200	10
Other services	465	1,638	1,650	12
Other purchases of goods and services from government accounts	425	1,360	1,380	20
Maintenance of facilities	13	28	30	2
Maintenance of equipment	412	565	585	20
Supplies & Materials	132	170	200	30
Equipment	<u>748</u>	<u>894</u>	<u>950</u>	<u>56</u>
Direct Obligations...	35,257	42,740	46,821	4,081
Reimbursable Obligations...	<u>2,340</u>	<u>2,345</u>	<u>2,579</u>	<u>234</u>
Total New Obligations...	\$ 37,597	\$45,085	\$49,400	\$4,315

Note: In addition to the actual FY 2013 obligations shown in Schedule O, MSPB obligated approximately \$1,665,000 of FY 2012/2013 carryover funds in FY 2013.

Schedule Q - Employment Summary

	FY 2013 Actual	FY 2014 Enacted	FY 2015 Request	Change
Direct:				
Civilian full-time equivalent employment	187	211	233	22
Reimbursable:				
Civilian full-time equivalent employment	<u>15</u>	<u>15</u>	<u>17</u>	<u>2</u>
Total...	202	226	250	24

About MSPB

MSPB has its origin in the Pendleton Act of 1883, which established the Civil Service Commission (CSC) and a merit-based employment system for the Federal Government. The Pendleton Act was passed after the assassination of President Garfield by a disgruntled Federal job seeker and grew out of the 19th century reform movement to curtail the excesses of political patronage in government and ensure a stable highly qualified workforce to serve the public. Over time, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals. Concern over the inherent conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;⁴ OPM to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations. The CSRA also codified for the first time the values of the merit systems as the MSPs and defined the PPPs.⁵

Adjudication

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

An appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An AJ in the office assures that the parties receive the due process procedures called

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

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

for in the MSPB's regulations and, after providing a full opportunity to develop the record on all relevant matters, including at a hearing in many cases, issues an initial decision. Unless a party files a PFR with the Board, the initial decision becomes final 35 days after issuance. Any party, or OPM or the Office of Special Counsel, may petition the full Board in Washington to review the initial decision. The Board's decision on a PFR constitutes the final administrative action on the appeal.

In appellate cases, the Board's final decision, whether it is an initial decision of an AJ that has become final or the Board's decision on a PFR, may be appealed to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) or, in cases involving allegations of discrimination, to a U.S. district court or the Equal Employment Opportunity Commission. In addition, for a two-year period starting on the effective date of the WPEA, certain cases involving protected whistleblowing disclosures and activity may be appealed to the Federal Circuit or the other Circuit Courts of Appeals.

If a party believes that the other party is not complying with an MSPB order or MSPB-approved settlement agreement, the party can file a Petition for Enforcement with the regional or field office that issued the initial decision. If the AJ finds compliance, that constitutes an initial decision and the party may file a PFR with the MSPB. If the AJ finds non-compliance, the non-complying party is ordered to comply and may either do so or file a PFR with the MSPB. Additional types of addendum cases, that is those that result from successful initial appeals, involve requests for attorney fees where the appellant is the prevailing party and requests for damages under laws that allow for such claims.

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

Mediation Appeals Program

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

the beginning of adjudication, MAP saves time and money for the Federal employees and agencies who resolve their cases through this process.

Because of these advantages, MAP has become a popular and successful program, as shown by the fact that a greater number of cases have been mediated each year since the program's inception. Moreover, while MAP had settled approximately half the cases mediated (nearly 60% when those that settle after return to the traditional adjudication track are considered), in recent years the success rate in MAP alone has increased so that approximately two-thirds of the cases mediated are now being settled. Even where the case is resolved by an AJ's decision, the mediation process often helps sharpen the parties' focus on the matters truly in dispute and the resolution they seek. Moreover, based on the evaluations the parties are asked to complete at the end of each mediation, more than 95% of the participants have stated that they would use MAP again. However, with very few exceptions, MAP and other ADR efforts are not being elected by the parties to our more than 32,300 furlough appeals.

Merit Systems Studies and OPM Oversight

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

MSPB studies address the variety of challenges facing the Federal government in managing its workforce. Study reports released in FY 2012 through January FY2014 include: *Managing Public Employees in the Public Interest: Employee Perspectives on Merit Principles in Federal Workplace*; *Federal Employee Engagement: The Motivating Potential of Job Characteristics and Rewards*; *Employee Perceptions of Federal Workplace Violence*; *Blowing the Whistle: Barriers to Federal Employees Making Disclosures*; *Telework: Weighing the Information, Determining an Appropriate Approach*; *Clean Record Settlement Agreements and the Law*; *Preserving the Integrity of Federal Merit Systems: Understanding and Addressing Perceptions of Favoritism*; and *Evaluating Job Applicants: The Role of Training and Experience in Hiring*.

Studies planned for FY 2014 include:

Fair and open competition: This principle is fundamental to Federal merit systems and supports efficient and effective Government by promoting hiring based on competence rather than connections. This study will examine: (1) the state of fair and open competition in the Federal government; (2) perceived barriers to fair and open competition; and (3) how agencies can uphold fair and open competition when hiring.

Sexual orientation and the Federal workplace: past treatment and current policy: Since 1980, the tenth PPP (5 U.S.C. § 2302(b)(10)) has been interpreted to bar discrimination based on sexual orientation. This study will examine: (1) Federal employee perceptions of the frequency of workplace discrimination based on off-duty conduct and sexual orientation; (2) the workplace attitudes of Lesbian, Gay, Bi-sexual and Transgender Federal employees; and (3) whether the protections grounded in 5 U.S.C. § 2302(b)(10) and enforcement mechanisms are adequately understood.

Veterans' employment: requirements and issues: Data from an MSPB survey show that some employees perceive that officials have knowingly violated veterans' preference rights, while others perceive perceptions of inappropriate favoritism towards veterans. This study will examine: (1) the complexity of veterans' preference laws; and (2) the need to educate Federal officials and employees on veterans' employment policies to promote compliance with the law and public policy and reduce perceptions of impropriety.

Merit system principles education: MSPB's mission is to "protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices." The objectives of the study are to: (1) educate managers, human resources professionals, and employees on the content and importance of the MSPs; (2) provide information to supervisors on managing Federal employees within the MSPs and PPPs; and (3) summarize Federal employees' views on agency adherence to MSPs to identify strengths and areas for improvement.

Training and development for the Senior Executive Service (SES): The SES serves as the institutional leadership of the Federal civil service. Success in the SES requires both the leadership competencies outlined in the Executive Core Qualifications at entry and continuing education and growth. This study will examine training and development programs and initiatives for the SES and their effectiveness to help agencies select and implement strategies to (1) support the continuing performance and development of senior executives; and (2) adequately prepare individuals with the potential to become senior executives.

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

Management Support

Information Technology

The MSPB's primary mission is to provide for independent adjudication of appeals of personnel actions for Federal employees. Many of the appeals filed with the agency are from *pro se* appellants - employees representing themselves. Pro se appellants do not generally have equal knowledge of the case filing process or equal access to the information available, especially if they are stationed overseas. Yet, they are expected to file an appeal and to respond to orders in a timely manner or risk having their cases dismissed. The MSPB's electronic filing system, e-Appeal Online, allows

Federal agencies and employees instant access to filings and issuances through the internet as soon as they are uploaded. Parties who file electronically can also receive acknowledgement orders from the agency by e-mail instantaneously, rather than through the regular mail.

The agency has also implemented an agency-wide, electronic Case Management System (CMS). The system is used to process and track each initial appeal and Petition for Review filed with the agency. CMS has also been integrated with the MSPB's e-Appeal, document management, and document assembly systems to allow our Administrative Judges and Attorneys to more efficiently create legal documents that are pre-populated with case data. In addition, MSPB has implemented an agency-wide, web-based office calendar system to make staff aware of scheduled events, such as hearings, leave, and outreach.

Human Resources

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

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

Financial Management

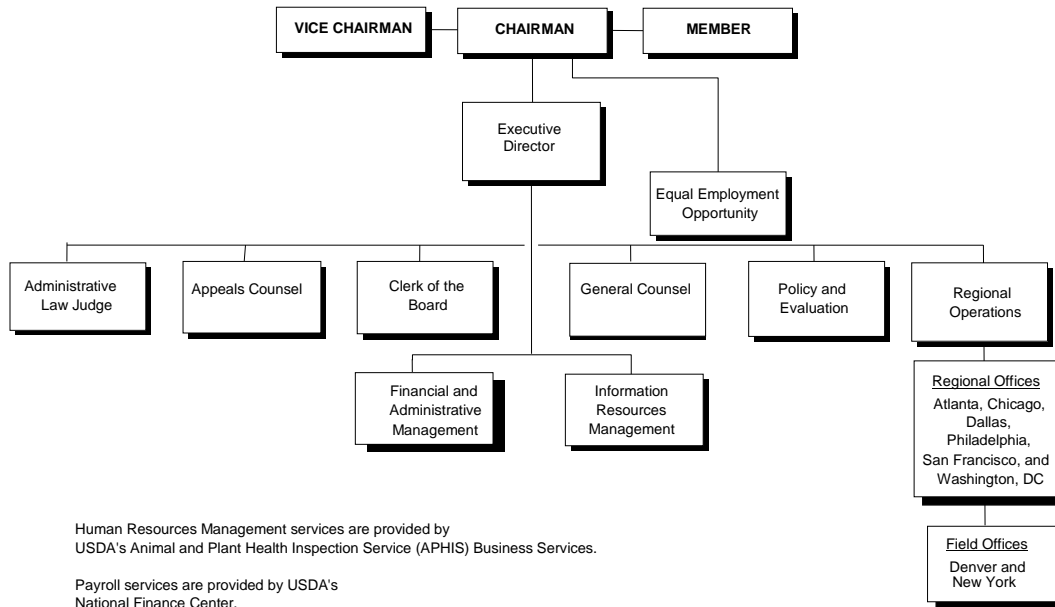
The MSPB has initiated cross-servicing agreements with Bureau of Public Debt (BPD) for its accounting, financial auditing, purchasing, and travel-related services and support. The agency also has an agreement in place with the USDA National Finance Center (NFC) for processing of payroll and payroll-related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

Equal Employment Opportunity

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

Organization Chart

U.S. Merit Systems Protection Board



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

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

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