

ISSUES OF MERIT

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Shared Human Resource Services: Communication is Key

As agencies move toward more shared services, clear expectations and open communication can make or break the outcome.

Shared services provide an approach to Federal operations where agencies transfer common functions—for example, acquisition, financial management, human resources (HR), travel processing, and information technology (IT)—to a Federal shared service provider who in turn performs those functions for a number of agencies. The goal of this arrangement is to reduce duplication and costs across the Federal Government and to improve the effectiveness of the shared functions.

The continuing importance of shared services was highlighted by two recent events. In October 2015, the Office of Management and Budget (OMB) and the General Services Administration (GSA) announced the creation of the Unified Shared Services Management Office to drive the implementation of shared services. The Shared Services Leadership Coalition—a nonprofit coalition of companies, nonprofits, and individuals providing education and support for legislation to accelerate the implementation of shared services—was also launched.

To obtain the many benefits of the shared services model, agencies

would likely have to apply different approaches to develop and maintain these arrangements based on the function that is being shared. For example, very different measures are required of both the shared services provider and customer if the function being shared is a “plug and play” IT system as opposed to a broader HR staffing program. The HR program could require more care and feeding to ensure that it does not run afoul of the extensive governing laws, rules, or regulations.

There is increasing demand for HR services above and beyond mere personnel action processing—including the entire HR lifecycle from strategy to hire to separation.¹ This demand means there is also an increasing opportunity for poor outcomes if the shared services arrangement is not properly developed and maintained. The mere fact that most shared services arrangements move the HR service farther from its customers presents significant challenges.

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¹Jason Miller, “OMB Priming HR Shared Services for a Big Year,” Federal News Radio, February 8, 2016.

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The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

Issues of Merit

We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

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DIRECTOR'S PERSPECTIVE

USAJOBS Is Not the Problem

In April, the Senate Homeland Security and Governmental Affairs Committee held a roundtable on USAJOBS®, the Government's central source for job opportunity announcements and applications. The issues discussed were not new—the hiring process is too complex, takes too long, lacks necessary communication with applicants, and does not result in quality candidates. Some of the discussion pointed to USAJOBS as a source of those problems and suggested revamping the website or using means other than USAJOBS to post jobs and target recruitment.

However, the key to improving Federal hiring is not revamping USAJOBS, but rather evaluating and addressing the root cause of the problems. Those who seek to change an aspect of the Federal hiring system that they find unsatisfactory should, as a first step, identify within the hierarchy of legal authority the rules that underlie the existing condition. The long-running mismatch between the means chosen to effect change and the true source of the perceived problem has been a barrier to reform.

For example, in 1993, the Clinton Administration observed that the Federal hiring system was too “complex” and managers needed “more control over who comes to work for them.” In response, the Office of Personnel Management (OPM) abolished the Federal Personnel Manual (FPM), a “10,000-page behemoth of [administrative] rules.” The hope was that the elimination of the rulebook would empower managers in the areas of “recruiting, testing, and hiring.”¹ Abolishing the FPM did force HR staffs and managers to focus more on the laws

and regulations rather than the procedural guidance that had built up over decades. However, it did not in fact change the laws or regulations that govern competitive service hiring.

Numerous other steps have been taken to make the system faster and less complex. In 1996, OPM granted agencies the authority to examine applicants for competitive service positions to address how bureaucratic and slow the process had become. In 2000, President Clinton created the Federal Career Intern Program (FCIP), which provided streamlined procedures to hire high-quality applicants. In 2010, President Obama called on agencies to rethink recruitment and hiring practices, and directed various changes to the application, assessment, and selection processes.

However, things have not gotten much better. Research from the Merit Systems Protection Board (MSPB) and others show that hiring is still slow, complex, and confusing to applicants. To get around the process, agencies have turned to noncompetitive hiring authorities. From 2004–2012, MSPB noted that agencies used competitive examining less than 40 percent of the time.²

Why haven't administrative efforts to improve the Federal hiring system brought better results? The answer is that the basic procedures for Federal hiring, which are found in Chapter 33 of Title 5 of the U.S. Code, have not undergone any significant revision since 1944. To help ensure that hiring decisions are based on merit, those procedures are actually

¹ *National Performance Review Status Report*, September 1994.

² MSPB, *The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs*, 2015.

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Director's Perspective

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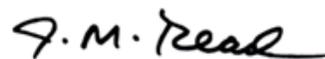
intended to limit the discretion of the hiring manager. In operation, they often prohibit selection of the candidate the hiring manager deems to be the strongest. Eliminating the FPM, delegating examining and hiring authority to agencies, and modifying the practices of HR departments still leaves intact a rigid, rule-bound system. Meaningful change to the hiring system requires legislative and regulatory action. That point was brought home when MSPB ruled that FCIP was inconsistent with statute in *Dean v. Office of Personnel Management*, 115 M.S.P.R. 157 (2010).

The better approach to hiring reform is changing the statutes that are perceived as creating barriers to effective hiring. For example, MSPB was a long-time advocate for category rating. In a 1995 study, *The Rule of Three in Federal Hiring: Boon or Bane?*, we discussed how category rating gives managers the ability to select from a larger list of highly qualified candidates and treats veterans more fairly. The Chief Human Capital Officers Act of 2002 authorized all agencies to use category rating, it was codified in 5 U.S.C. § 3319, and it became required under President Obama's 2010 hiring reform initiative.

There are areas where legislation may not be needed and a simple regulatory change will help get at the root of the problem. For instance, MSPB's 2005

report *The Probationary Period: A Critical Assessment Opportunity* shows that managers make poor use of the probationary period that new employees must serve. Probation is an opportunity for managers to continue to evaluate the skills and conduct of an applicant before the appointment becomes final. However, a little more than half the time, managers allow a probationer whose performance or conduct is unsatisfactory to attain tenure by allowing the probationary period to pass with no action, even though a probationer can be separated summarily with no right of appeal. A simple fix would be to amend the regulation that governs probationary periods so that probation is not deemed complete without a responsible management official taking the affirmative step of certifying that the employee should become permanent.

History has shown that reforming the Federal hiring process while also protecting merit is not a simple task. Instead of focusing on short cuts around competitive procedures, we need to conduct a more holistic review of the problems to find the right solutions. ❖



Director, Policy and Evaluation

Tell Us! — What's Working in Agencies? — Tell Us!

Issues of Merit often includes information about programs and practices Federal agencies have developed to improve management of their workforces. These *Agency Corner* articles help managers and HR practitioners learn from the successes of their counterparts in other agencies. MSPB is asking our readers to help find more of these success stories. You often see them before we do and can alert us about programs that merit recognition.

Please tell us about what's working in agencies by emailing studies@mspb.gov.

Be sure to include:

- the name or nature of the program;
- the agency or sub-agency where it is administered; and
- a brief description of why it is remarkable.

Your recommendation will not only highlight what could be featured in future *Agency Corner* articles but will also help us make recommendations to other agencies and managers about ways to promote Federal workforce effectiveness.

—Thank you for your help! —

MSPB's 2015 Adjudication Activities

MSPB adjudicated a record-setting number of cases while maintaining a high level of quality.

MSPB issues an Annual Report every spring that includes statistics on case processing activities. FY 2015 data are provided here for the convenience of *Issues of Merit* readers. The last 3 years have been unusual for MSPB. From FY 2008 through FY 2012, MSPB's eight regional and field offices received 6,247 appeals on average and closed 6,228 appeals on average. In FY 2013, however, several departments and agencies furloughed large numbers of employees in response to budget sequestration. As a consequence, MSPB's regional and field offices received over 32,000 appeals from furlough actions in FY 2013. The results of MSPB's adjudication activities in FY 2015 reflected the surge in appeals 2 years earlier.

MSPB closed a new record number of 28,509 cases in FY 2015, a 63 percent increase over the record number of 17,466 cases closed in FY 2014. MSPB resolved these cases while maintaining the percentage of decisions left unchanged by its reviewing court at 96 percent. This was the same rate as in 2014 and attests to the quality of the Board's decisions. Decisions issued by the full Board, chiefly on review of decisions issued by administrative judges (AJs) in regional and field offices, accounted for 3,120 of the total number of cases closed by MSPB in FY 2015. An additional 449 decisions

were issued in special categories of proceedings (stay requests, addendum cases, and initial decisions in original jurisdiction cases).

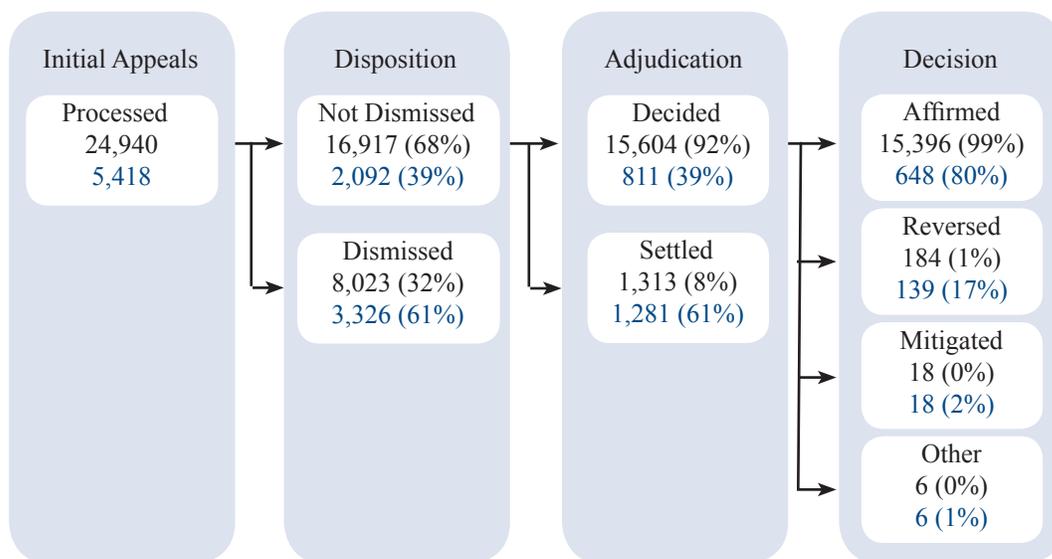
MSPB's regional and field offices closed a total of 24,940 appeals in FY 2015—19,522 of which were furlough appeals. Thirty-two percent of these appeals were dismissed. Of the remaining 16,917 cases not dismissed, 8 percent were settled. Of the 15,604 cases adjudicated on the merits, 99 percent affirmed the agency's action and 1 percent reversed or otherwise changed the agency action. By the end of FY 2015, MSPB's regional and field offices had closed 93 percent of the furlough appeals received in 2013.

Excluding furlough cases, MSPB's regional and field offices closed 5,418 appeals in FY 2015. Of those, 61 percent were dismissed. Of the cases not dismissed, 62 percent were settled. Of the cases adjudicated on the merits, 80 percent affirmed the agency action and 20 percent reversed or otherwise changed the agency action. Excluding furlough cases, individuals received MSPB-ordered relief in 3 percent of cases closed by AJs (157 out of 5,418).

For more information about case processing and MSPB's other adjudication activities, please refer to the MSPB FY 2015 Annual Report at www.mspb.gov. ❖

Figure 1. An Overview of Initial Appeal Outcomes

Non-furlough case data appears in blue text. For a breakdown of furloughs, please refer to the MSPB FY 2015 Annual Report available at www.mspb.gov



Ensuring Accountability Through Supervisory and Managerial Probation

Agencies may have more tools than they realize to deal with poorly performing leaders.

Supervisors and managers play a critical role in ensuring that agencies accomplish their missions and meet the needs of the constituents they serve. Therefore, it is imperative to make sure they have the technical and leadership skills necessary to perform their responsibilities.

MSPB research demonstrates that employees are often chosen for supervisory positions based on their technical skills. Job announcements and assessment instruments emphasize technical skills during the selection process, and agencies understandably want to reward high performing employees with promotions that might not be available outside of supervisory positions.¹

However, a supervisor's primary responsibility is to accomplish work through others. Therefore, leadership skills are critical to a supervisor's ability to plan work, communicate organizational goals and policies, guide performance, and make difficult decisions about employee recruitment, retention, development, and appraisal. Unfortunately, it is difficult to assess applicants' leadership skills through the typical assessment tools that Federal agencies use, such as occupational questionnaires and interviews. That is likely another factor in why agencies emphasize technical skills during the selection process.

Fortunately, civil service law provides an additional tool to help agencies ensure they select high-quality supervisors and managers: the probationary period. When an agency selects a candidate who has not served previously in a competitive service supervisory or managerial position, the candidate is required to serve a probationary period before the appointment becomes final.

Most agency personnel know that new competitive service employees are required to serve a 1-year probationary period. However, the regulations that govern the supervisory and managerial probationary periods differ from the initial probationary period in some ways.

¹ MSPB, *A Call To Action: Improving First-Level Supervision of Federal Employees*, May 2010.

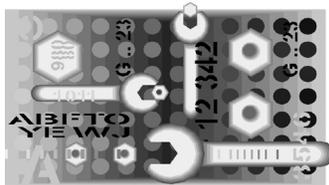
² 5 U.S.C. 3321, 5 CFR 315.805-806, and 5 CFR 315.901-909.

For instance:²

- The length of the supervisory and managerial probationary periods is not set in law or regulation. Agency heads have the authority to determine the duration, provided that the length is reasonable and fixed, appropriate to the job, and consistently applied.
- The agency head may establish different supervisory and managerial probationary periods for different occupations or use a uniform period for all.
- An employee is required to complete a single probationary period for a supervisory position and a single probationary period for a managerial position, unless the agency has made a specific exception based on the candidate's performance and experience.
- Prior service in a Federal supervisory or managerial probationary period may be creditable toward successful completion of the current probationary period, depending on agency regulation.
- If the new supervisor or manager does not successfully complete the probationary period, then the agency should remove the employee from the supervisory or managerial position.
 - An employee who previously served in a competitive service position would be returned to a position of no lower grade and pay than the previous position.
 - An employee who did not serve previously in a competitive service position would be separated under the initial appointment probationary period.
- When an employee is reassigned under the supervisory probationary period or separated under the initial appointment probationary period, that action is not generally appealable.

When used correctly, the probationary period provides the agency a critical opportunity to evaluate how well a supervisor or manager carries out the actual duties of the job before the appointment becomes final. There really is no personnel assessment more accurate than that. For that reason, MSPB will be looking at best practices in how agencies use the supervisory and managerial probationary periods. Do you think your agency has a best practice in this area? Let us know by emailing studies@mspb.gov. ❖

TOOLS OF THE TRADE



A Refresher on Using Selective Factors

An important step in hiring is determining whether applicants meet minimum qualification requirements. When a job has duties or functions that are not common to the occupation, a selective factor may be necessary to document a particular skill or proficiency that is required, reducing the likelihood of referring applicants who are unable to do the job.

Generally, the hiring manager works with HR to develop selective placement factors, and they become part of the crediting plan. They are also included in the job opportunity announcement. Applicants who do not meet a selective factor are not considered further in the application process. A brief summary of what is and is not a selective factor follows.¹

A selective factor is:

- A tool to screen applicants for a competency essential to satisfactory job performance. An applicant who does not meet a selective placement factor is “screened out” and eliminated from further consideration;
- Part of the minimum qualifications for a position. Accordingly, a selective factor must be consistent with the position description and supported by the job analysis;
- Approved by the hiring agency.² Typically, a selective factor is established by the servicing HR office, in consultation with the hiring manager or designated subject matter experts; and
- Usually geared to a specific ability (such as language fluency) or technical competency.

A selective factor is NOT:

- Readily acquired on the job. Any competency that an individual could gain quickly, through training or orientation, is not a proper selective factor;

¹ For more information on selective factors and quality ranking factors, see OPM’s Delegated Examining Operations Handbook (DEOH) and MSPB, “Selecting with Selective Factors,” *Issues of Merit* January 2008.

² One exception, as discussed in OPM’s DEOH, is a single-gender requirement (i.e., requiring that an applicant be of a particular sex) which must receive an exception from OPM.

- A tool to screen applicants for a competency or level of proficiency that is desirable but not essential. Desired attributes may only be used to sort applicants, not disqualify them;
- A means to establish a positive education requirement. For reasons of openness and job-relatedness, such a requirement (e.g., a 4-year college degree) can generally be established only by OPM, for a scientific, professional, or technical position;³ or
- A substitute for assessment. Selective factors, like qualification standards, are requirements rather than measurements.

Using selective factors appropriately will help the agency ensure that job applicants have the minimum required skills necessary to do the job. As such, using selective factors can save both applicants and agencies time and resources during the assessment process. Agencies will be able to screen out applicants who are not prepared for the job, and applicants will not spend time applying for a job they are not qualified to perform. ❖

³See 5 U.S.C. § 3308.

IN CASE YOU MISSED IT

Have you seen these recent MSPB publications? They are available at www.mspb.gov/studies

Studies:

Training & Development for the Senior Executive Service: A Necessary Investment

- Examines leadership training and development activities and recommends strategies for developing senior executives.

Studies Flash:

Performance Management is More Than an Appraisal

- Highlights issues and practices in performance management.

Fair and Open Competition: Competent Staff Required

- Discusses the importance of the role HR staff play in supporting merit-based hiring decisions.

Shared HR Services

(continued from page 1)

For example, in a 2011 survey, MSPB asked HR specialists and assistants whether they had worked on recruitment actions they thought were manipulated to provide an advantage to a candidate through:

- the period the vacancy was open;
- the area of consideration;
- the qualifications required of candidates;
- the duties of the position;
- the grade-level of the position;
- the use of selective factors;
- influencing other applicants to withdraw; or
- circumvention of veterans' preference.

For each of these items, the perception that recruitment actions were manipulated was higher among the HR staff who served more than one agency or department—as in a shared services arrangement—than those who did not. We cannot state definitively that distance between a hiring manager and HR provider reduces the fairness of HR actions, but the pattern of such perceptions should be a concern for agencies that use or are considering using the shared services business model.²

Communication between the customer and the service provider is critical during both the selection and delivery phases of the contract to make the shared services model work. When selecting a service provider, it is important to specify what the expectations for service delivery will be. Some providers operate under strict standard operating procedures while some customers desire more flexibility and involvement in the process. These issues should be discussed during the process of selecting the HR provider.

When a provider is selected from outside the agency, managing that relationship within the shared services arrangement can be challenging. While effective communication can occur at a distance, it requires more commitment to fostering a meaningful exchange and to setting clear expectations. Communication can be especially delicate when a manager purportedly seeks something that may be appropriate but appears to possibly be driven by an improper motive. Yet, candid

communication with hiring managers is a critical aspect of the job of HR advisors and processors. Candid communication can facilitate compliance with HR laws, as well as result in better outcomes for the shared services customer. There are several ways to ensure that this type of communication occurs.

On the customer side, the leadership of the customer agency should make it clear to the service provider and to its own hiring managers that the commission of prohibited personnel practices will not be tolerated. Leadership should communicate to the provider the methods it can use to alert the agency when a suspected prohibited practice may be occurring and advise hiring managers of the consequences they will face if they try to work around the rules.

On the service provider side, the provider's management chain should clearly communicate to its staff members that they will be supported if they fail to take actions that could result in the commission of a prohibited personnel practice. Management should further communicate to both staff and the customer that refusing to commit prohibited actions is not considered poor customer service, but rather the opposite—the opportunity to help hiring managers

select high-quality candidates while protecting the rights of applicants.

Another way to increase communication and achieve a good working relationship between the service provider and customer agency is to make sure the supervisor is involved with hiring activities. This is a recommendation from one of MSPB's previous studies in which we found that supervisors who were involved in these activities reported a greater level of overall satisfaction with the employees who were hired.³

In any servicing arrangement, better hiring outcomes are dependent upon open, on-going communication between hiring managers and HR staff. In a shared services arrangement, such avenues of communication become even more important to ensuring that the service provider and the customer work effectively toward the best outcome. ❖

...the perception that recruitment actions were manipulated was higher among the HR staff who served more than one agency or department—as in a shared services arrangement...

²MSPB, *The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs*, 2015, pp. 36-37.

³MSPB, *Federal Appointment Authorities—Cutting through the Confusion*, 2008, p. 32.



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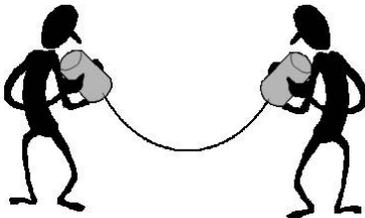
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