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FOR IMMEDIATE RELEASE
May 11, 2015

MSPB's Newest Report Explains Due Process in Federal Civil Service Employment

The reasons why agencies must follow due process when removing Federal employees are explained in a new report issued by the U.S. Merit Systems Protection Board, *What is Due Process in Federal Civil Service Employment?* The report discusses the current civil service laws that apply to adverse actions and the history behind their formation. It also describes the constitutional requirements such laws must comply with, namely due process. According to Chairman Susan Tsui Grundmann, “The Constitution requires due process in any system where the Government must have just cause to act against an individual.”

The report explains that, in the Federal employment context, due process is: (1) a meaningful opportunity – before an adverse action takes place – for the individual to know the charges and penalty and present a defense; and (2) the ability to appeal a serious adverse action – such as a lengthy suspension, demotion, or removal – before an impartial adjudicator. “The process that is due can depend on the situation, and this is reflected in the current civil service statutes,” says Chairman Grundmann. For example, 5 U.S.C. § 7513 provides that, when there is reason to believe that a serious crime has been committed, the minimum notice period before a removal takes effect can be reduced from the usual 30 days, but the statute still provides 7 days so that the employee can reply to the charges.

The report walks the reader through a history of how and why the Government moved from a spoils system to a merit system; a discussion of court decisions explaining what due process the Constitution requires in a merit system; and an explanation of what the current statutes instruct agencies to do. The report also includes an appendix that discusses some misperceptions about adverse actions in the

civil service and provides thoroughly documented corrections to clarify how the system actually operates today.

The U.S. Merit Systems Protection Board (MSPB) is a bi-partisan, independent, quasi-judicial agency whose mission is to protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices. To request a printed copy of this report, e-mail studies@mspb.gov; call (202) 254-4496; or write to: Merit Systems Protection Board, Office of Policy and Evaluation, 1615 M Street NW, Washington, DC 20419.