

UNITED STATES MERIT SYSTEMS PROTECTION BOARD



PERFORMANCE AND ACCOUNTABILITY REPORT



NOVEMBER 17, 2009

Foreword

The Merit Systems Protection Board (MSPB) presents its Performance and Accountability Report (PAR) for fiscal year 2009. This report contains the annual audited financial statement required by the Accountability of Tax Dollars Act (ATDA) and the annual performance report required by the Government Performance and Results Act (GPRA). The financial accountability report section of the PAR also includes the annual report on internal controls required by the Federal Managers' Financial Integrity Act (FMFIA). This report also includes information about MSPB appeals processing as required by Section 7701(i)(1) and (2) of Title 5 United States Code.

The PAR has been prepared in accordance with guidance provided by the Office of Management and Budget (OMB) and other sources. The MSPB PAR for FY 2009 was prepared by Government employees, except for the audit, which was conducted by independent auditors. The MSPB will duplicate and bind copies of the FY 2009 PAR sufficient for the November 16, 2009 distribution to the President, OMB, and Congress and will make the PAR available in electronic form on the MSPB website (www.mspb.gov). Additional copies of the PAR will be printed at a later date and may be ordered from the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419.

We invite our customers and stakeholders to provide comments to improve this report. Please send comments to:

Merit Systems Protection Board

ATTN: Comments on the PAR for FY 2009

1615 M Street, NW

Washington, DC 20419

Toll free: 1-800-209-8960

Fax: 202-653-7130

e-mail: mspb@mspb.gov

Table of Contents

Message from the Chairman.....	1
Management Discussion and Analysis	3
About the Merit Systems Protection Board.....	3
Performance Goals and Results.....	5
MSPB Fiscal Year 2009 Performance Results Summary	8
Analysis of Financial Statements	9
Systems, Controls and Legal Compliance	10
Trends and Issues.....	12
Program Performance Report	15
Adjudication Annual Performance.....	15
Summary.....	15
Annual Performance Goals and Results.....	16
Merit Systems Studies Annual Performance.....	20
Summary.....	20
Annual Performance Goals and Results.....	21
Management Support and Organizational Excellence Annual Performance	26
Summary.....	26
Annual Performance Goals and Results.....	26
Financial Accountability Report	33
Letter to the Auditor on Management Controls	34
Independent Auditor’s Report on the Financial Statements.....	39
Audited Financial Statements	40
Independent Auditor’s Report on Internal Control over Financial Reporting.....	55
Independent Auditor’s Report on Compliance with Laws and Regulations	56
Appendix: Abbreviations and Acronyms	57



THE MERIT SYSTEMS PROTECTION BOARD

Performance and Accountability Report for Fiscal Year 2009

MESSAGE FROM THE CHAIRMAN

It is my honor to submit the Fiscal Year (FY) 2009 Performance and Accountability Report (PAR) for the Merit Systems Protection Board (MSPB). I am pleased to report that the MSPB met or exceeded all of its program performance goals and received a clean audit of its financial statements for FY 2009. These achievements reflect the expertise and dedication of our employees with whom Vice Chairman Mary M. Rose and I are proud to serve.

The MSPB's role as the independent, bipartisan protector of the merit systems under which Federal employees work is essential to assuring the American people that their Federal civil servants are well-qualified to perform their duties and to effectively serve the public. The MSPB has two statutory functions—to provide for independent adjudication of appeals of personnel actions for over 2 million Federal employees, and to conduct studies of the merit systems and other Federal management issues to ensure employees are managed in accordance with the merit principles and free from prohibited personnel practices.

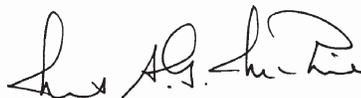
FY 2009 was another successful year for MSPB. MSPB regional, field, and headquarters offices exceeded three of the four targets for timely processing of initial appeals and petitions for review while maintaining the high quality of those decisions. We also exceeded a new target for the average case processing time for petitions for enforcement. The MSPB exceeded each of the three performance measures regarding the effective use of alternative dispute resolution to resolve appeals. The MSPB also exceeded the merit systems studies performance targets by completing study reports on such topics as addressing poor performers in the Federal Government, exploring the utility of job simulations in the employee selection process, the changing role of Federal supervisors, fair and equitable treatment in the Federal workforce, and addressing the performance management practices that drive employee engagement. The use of our automated appeals filing system, e-Appeal, continues to increase. In addition, we actively sought feedback from our stakeholders concerning how we can improve our operations and we continue to effectively manage our human capital, information management, and other support programs. The MSPB achieved a clean audit of its financial statements for the seventh consecutive year. These results are reported in detail in the program performance and financial accountability sections of this report.

The most significant issues affecting the MSPB's ability to carry out its mission to protect the Federal merit systems include changes and developments in appeal rights and management flexibilities, changing demographics of the Federal workforce, the Federal budget, and changes in MSPB staff and leadership positions. In particular, as the number of veterans who have served their country in major military conflicts continues to grow, the MSPB expects to continue to receive large numbers of cases under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans Employment Opportunities Act (VEOA) as these individuals seek redress for any alleged violation of their rights under these Acts. In addition, both houses of Congress have introduced measures that, if enacted, would increase MSPB's whistleblower appeals caseload. The MSPB is committed to meeting these future challenges by ensuring we use effective and efficient processes and by hiring and retaining the experienced staff we need to accomplish our mission.

Finally, this report provides a variety of legally required assurances regarding our performance and financial data, management controls, and financial systems. All data reported were obtained from final FY 2009 statistical reports from the agency's appeals case management system, audited FY 2009 financial reports, and reports submitted by the agency's program managers. In accordance with law and Office of Management and Budget (OMB) guidance, I have determined that the performance and financial data included in this report are complete and reliable. There are no material inadequacies or non-conformances in either the completeness or reliability of the performance or financial data. The MSPB has existing systems to ensure the completeness and reliability of the performance data used in this report and is using OMB guidance to review and continually improve these systems. In addition, following an assessment of MSPB's comprehensive management control program, I certify, with reasonable assurance, that MSPB's systems of accounting and internal control are in compliance with the provisions of the Federal Managers' Financial Integrity Act.

As my term ends, the MSPB will soon welcome a new Board Chairman and a Vice Chairman. They will join Board Member Rose, and once again bring the Board to full strength for most of FY 2010. I wish the Board continued success in fulfilling its vital mission of protecting the Federal merit systems and the rights of those who work within those systems.

Respectfully,



Neil A. G. McPhie
Chairman
November 10, 2009

MANAGEMENT DISCUSSION AND ANALYSIS

ABOUT THE MERIT SYSTEMS PROTECTION BOARD

THE MSPB MISSION

The mission of the Merit Systems Protection Board is:

To protect Federal merit systems and the rights of individuals within those systems.

The MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. In addition, the MSPB reviews the significant actions of the Office of Personnel Management (OPM) to assess the degree to which those actions may affect merit.

BOARD ORGANIZATION

The MSPB has three appointed Board members and approximately 225 employees assigned to headquarters and to its eight regional and field offices located throughout the United States.

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

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 MSPB. (The functions of this office are currently performed by administrative law judges at the National Labor Relations Board (NLRB) under a reimbursable 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 an administrative judge's (AJs) initial decision and in most other cases decided by the Board. The office 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 MSPB headquarters, rules on certain procedural matters, and issues MSPB's 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 and Privacy Act programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records and directives systems, legal research programs, and the Government in the Sunshine Act program.

The **Office of Equal Employment Opportunity (EEO)** plans, implements and evaluates MSPB's affirmative employment initiatives, advises MSPB's managers and supervisors on these initiatives, and advises and trains all employees on compliance with equal employment opportunity and civil rights laws. It provides informal and formal complaint processes and alternative dispute resolution processes to MSPB employees, former employees, and applicants for employment who allege employment discrimination and also provides similar processes to individuals who allege disability discrimination in their access to the MSPB's programs and activities. The office also reports agency complaints data and workforce demographics to Congress, the Equal Employment Opportunity Commission (EEOC), OPM, and other external stakeholders.

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 the MSPB. It develops and coordinates internal management programs and projects, including review of internal controls agency-wide. It also administers the agency's cross-servicing agreements with the U.S. Department of Agriculture National Finance Center for payroll services, the Department of the Treasury Bureau of the Public Debt for accounting services, and the U.S. Department of Agriculture Animal and Plant Health Inspection Service for human resources management services.

The **Office of the General Counsel (OGC)**, as legal counsel to the MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents the MSPB in litigation and prepares proposed decisions for the Board on compliance and other cases, coordinates MSPB's legislative policy and congressional relations functions, and requests to review OPM regulations. The office conducts MSPB's petition for review settlement program, drafts regulations, conducts MSPB's ethics program, and plans and directs audits and investigations. The office also provides administrative assistance to NLRB administrative law judges assigned to MSPB-related cases under the MSPB/NLRB interagency agreement.

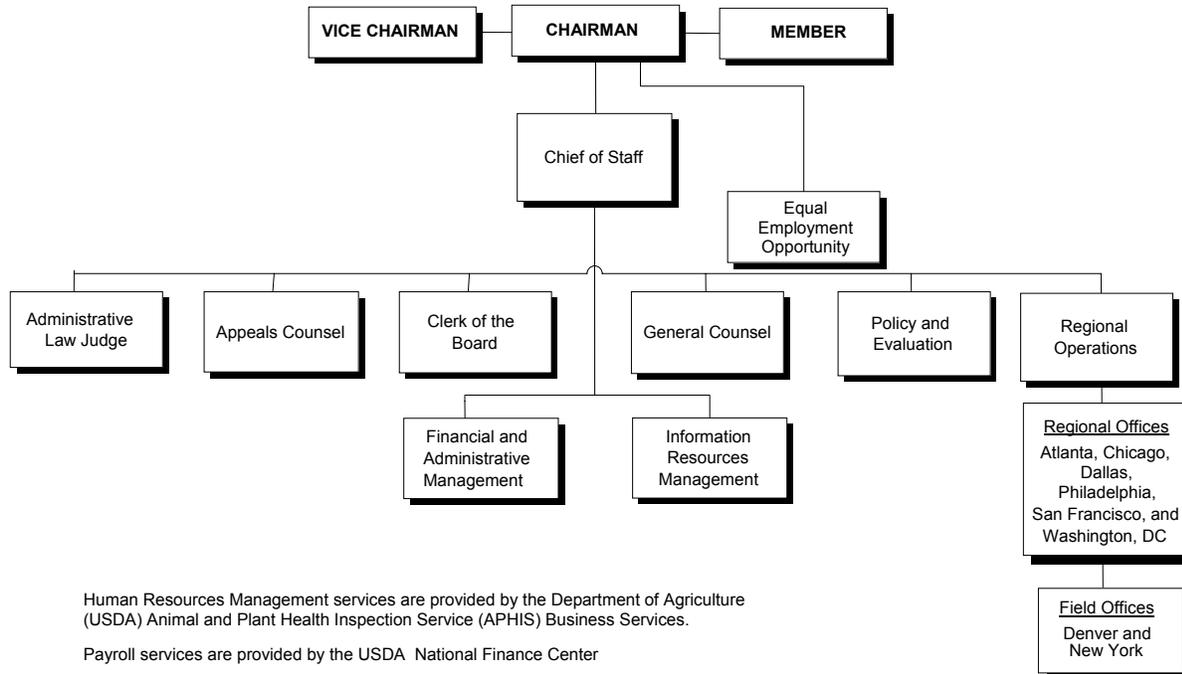
The **Office of Information Resources Management (IRM)** develops, implements, and maintains MSPB's automated information systems to help the agency manage its caseload efficiently and carry out its administrative and research responsibilities.

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. OPE also conducts special projects for the MSPB and has responsibility for preparing MSPB's program performance plans and reports including those required by the Government Performance and Results Act (GPRA).

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

ORGANIZATION CHART

U.S. Merit Systems Protection Board



Human Resources Management services are provided by the Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Business Services.

Payroll services are provided by the USDA National Finance Center

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

The functions of the Administrative Law Judge are performed by the National Labor Relations Board under a reimbursable interagency agreement

PERFORMANCE GOALS AND RESULTS

The MSPB Performance Plan for FY 2009 consisted of ten annual performance goals associated with the three strategic goals described in the agency's Strategic Plan for FY 2007-2012. The MSPB exceeded three and met the remaining seven of its ten annual performance goals. Highlights of our program performance for FY 2009 are presented below, the following table presents a summation of MSPB performance, and detailed performance information is presented in the program performance section of this report.¹

Strategic Plan Goal 1- Adjudication: To provide fair, high-quality, and timely adjudication of cases filed with the MSPB and to make effective use of alternative methods of dispute resolution in MSPB proceedings.

The MSPB exceeded two and met two of its adjudication performance goals for FY 2009. The performance goal for case processing timeliness was exceeded as MSPB processed initial decisions, petitions for review, and

¹ The performance goals and targets for FY 2009 are those described in the MSPB Performance Budget for Fiscal 2010 submitted to the Congress on February 5, 2009. The performance goals, measures and/or targets for FY 2010 have been revised and may be adjusted further based on action taken on the FY 2010 budget and other factors. The Final Performance Plan for FY 2010 will be completed by December 31, 2009.

petitions for enforcement ranging from 8 percent to 37 percent faster than the performance targets. In addition, 75 percent of initial appeals and 72 percent of petitions for review were decided within 110 days, exceeding the performance target of 50 percent. The performance goal for the use of alternative dispute resolution procedures was also exceeded. The rate of settlement of initial appeals that were not dismissed was 62 percent, exceeding the performance target of 50 percent. The rate of settlement of cases selected for the petition for review settlement program was 65 percent, exceeding the performance target of 25 percent. The number of cases mediated exceeded the performance target by 71 percent, and 55 percent of these cases were successfully resolved through mediation, exceeding the performance target of 50 percent.

The performance goal for issuing high-quality decisions was met as the percent of MSPB decisions that remained unchanged on review by the U.S. Court of Appeals for the Federal Circuit met the performance target of 92 percent, and the percent of cases decided by the Board on Petition for Review that were reversed and/or remanded to MSPB judges for a new decision was 5 percent (exceeding the performance target of 10 percent). The performance goal for customer satisfaction with MSPB adjudicatory and alternative dispute resolution programs and adjudication outreach efforts was also met as four automated surveys were implemented for various users of e-Appeal, MSPB's automated appeal filing system. Because of possible changes in appeal rights and management flexibilities, the FY 2010 performance targets for most adjudication measures will remain at FY 2009 levels.

Overall, the MSPB received 7,474 cases and processed 7,226 cases in FY 2009. Seventy-five percent of initial appeals were processed in 110 days or less (88 percent of initial appeals were processed in 120 days or less) and 72 percent of PFRs were processed in 110 days or less. The remaining 25 percent of initial appeals took more than 110 days to process (12 percent took more than 120 days to process), and 28 percent of PFRs took more than 110 days to process. Each case is adjudicated on its merits and in a manner consistent with the interests of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal.²

Strategic Plan Goal 2 – Merit Systems Studies: To conduct merit systems studies that support strong and viable merit systems that ensure the public's interest in a high-quality, professional workforce managed under the merit principles and free from prohibited personnel practices.

The MSPB exceeded one and met the remaining two merit systems studies performance goals. The MSPB completed studies addressing poor performers in the Federal Government, the utility of job simulations in employee selection processes, the changing role of supervisors, fair and equitable treatment in the Federal workforce, addressing the results of the 2007 Merit Principles Survey that focused on the performance management practices that drive employee engagement, and the FY 2008 MSPB Annual Report. Following many MSPB studies that advocated agencies put in place better procedures for recruiting, assessing, and communicating with job applicants, OPM included many of the recommendations in its end-to-end hiring process model as well as in instructions to agencies to improve their hiring processes. The MSPB testified before the House Armed

² In accordance with 5 USC 7701(i)(1) and (2), several factors may contribute to the length of time it takes to resolve a particular case. It takes time to issue notices, respond to discovery and other motions, subpoena documents, arrange for and question witnesses, present evidence, conduct a hearing and often to participate in alternative dispute resolution efforts. When there is good cause to do so, the parties may be granted additional time in an effort to preserve due process. Adjudication also may require more time when cases involve new, particularly complex, or numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, when Board members do not agree regarding the disposition of issues or cases, the need to resolve disagreements or prepare separate opinions may increase the time needed for adjudication.

Services Readiness Subcommittee about Government hiring practices and before the Defense Business Board regarding pay for performance. In FY 2010, the MSPB plans to complete six studies and issue four editions of the *Issues of Merit* newsletter. In addition, the MSPB will begin the administration of the 2010 Merit Principles Survey, develop a new research agenda to guide study topics through 2013, and continue to monitor the impact and usefulness of MSPB reports.

Strategic Plan Goal 3 - Management Support and Organizational Excellence: To achieve organizational excellence and strategically manage MSPB's human capital, information technology, and other internal systems and processes.

The MSPB met all three of the management support and organizational excellence performance goals. The numeric performance targets for the management of information resources were all exceeded, and MSPB continues to comply with information management regulatory requirements. MSPB is tracking its recruitment process from initial planning to the selected new employee's report date to determine what improvements can be made to this process and has instituted an electronic Official Personnel Folder allowing employees immediate access to their personnel records. Pilot testing of a new electronic purchase requisition system which will provide for a more efficient process has also begun. The MSPB also achieved an unqualified opinion on its financial audit for the seventh consecutive year. The FY 2010 performance targets for MSPB's human capital, information technology, and other internal programs reflect our intent to maintain or increase the performance results obtained in FY 2009.

MSPB FISCAL YEAR 2009 PERFORMANCE RESULTS SUMMARY

+ Performance goal exceeded
 ✓ Performance goal met
 ✗ Performance goal not met

STRATEGIC GOAL 1					
To provide fair, high-quality, and timely adjudication of cases filed with the MSPB and to make effective use of alternative methods of dispute resolution in MSPB proceedings.					
Performance Goal 1.1		Issue high quality decisions.	Selected Targets	Selected Results	
1.1.a	Percentage of MSPB decisions unchanged on review by the U.S. Court of Appeals for the Federal Circuit.		92% or more	92%	✓
1.1.b	Percent of cases decided by the Board on Petition for Review (PFR) that are reversed and/or remanded to MSPB judges for a new decision.		10% or less	5%	
Performance Goal 1.2		Issue timely decisions.			
1.2.a	Average case processing time for initial decisions.		90 days or less	83 days	+
1.2.b	Average case processing time for PFRs.		150 days or less	94 days	
1.2.c	Average case processing time for petitions for enforcement.		200 days or less	171 days	
1.2.d	Percentage of initial appeals decided within time standards.		50% or more	75%	
1.2.e	Percentage of PFRs decided within time standards.		50% or more	72%	
Performance Goal 1.3		Make effective use of alternative methods of dispute resolution.			
1.3.a	Maintain rate of settlement of initial appeals that are not dismissed at 50% or higher.		50% or higher	62%	+
1.3.b	Maintain rate of settlement of cases selected for the PFR settlement program at 25% or higher.		25% or higher	65%	
1.3.c	Number of cases mediated and percentage of cases successfully resolved through mediation procedures.		106 or more 50% or more	173 55%	
Performance Goal 1.4		Achieve and maintain customer satisfaction with our adjudicatory and alternative dispute resolution programs and with adjudication outreach efforts.			
1.4.a	Customer satisfaction with adjudication and alternative dispute resolution processes and with adjudication outreach efforts.				✓
STRATEGIC GOAL 2					
To conduct studies that support strong and viable merit systems that ensure the public's interest in a high-quality, professional workforce managed under the merit principles and free from prohibited personnel practices.					
Performance Goal 2.1		Conduct merit systems studies and recommend improvements to policy-makers and practitioners.			
2.1.a	Number and scope of MSPB reports and <i>Issues of Merit</i> newsletters issued.				+
2.1.b	Studies or study recommendations referenced in policy papers, professional literature, legislation and the media.				
Performance Goal 2.2		Assess the practice of merit in the workplace.			
2.2.a	Periodically conduct merit principles survey or other surveys to monitor and report on perceptions of merit in the workplace.				✓
Performance Goal 2.3		Achieve and maintain customer satisfaction with merit systems studies products and outreach efforts.			
2.3.a	Customer satisfaction with reports, newsletters, website and outreach efforts.				✓
STRATEGIC GOAL 3					
To achieve organizational excellence and strategically manage MSPB's human capital, information technology and other internal systems and processes.					
Performance Goal 3.1		Attract, develop and retain a high-quality, diverse and highly motivated workforce.			
3.1.a	Program managers agree that the right employees are in the right place to achieve results.				✓
3.1.b	MSPB managers and employees ensure that the agency's mission is enhanced by a diverse workforce.				
3.1.c	Customer satisfaction with internal human resources and Equal Employment Opportunity programs.				
3.1.d	Effectively implement human capital authorities and flexibilities.				
Performance Goal 3.2		Effectively use information technology to enhance organizational performance and efficiency, and provide access to and dissemination of MSPB information.			
3.2.a	Support e-Government objectives by increasing appeals and pleadings filed electronically.				✓
3.2.b	Improve customer service by conforming with established IRM service level agreements.				
3.2.c	Measure success in enhancing organizational performance and efficiency through IRM customer satisfaction surveys.				
3.2.d	Comply with information management regulatory requirements.				
Performance Goal 3.3		Effective and efficient operation of financial, budget and other support programs.			
3.3.a	Maintain accurate and legally sound budget accounts and accountings ledgers.				✓
3.3.b	Customer satisfaction of employees with other support programs.				

ANALYSIS OF FINANCIAL STATEMENTS

Improving financial management continues to be a high priority at the U.S. Merit Systems Protection Board (MSPB). It is an essential element in demonstrating accountability and enhancing services provided to the public. Financial improvements initiated by the MSPB have been driven by recent legislation and external initiatives, as well as by a strict, organizational belief that adherence to sound financial policies and procedures will directly enhance the efficiency and effectiveness of the agency. This is of particular importance in an era of financial uncertainty and tightening budgets. Pivotal to driving better performance results through enhanced financial management practices has been the MSPB's ongoing efforts to provide day-to-day decision-makers with reliable budgetary and cost information.

The principal financial statements summarize the MSPB's financial position, net cost of operations, and changes in net position, provide information on budgetary resources and financing, and present the sources and disposition of custodial revenues for FY 2009 and FY 2008. Highlights of the financial information presented in the principal financial statements are shown below.

FINANCIAL POSITION

The MSPB's Balance Sheet presents its financial position through the identification of agency assets, liabilities, and net position. The agency's total assets decreased from \$8.4 million in FY 2008 to \$7.4 million in FY 2009. The decrease in total assets is primarily attributable to MSPB's property, plant and equipment being recorded at original acquisition cost and then depreciated using the straight-line method over the estimated useful life of the asset. The agency did not experience major changes in liabilities during FY 2009. Liabilities totaled \$5.2 million at the end of FY 2008 and \$5 million in FY 2009. The agency's total net position at the end of FY 2009 was \$2.4 million.

NET COST OF OPERATIONS

The net cost of the MSPB operations for FY 2009 was \$43.6 million, an eight percent increase over the agency's FY 2008 cost of operations. In FY 2009, 81 percent of the MSPB's resources were spent on the adjudication program, which processed 7,226 cases during the year. About six percent of the agency's resources were devoted to the merit systems studies program, which conducts studies of the Federal personnel system and makes recommendations for its improvement. In addition, about thirteen percent of the MSPB's resources were spent on management support, which provides vital financial, administrative, information technology, and human resources services to the agency.

STATEMENT OF BUDGETARY RESOURCES

This statement reports the budgetary resources available to the MSPB during FY 2009 and FY 2008 to effectively carry out the activities of the agency, as well as the status of these resources at the end of each fiscal year. The MSPB had direct obligations of \$38.4 million in FY 2009, an increase of \$1.1 million over FY 2008.

LIMITATIONS ON THE PRINCIPAL FINANCIAL STATEMENTS

The principal financial statements have been prepared to report the financial position and results of operations of the entity, pursuant to the requirements of 31 U.S.C. 3515 (b). While the statements have been prepared from the books and records of the entity in accordance with GAAP for Federal entities and the formats prescribed by OMB,

the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

SUMMARY BY BUDGET ACTIVITY (DOLLARS IN THOUSANDS)						
	2008		2009		2010 (requested)	
Budget Activity	FTE	Amt	FTE	Amt	FTE	Amt
Adjudication	178	\$32,918	175	\$33,192	183	\$35,201
Merit Systems Studies	11	2,236	12	2,443	13	2,730
Management Support	28	4,501	30	5,209	30	4,987
TOTAL	217	\$39,655	217	\$40,844	226	\$42,918

SYSTEMS, CONTROLS AND LEGAL COMPLIANCE

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT

The 1950 Budget and Accounting Procedures Act (64 Stat. 832) requires Federal managers to establish and maintain adequate systems of management control, but because of numerous instances of fraud, waste, abuse, and mismanagement, Congress passed the Federal Managers Financial Integrity Act (FMFIA) of 1982. This Act requires the head of each Federal agency to conduct an annual evaluation of its management controls (Section 2) and financial management systems (Section 4) and to report the results to the President and Congress. OMB Circular A-123 on Management Accountability and Control and Circular A-127 on Financial Management Systems furnish guidance on complying with Sections 2 and 4, respectively. The Act also requires the Chairman to provide an assurance statement on the adequacy of management controls and conformance of financial systems with government-wide standards. The Chairman's assurance statement is contained in the transmittal letter.

In accordance with the FMFIA, the MSPB has established an internal management control system to ensure: (1) that obligations and costs comply with applicable law; (2) that assets are safeguarded against waste, loss, unauthorized use, or misappropriation; (3) that revenues and expenditures are properly recorded and accounted for; and (4) that expenditures are being made in accordance with the agency's mission and that they are achieving their intended results.

IMPROPER PAYMENTS ACT

Improved financial performance through the reduction of improper payments continues to be a key financial management focus of the Federal government. At the MSPB, developing strategies and the means to reduce improper payments is a matter of good stewardship. Accurate payments lower program costs. This is particularly important as budgets have become increasingly tight.

OMB originally provided Section 57 of Circular A-11 as guidance for Federal agencies to identify and reduce improper payments for selected programs. The Improper Payments Information Act of 2002 (IPIA) broadened the original erroneous payment reporting requirements to programs and activities beyond those originally listed in Circular A-11. In August 2006, OMB issued Circular A-123, Appendix C - Requirements for Effective Measurement and Remediation of Improper Payments.

The IPIA defines improper payments as those payments made to the wrong recipient, in the wrong amount, or used in an improper manner by the recipient. The IPIA requires a Federal agency to identify all of its programs that are of high risk for improper payments. It also requires the agency to implement a corrective action plan that includes improper payment reduction and recovery targets and to report annually on the extent of its improper payments for high risk programs and the actions taken to increase the accuracy of payments.

To coordinate and facilitate the MSPB's efforts under the IPIA, the Chief Financial Officer works with office directors to develop a coordinated strategy to perform annual reviews for all programs and activities susceptible to improper payments. This cooperative effort includes developing actions to reduce improper payments, identifying and conducting ongoing monitoring techniques, and establishing appropriate corrective action initiatives. The MSPB has determined that there is no significant risk of improper payments based on the review of its programs in FY 2009.

MANAGEMENT CONTROLS

The 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 the 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 the procedures may be inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

TRENDS AND ISSUES

The most significant trends or issues affecting the MSPB's ability to carry out its mission to protect the Federal merit systems include changes and developments in appeal rights and management flexibilities, changing demographics of the workforce, the Federal budget, and changes in MSPB staff and leadership positions.

CHANGES AND DEVELOPMENTS IN APPEAL RIGHTS AND MANAGEMENT FLEXIBILITIES

In FY 2009, the MSPB received a combined total of 1,072 cases (compared to 533 cases in FY 2008) under two related veterans' rights laws, the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans Employment Opportunities Act (VEOA). The MSPB expects to continue to receive large numbers of cases under these veterans' rights laws as our nation remains engaged in major military conflicts. Veterans who seek employment in the Federal civil service and are not hired have the right to seek redress for any alleged violation of their veterans' preference rights before the MSPB under the VEOA. Individuals who left employment in the Federal civil service to serve in the military have the right to reemployment in the Federal civil service, and to challenge the terms (or denial) of reemployment before the MSPB under USERRA. Considering the current employment outlook in the private sector, it is reasonable to expect that veterans who have a statutory preference in Federal hiring and those who have the right to reemployment in the Federal civil service will continue to seek to enforce their rights before the MSPB in large numbers.

Additionally, members of both houses of Congress have introduced legislation that, if enacted, would increase the MSPB's caseload in whistleblower appeals as well as increase the complexity of the processing of those appeals. One such bill, S. 372, the Whistleblower Protection Enhancement Act, would allow the MSPB to consider certain new kinds of retaliation claims; remove several existing exceptions to whistleblower protection; create a new category of whistleblowing; bring screeners employed by the Transportation Security Administration within the coverage of the Whistleblower Protection Act; and require that findings be made on certain issues in whistleblower cases that currently are not always made. According to the analysis of S. 372 provided to the Congressional Budget Office by MSPB, the bill would likely lead to 350 additional cases filed in the MSPB's regional offices each year, an additional 225 hearings per year, and an additional 64 case receipts at MSPB headquarters each year.

During FY 2009, the MSPB and the Office of Compliance signed an interagency Memorandum of Understanding (MOU) whereby the MSPB will provide mediation and hearing services for cases filed under the Congressional Accountability Act (CAA). The Office of Compliance is a non-partisan independent agency within the Legislative Branch that administers and enforces the CAA. Although these activities are not expected to significantly increase MSPB's workload, the MOU is noteworthy in that it extends the MSPB's decision-making authority to not only new cases and new employees, but also to a different branch of government.

The Americans with Disabilities Act (ADA) Amendments Act of 2008 became effective on January 1, 2009. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment. However, it changes the way these statutory terms should be interpreted. While discrimination claims alone are not appealable to the MSPB, such claims are frequently raised as affirmative defenses to actions that are appealable (thus known

as “mixed” cases). The broader interpretation and expanded rights afforded by the ADA Amendments Act will likely make some Board appeals more complex and may encourage additional claims. The EEOC issued proposed regulations in September 2009 implementing the law.

Effective October 1, 2008, the Department of Homeland Security (DHS) rescinded application of 5 CFR 9701, Subparts A-G, of the DHS Human Resources Management System. (73 FR 58435) DHS took this action pursuant to the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009, Public Law 110-329 (2008), which barred DHS from using funds appropriated in this act or any other appropriations act for the development, testing, deployment, or operation of any portion of the DHS personnel system. The MSPB subsequently amended its regulations by removing all DHS-specific provisions. (74 FR 9343) Therefore, all appeals to the MSPB from DHS employees will be adjudicated under the MSPB’s governmentwide regulations.

However, agencies continue to be interested in additional flexibilities. Therefore, we anticipate that the number of employees who will be managed under new, non-traditional human resources management systems will increase. In fact, although the National Defense Authorization Act for Fiscal Year 2010 (NDAA) (H.R. 2647) ended the Department of Defense’s National Security Personnel System, it encourages the Secretary of Defense to propose new personnel flexibilities. As employees move from traditional Title 5 positions to those governed by more flexible provisions and back again, it is possible that the MSPB could see an increase in its appeals workload as well as increased complexity in the various legal authorities and precedents used to decide these appeals. These changes also emphasize the need for MSPB to continue its study of Federal merit systems and human capital management practices to ensure the systems are operating in accordance with merit system principles and are free from prohibited personnel practices. Studying these new systems may also identify ways to improve the effectiveness and efficiency of Government operations.

These changes and developments in appeal rights and management flexibilities will make the MSPB’s ability to hire and retain skilled staff all the more critical. The MSPB effectively manages its increased workload through the increased application of technology to our work processes. The MSPB has undertaken pilot projects on the development of electronic case files and the use of electronic transcripts. Both projects provide benefits by giving MSPB employees the ability to access files from any computer. Both also provide the advantage of fully searchable records. When fully implemented, parties with internet access will also be able to access and search their case files.

CHANGING DEMOGRAPHICS OF THE FEDERAL WORKFORCE

The American Recovery and Reinvestment Act may result in a considerable amount of hiring by some Federal agencies. It appears that some of this hiring will be under appointing authorities that do not result in appeal rights, which may generate some appeals before MSPB arguing to the contrary. Of course, any additional hiring that does grant appeal rights may generate an increased number of appeals as well.

The proportion of retirement-eligible Federal employees continues to increase. While current economic conditions may delay the retirements of some of these Federal employees, it is still likely that retirements will increase in the next few years. As retirements increase, we might expect to see an increase in retirement-based appeals. The FY 2010 NDAA may provide an incentive to Federal employees covered by the Federal Employees Retirement System to retire sooner than they had anticipated due to a provision that allows them to claim service credit toward retirement for their sick leave balance. However, the NDAA also allows full-time Federal employees to end their careers in a part-time status without adversely affecting the amount of their annuity. This may be an incentive for employees to postpone their retirement and work in a part-time status.

As the government replaces retiring employees with relatively younger, less experienced employees, we are likely to see a decrease in the average age of the workforce. As this occurs, we may expect to see an increase in appeals because less experienced employees typically experience more appealable actions than do more experienced employees. It is not possible to predict exactly how these issues will play out over time. Therefore it is important for the MSPB to continue its efforts to hire and retain skilled adjudicatory, studies, management, and support staff.

THE FEDERAL BUDGET

Irrespective of the hiring that the American Recovery and Reinvestment Act may spur in some agencies, increasing budget pressures may result in a greater potential for other agencies to cut costs by decreasing the size of their workforce, reducing or freezing hiring, or reducing training. Reducing the workforce may lead to increases in the number of employees who are separated involuntarily through reductions in force (RIF). If historical trends are accurate, this will lead to potentially large increases in the number of appeals to the MSPB. Reductions in hiring and workforce training may also have long-term impacts on merit principles such as the efficiency and effectiveness of the workforce. It is important to understand the strategic long-term Federal workforce and merit systems implications of the methods used to control spending.

In addition, it is unclear how other factors related to changing economic conditions may affect the workforce. Employees may behave and perform better in an effort to keep their jobs. On the other hand, employees may experience more workplace conflict and other behavioral and performance issues due to the stress caused by economic conditions over which they have no control. It is not possible to predict exactly how these issues will unfold over time.

CHANGES IN MSPB LEADERSHIP POSITIONS AND BOARD MEMBERSHIP

Although Chairman Neil A. G. McPhie's term of appointment ended on March 1, 2009, statutory provisions permitted him to serve until a new Board Chairman has been nominated and confirmed by the Senate, but no later than one additional year (until March 1, 2010). The term of the current Board Vice Chairman, Mary M. Rose, extends until March 2011. As a new Board Chairman and Vice Chairman have been nominated by the President, it would appear that the MSPB will once again be at full strength for most of FY 2010. In addition, MSPB appointed a new Director of the Office of Appeals Counsel in FY 2009.

PROGRAM PERFORMANCE REPORT

ADJUDICATION ANNUAL PERFORMANCE

SUMMARY

Strategic Goal 1: To provide fair, high-quality and timely adjudication of cases filed with the MSPB and to make effective use of alternative methods of dispute resolution in MSPB proceedings.

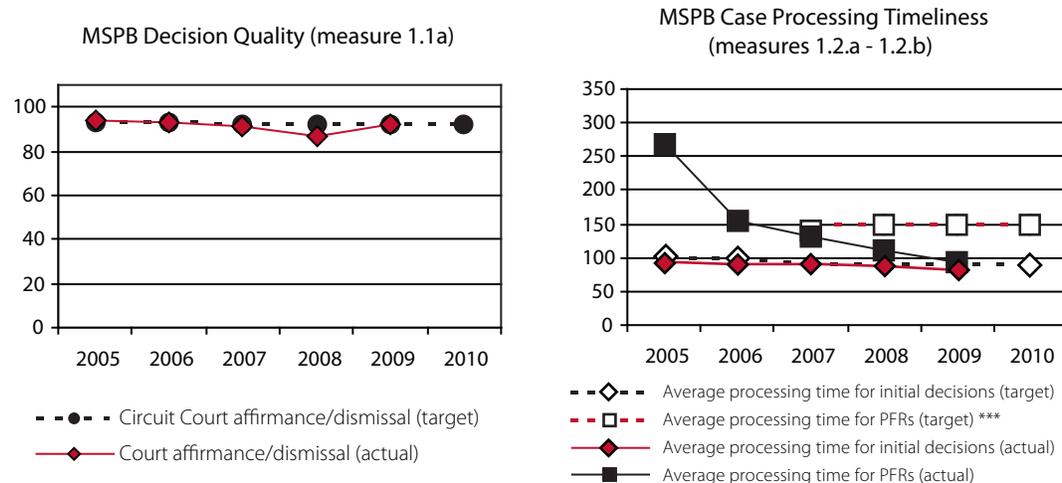
Annual Performance Goals

- 1.1 Issue high-quality decisions.
- 1.2 Issue timely decisions.
- 1.3 Make effective use of alternative methods of dispute resolution.
- 1.4 Achieve and maintain customer satisfaction with our adjudicatory and alternative dispute resolution programs and with adjudication outreach efforts.

Resources

	FY 2009 (ENACTED)	FY 2010 (REQUESTED)
Budget \$ (in thousands)	\$33,192	\$35,201
% of total MSPB budgetary resources	81	82

Selected Results (** New goal in FY 2007)



ANNUAL PERFORMANCE GOALS AND RESULTS

Performance Goal 1.1: Issue high quality decisions.

1.1.a: Percentage of MSPB decisions unchanged on review by the U.S. Court of Appeals for the Federal Circuit (Court dismisses case or affirms Board decision).

Results		Targets	
FY 2005	94%	FY 2009	92% or greater.
FY 2006	93%	FY 2010	92% or greater.
FY 2007	91%		
FY 2008	87%*		
FY 2009	92%		

* A significant number of cases were affected by the Court's decision in *Kirkendall v. Department of the Army*. Adjusting for these related decisions results in 94 percent of the cases left unchanged by the Court.

1.1.b: Percent of cases decided by the Board on Petition for Review (PFR) that are reversed and/or remanded to MSPB judges for a new decision, adjusted for those not due to error or oversight by the AJ.

Results		Targets	
FY 2005	7%	FY 2009	10% or fewer cases.
FY 2006	10%	FY 2010	10% or fewer cases.
FY 2007	9%		
FY 2008	6%		
FY 2009	5%		

Summary results for Performance Goal 1.1: This Performance Goal was **MET**. Ninety-two percent of MSPB decisions were unchanged on review by the U.S. Court of Appeals for the Federal Circuit, which was the FY 2009 performance target. The percent of cases decided by the Board on PFR that were reversed and/or remanded to MSPB judges, adjusted for those cases that were not due to an error or oversight by the AJ, was 5 percent, 50 percent fewer than the performance target of 10 percent. Changes in Court precedent that would affect multiple cases are rare, and there is considerable year-to-year variability in PFR remands and reversals. Therefore, the FY 2010 targets for these measures will remain set at FY 2009 levels.

Performance Goal 1.2: Issue timely decisions.

1.2.a: Average case processing time for initial decisions.

Results		Targets	
FY 2005	92 days	FY 2009	90 days or less.
FY 2006	89 days	FY 2010	90 days or less.
FY 2007	89 days		
FY 2008	87 days		
FY 2009	83 days		

Performance Goal 1.2

1.2.b: Average case processing time for petitions for review (PFRs).

Results

FY 2005 268 days
FY 2006 154 days
FY 2007 132 days
FY 2008 112 days
FY 2009 94 days

Targets

FY 2009 150 days or less.
FY 2010 150 days or less.

1.2.c: Average case processing time for petitions for enforcement (Headquarters only).

Results

FY 2005 New measure in FY 2008
FY 2006 New measure in FY 2008
FY 2007 New measure in FY 2008
FY 2008 Measure assessed and target established for FY 2009
FY 2009 171 days

Targets

FY 2009 200 days or less.
FY 2010 200 days or less.

1.2.d: Percentage of initial appeals decided within time standards.

Results

FY 2005 New measure in FY 2007
FY 2006 New measure in FY 2007
FY 2007 85% decided within 120 days
FY 2008 72% decided within 110 days
FY 2009 75% decided within 110 days

Targets

FY 2009 50% or more of cases decided within 110 days.
FY 2010 50% or more of cases decided within 110 days.

1.2.e: Percentage of PFRs decided within time standards.

Results

FY 2005 New measure in FY 2007
FY 2006 New measure in FY 2007
FY 2007 48% decided within 110 days
FY 2008 60% decided within 110 days
FY 2009 72% decided within 110 days

Targets

FY 2009 50% or more of cases decided within 110 days.
FY 2010 50% or more of cases decided within 110 days.

Summary Results for Performance Goal 1.2: This Performance Goal was **EXCEEDED**. The average case processing time for initial decisions was 83 days, or 8 percent faster than the target of 90 days. The average processing time for PFRs was 94 days, or 37 percent faster than the target of 150 days. The average case processing time for petitions for enforcement was 171 days, 15 percent faster than the target of 200 days. The proportion of initial appeals that were decided within 110 days was 75 percent, which exceeded the FY 2009 target of 50 percent. The proportion of PFRs closed within 110 days was 72 percent, which exceeded the FY 2009 target of 50 percent. Because of possible changes in appeal rights and management flexibilities, the FY 2010 targets for average case processing and percent of cases closed within time standards for both initial appeals and PFRs, as well as case processing time for petitions for enforcement, will remain set at FY 2009 levels.

Performance Goal 1.3: Make effective use of alternative methods of dispute resolution.

1.3.a: Maintain rate of settlement of initial appeals that are not dismissed at 50% or higher.

Results		Targets	
FY 2005	55%	FY 2009	50% success rate or higher.
FY 2006	58%	FY 2010	50% success rate or higher.
FY 2007	57%*		
FY 2008	54%		
FY 2009	62%		

* Figure provided for comparison purposes only. In FY 2007, MSPB reported the settlement rate for initial appeals and PFRs combined, which was 56%.

1.3.b: Maintain rate of settlement of cases selected for the PFR settlement program at 25% or higher.

Results		Targets	
FY 2005	47%	FY 2009	25% success rate or higher.
FY 2006	38%	FY 2010	25% success rate or higher.
FY 2007	23%*		
FY 2008	34%		
FY 2009	65%		

* Figure provided for comparison purposes only. In FY 2007, MSPB reported the settlement rate for initial appeals and PFRs combined, which was 56%.

Number of cases mediated and percentage of cases successfully resolved through mediation procedures.

Results		Targets	
FY 2005	83 cases mediated with a success rate of 48 percent.	FY 2009	Mediate 101 or more cases with a 50% or better success rate.
FY 2006	109 cases mediated with a success rate of 45 percent at the conclusion of MAP, and a success rate of 61 percent including cases that settled after returning to adjudication.	FY 2010	Mediate 106 or more cases with a 50% or better success rate.
FY 2007	100 cases were mediated with a success rate of 48 percent at the conclusion of MAP (48 settled cases), and a success rate of 67 percent including cases that settled after returning to adjudication (19 additional cases settled).		

Performance Goal 1.3.c:

FY 2008 147 cases were mediated with a success rate of 54 percent at the conclusion of MAP (79 settled cases), and a success rate of 71 percent including cases that settled after returning to adjudication (26 additional cases settled).

FY 2009 173 cases were mediated with a success rate of 55 percent at the conclusion of MAP, and a success rate of 62 percent including cases that settled after returning to adjudication.

Summary results for Performance Goal 1.3: This performance goal was **EXCEEDED**. The settlement rate of initial appeals that were not dismissed was 62 percent, which exceeded the performance target of 50 percent. The settlement rate of cases selected for the PFR settlement program was 65 percent, which exceeded the performance target of 25 percent. The number of cases mediated in FY 2009 was 173, which was 71 percent higher than the performance target of 101 cases. The success rate for MSPB's Mediation Appeals Program was 55 percent, which exceeded the performance target of 50 percent. There is considerable variability in the cases selected as appropriate for the PFR settlement and MAP programs as well as unpredictability of settlement successes. Therefore, the FY 2010 targets for the initial appeals, PFR, and MAP settlement rates will remain set at FY 2009 levels. The FY 2010 target for the number of cases mediated will be set at 106 or more cases.

Performance Goal 1.4: Achieve and maintain customer satisfaction with our adjudicatory and alternative dispute resolution programs and with adjudication outreach efforts.

1.4.a: Customer satisfaction with adjudication and alternative dispute resolution processes and with adjudication outreach efforts.

Results

FY 2005 New measure in FY 2007

FY 2006 New measure in FY 2007

FY 2007 Completed internal report on customer satisfaction with initial appeals and settlement processes which indicated that customers are satisfied with MSPB processes and their interactions with MSPB employees; feedback from e-Appeal users was positive, including many who reported encouraging all users in their agencies to file using e-Appeal.

FY 2008 Developed four automated surveys for e-Appeal customers including those who file appeals, use automated pleadings, use the repository, and those who created e-Appeal accounts but did not use the system to file their appeal.

FY 2009 The automated surveys for e-Appeal customers were implemented.

Targets

FY 2009 Implement the survey for e-Appeal customers.

FY 2010 Implement appropriate modifications to e-Appeal based on survey results.

Summary results for Performance Goal 1.4: This Performance Goal was **MET**. Four automated surveys for e-Appeal users were implemented in FY 2009. In FY 2010, MSPB will implement appropriate changes to e-Appeal based on feedback received through the surveys.

MERIT SYSTEMS STUDIES ANNUAL PERFORMANCE

SUMMARY

Strategic Goal 2 To conduct studies that support strong and viable merit systems that ensure the public's interest in a high-quality, professional workforce managed under the merit principles and free from prohibited personnel practices.

Annual Performance Goals

- 2.1 Conduct merit systems studies and recommend improvements to policy-makers and practitioners.
- 2.2 Assess the practice of merit in the workplace.
- 2.3 Achieve and maintain customer satisfaction with merit systems studies products and outreach efforts.

Resources

	FY 2009 (ENACTED)	FY 2010 (REQUESTED)
Budget \$ (in thousands)	\$2,443	\$2,730
% of total MSPB budgetary Resources	6	6

Selected Results

Significant impact

- Improved Federal hiring by advocating better applicant recruitment, assessment, and communication procedures.
- Increased attention to the importance of employee engagement on agency outcomes and strategies for improving engagement.
- Improved performance management practices.

Select recent studies (beginning with most recent)

- As Supervisors Retire: An Opportunity to Re-Shape Organizations
- Job Simulations: Trying Out for a Federal Job
- Addressing Poor Performers and the Law
- Managing for Engagement: Communication, Connection, and Courage
- Merit Systems Protection Board Annual Report for FY 2008
- The Federal Government: A Model Employer or a Work in Progress?
- The Power of Federal Employee Engagement
- Alternative Discipline: Creative Solutions for Agencies to Effectively Address Employee Misconduct
- Federal Appointment Authorities: Cutting Through the Confusion
- In Search of Highly Skilled Workers: A Study on the Hiring of Upper Level Employees From Outside the Federal Government
- Attracting the Next Generation: A Look at Federal Entry-Level New Hires

Performance Goal 2.1: Conduct merit systems studies and recommend improvements to policy-makers and practitioners.

2.1.a: Number and scope of MSPB reports and *Issues of Merit* newsletters issued.

Results

FY 2005 Published 2 internal reports on the PFR process and HR customer satisfaction, and 4 external reports including the FY 2004 Annual Report and reports on the probationary period, the Federal Career Intern Program, and reference checks; published the MSPB Performance and Accountability Report (PAR) for FY 2004 within the new 45-day timeline; completed 2 other merit systems reports that were in final review at the end of the fiscal year; published 4 editions of the *Issues of Merit* newsletter; increased focus on internal Board and adjudication issues by completing important studies of the PFR process and HR customer satisfaction, and by making significant progress on an internal study of the initial appeals and settlements processes.

FY 2006 Published 8 reports and 4 editions of the *Issues of Merit* newsletter. Report topics included: designing effective pay-for-performance compensation systems, managing contracting officer representatives to achieve positive contract outcomes, reforming Federal hiring, the symposium on the practice of merit, the effect of *Van Wersch* and *McCormick* on the probationary period, study of initial appeals and settlements (internal report), the MSPB FY 2005 Annual Report and the MSPB FY 2005 PAR; completed reports on the 2005 Merit Principles Survey (MPS), baseline data for DHS, baseline data for the Department of Defense (DoD), and a draft of the MSPB Strategic Plan for FY 2007-2012.

FY 2007 Published a report on the results of the 2005 Merit Principles Survey and 4 editions of the *Issues of Merit* newsletter; completed a report on Federal entry-level new hires and four internal reports; published MSPB's FY 2006 Annual Report, FY 2006 PAR, FY 2007-2012 Strategic Plan, and FY 2007 (revised) - FY 2008 (final) Performance Plan; received Board Member approval for a new research agenda covering the 2008-2010 time period.

FY 2008 Published reports on hiring upper-level employees from outside the Federal Government, the use of various hiring authorities, Federal employee engagement, the use of alternative discipline in Federal agencies, a longitudinal analysis of prior Merit Principles Surveys, the MSPB FY 2007 Annual Report, and four editions of the *Issues of Merit* newsletter. Completed three internal reports including a report outlining MSPB Human Capital Survey results for the public that was placed on the MSPB website. Assessed the scope of study reports and selected research topics from the existing research agenda.

FY 2009 Completed reports on addressing poor performers in the Federal Government, the utility of job simulations in employee selection, an examination of how the role of the supervisor is changing, fair and equitable treatment in the Federal workforce, a summary report of the FY 2007 Merit Principles Survey results

that focuses on performance management practices that drive employee engagement, and the FY 2008 MSPB Annual Report. Completed an internal report summarizing MSPB's Annual Employee Survey data, and published four editions of the *Issues of Merit* newsletter. Assessed the scope of study reports and selected research topics from the existing research agenda.

Targets

FY 2009 Complete 6 reports and 4 editions of the newsletter; assess scope of studies and newsletters; evaluate and select future research topics from those approved in FY 2007.

FY 2010 Complete 6 reports and 4 editions of the newsletter; assess scope of studies and newsletters; develop a new research agenda for approval by the Board Members.

2.1.b: Studies or study recommendations referenced in policy papers, professional literature, legislation and the media.

Results

FY 2005 Reviewed alternative measures of impact of studies and began pilot test using customer survey card inserts in reports and began review of current vacancy announcements to assess the impact of the vacancy announcement report.

FY 2006 Used customer feedback survey cards in hard copy reports and an online version for web-based users to help assess usefulness and impact of studies; continued review of vacancy announcements including projected cost impacts; continued to collect information about use of MSPB study findings and recommendations as reports are referenced in policy papers, professional literature, legislation, and the media.

FY 2007 Evaluated the feedback provided by customers through both report feedback cards and web-based surveys concerning study reports and the OPE newsletter; collected information concerning MSPB report findings and recommendations through references in the professional literature, legislation, and the media which included a presentation on referencing MSPB reports at the Annual Conference of the American Society for Public Administration.

FY 2008 Tracked references of findings and recommendations in the policy, professional literature, legislation, and the media. Following a 2006 Board decision and previous MSPB study reports, OPM strongly advised agencies against using the Outstanding Scholar and Bilingual/Bicultural hiring authorities. Citing the COR report, OMB set new standards for training and development of COTRs. Following publication of two previous Board reports, OPM revised regulations regarding procedural and appeal rights of individuals serving a probationary or trial period. Testified by invitation before the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on recruiting and hiring the next generation of Federal employees.

FY 2009 Tracked references of findings and recommendations in policy, professional literature, legislation, and the media. Following numerous MSPB studies that advocate better applicant recruitment, assessment, and communication, OPM included many of MSPB's recommendations in its end-to-end hiring process as well as instructions to agencies on how to improve job announcements and hiring processes. Following the release of two employee engagement studies, numerous requests were received for more information about engagement from Federal agencies, Congress, oversight agencies such as OMB and GAO, good-Government groups, and the media. Testified by invitation before the House Armed Services Readiness Subcommittee about government hiring practices and before the Defense Business Board about pay for performance. Findings and recommendations of studies were highlighted by numerous media outlets, including the *Washington Post*, *Federal Times*, *Government Executive*, Federal News Radio, and others.

Targets

FY 2009 Continue to track and evaluate mechanisms for measuring the impact of studies and newsletters.

FY 2010 Continue to track and evaluate mechanisms for measuring the impact of studies and newsletters.

Summary results for Performance Goal 2.1: This Performance Goal was **EXCEEDED**. The MSPB exceeded its target for the number of completed reports by completing seven reports and four editions of the newsletter. The FY 2009 impact of MSPB reports included the adoption by OPM of many long-standing MSPB recommendations in their instructions to agencies on improving Federal hiring. The MSPB was one of the first agencies to demonstrate a linkage between employee engagement and agency outcomes, and interest in this topic among Federal decision makers continues to grow. The number of studies and reports varies each year, so the target for number of reports and editions of the newsletter will remain the same for FY 2010. The MSPB will continue to track and evaluate ways to measure the impact of studies and newsletters in FY 2010.

Performance Goal 2.2: Assess the practice of merit in the workplace.

2.2.a: Periodically conduct merit principles survey (MPS) or other surveys to monitor and report on perceptions of merit in the workplace.

Results

FY 2005 Successfully completed largest and first electronic web-based MPS distributed to 80,000 employees; used this automated capability to refine questions and provide agency Chief Human Capital Officers (CHCOs) the option to use the MPS to meet their FY 2005 statutory survey requirement; similar options were built into OPM's implementing guidance for the survey requirement.

FY 2006 Completed three reports using data from the 2005 MPS including a baseline report on DHS and a baseline report on DoD; collected data from OPM's Central Personnel Data File (CPDF) on DHS and DoD to monitor the impact of personnel system changes; collaborated with the Senior Executive Association (SEA) on the annual survey requirement followed by SEA proposing legislation

which included a requirement to use the MSPB MPS in alternate years to the OPM Human Capital Survey; began planning a survey to assess the practice of merit and prohibited personnel practices related to equitable treatment.

FY 2007 Published a report on the FY 2005 MPS; began electronic administration of the FY 2007 MPS which included assisting several agencies in meeting their statutory requirement for conducting an annual survey of their workforce; began electronic administration of a separate survey to investigate career advancement issues in the Federal workforce.

FY 2008 Completed the administration of the governmentwide 2007 MPS which included assisting a number of agencies in meeting their statutory requirements for conducting an annual survey of their workforce by providing them with their survey results for posting on their agency websites; completed a report on longitudinal MPS results including those from the 2007 MPS; completed administration of the governmentwide career advancement survey and began analysis of the results; determined that planning should begin for a governmentwide administration of the next MPS to be administered in FY 2010.

FY 2009 Completed a report on the findings from the 2007 MPS, focusing on improving Federal performance management practices; completed the administration of a Governmentwide telework survey and began analysis of the results; administered surveys to Federal proposing and deciding officials of suspension and removal actions in nine agencies and completed a report on addressing poor performers using this data; completed a report on fair and equitable treatment using survey data from the 2007 career advancement survey; completed agency interrogatories regarding how agencies use qualification standards and job simulations; began planning for the MPS 2010 administration.

Targets

FY 2009 Continue to assess the practice of merit and prohibited personnel practices in agencies; begin the planning phase for a governmentwide administration of the Merit Principles Survey in FY 2010.

FY 2010 Continue to assess the practice of merit and prohibited personnel practices in agencies; Conduct a version of the Merit Principles Survey. Draft a report on the 2009 telecommuting survey.

Summary results for Performance Goal 2.2: This performance goal was **MET**. The MSPB completed a report on the 2007 MPS and began working with a contractor to plan the 2010 MPS. The MSPB also completed administration of surveys and agency interrogatories about telework, addressing poor performance, qualification standards, and agency assessment practices. In FY 2010, we will continue to assess the practice of merit through surveys and other methods.

Performance Goal 2.3: Achieve and maintain customer satisfaction with merit systems studies products and outreach efforts.

2.3.a: Customer satisfaction with reports, newsletters, website, and outreach efforts.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Collected and analyzed feedback from customers concerning their satisfaction with MSPB reports, newsletters, our website, and outreach efforts using a variety of methods including discussions with stakeholders, responses received from feedback cards distributed with reports and information obtained directly from users of the website; used this information to inform the development of our research agenda for FY 2008-FY 2010, improve the quality, usefulness and impact of our reports and newsletters, and completely redesigned our website to make it more accessible and helpful to potential users.

FY 2008 Collected and analyzed feedback from customers concerning their satisfaction with MSPB reports, newsletters, the studies website, and outreach efforts using a variety of methods including discussions with stakeholders, responses received from feedback cards distributed with reports, outreach feedback and information obtained directly from users of our website.

FY 2009 Collected and analyzed feedback from customers concerning their satisfaction with MSPB reports, newsletters, the studies website, and outreach efforts using a variety of methods including discussions with stakeholders, outreach feedback, and information obtained directly from users of our website. In addition, we began administering a survey of newsletter readers to obtain feedback on the quality, content, and utility of *Issues of Merit*. To date, the feedback about the newsletter has been very positive. We will continue collecting feedback and use the information to improve the publication in FY 2010.

Targets

FY 2009 Use feedback on quality, usefulness, and impact of reports to maintain or improve the readability of reports, make improvements to the MSPB website, and to begin the formation of our new research agenda. Evaluate feedback received from agency presentations and outreach efforts.

FY 2010 Use feedback on quality, usefulness, and impact of reports to maintain or improve the readability of reports, and to make improvements to the MSPB website. Use feedback received from the *Issues of Merit* survey, as appropriate, to improve the newsletter. Evaluate feedback received from agency presentations and outreach efforts. Seek feedback from stakeholders to inform the development of the FY 2010-2013 research agenda.

Summary results for Performance Goal 2.3: This Performance Goal was **MET**. The MSPB used a variety of methods to collect customer feedback about the quality and usefulness of its study reports, and developed a survey of *Issues of Merit* readers. In FY 2010, the MSPB will use this feedback to improve the newsletter and will also seek feedback from stakeholder groups to inform the development of the FY 2010-2013 research agenda.

MANAGEMENT SUPPORT AND ORGANIZATIONAL EXCELLENCE ANNUAL PERFORMANCE

SUMMARY

Strategic Goal 3 To achieve organizational excellence and strategically manage MSPB’s human capital, information technology, and other internal systems and processes.

Annual Performance Goals

- 3.1** Attract, develop, and retain a high-quality, diverse, and highly motivated workforce.
- 3.2** Effectively use information technology to enhance organizational performance and efficiency, and provide appropriate access to and dissemination of MSPB information.
- 3.3** Effective and efficient operation of financial, budget, and other support programs.

Resources

	FY 2009 (ENACTED)	FY 2010 (REQUESTED)
Budget \$ (in thousands)	\$5,209	\$4,987
% of total MSPB budgetary resources	13	12

ANNUAL PERFORMANCE GOALS AND RESULTS

Performance Goal 3.1: Attract, develop, and retain a high-quality, diverse, and highly motivated workforce.

3.1.a: Program managers agree that the right employees are in the right place to achieve results.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 The MSPB placed as the second “Best Places to Work in Government” in the small agency category; Office Directors focused on specific issues relevant to their offices; increased use of structured interviews resulted in a better comparative assessment of the qualifications of the best qualified candidates.

FY 2008 Implemented an exit interview questionnaire and refined vacancy announcements to be more user-friendly and better able to attract the right applicants for the targeted position.

FY 2009 Due to low employee turnover in FY 2009, one annual assessment was completed with no areas of concern referenced in the exit interview questionnaire. Also, the MSPB increased its use of electronic hiring software to improve the timeliness of the hiring process. The Executive Resources Board recommended and secured three training slots at the OPM Federal Executive Institute as part of MSPB’s training program, including the Senior Management Fellows Program. A variety of health and wellness programs were provided for employees throughout the year.

Targets

FY 2009 Prepare semi-annual assessments based on the exit interview questionnaire.

FY 2010 Review assessment process based on results of hiring makeover project to include timely hiring process, user-friendly vacancy announcements, and exit interview questionnaire.

3.1.b: MSPB managers and employees ensure that the agency's mission is enhanced by a diverse workforce.

Results

FY 2005-2007 New measure in FY 2008.

FY 2008 Developed and implemented a Unity Day celebration and various special emphasis initiatives to improve inclusiveness, and respect for and appreciation of individual differences among employees; improved employee opportunities by notifying them about career advancement seminars and opportunities offered by affinity groups, and by working with managers to add inclusiveness in crediting plans and target vacancies toward minority populations; used data audits and other tools to assess effectiveness of diversity initiatives.

FY 2009 The delivery of Special Emphasis Observance Programs was enhanced with presentations from noted speakers on Federal workplace diversity issues such as generational differences and sexual orientation. Awareness and appreciation of diversity in its broadest context was promoted through these programs and other communications to all employees. Strategies were developed for achieving diverse applicant pools and for proposing training plans that will assist employees with achieving their best in accomplishing the agency's mission and assist managers and supervisors with managing a diverse workforce. Training and developmental opportunities were offered to employees, largely from affinity groups; a new collateral duty Disability Program Coordinator was recruited; an EEO & Diversity Training Policy was developed; and an expansion of the mission and goals of the Office of EEO to include a focus on diversity was proposed.

Targets

FY 2009 Develop and implement diversity initiatives that improve the inclusiveness of the work environment and employment opportunities, and emphasize the value of respecting and appreciating individual differences among employees; utilize EEO workforce data audits, surveys, and performance management assessments to assess the awareness and effectiveness of diversity initiatives.

FY 2010 Update, develop, implement, and evaluate measurement goals or indicators (i.e., EEO policies, hiring and training practices, reasonable accommodations, climate surveys, exit surveys, special emphasis observance programs, representation turnover, turnover costs, participation in vendor fairs) for achieving diversity and inclusiveness in the broadest context (including language proficiency and cultural backgrounds) across all occupations and grade levels.

3.1.c: Customer satisfaction with internal human resources (HR) and Equal Employment Opportunity (EEO) programs.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Informal interviews with employees suggested a high level of satisfaction with HR programs; staffing actions handled by the APHIS servicing personnel office met or exceeded governmentwide standards; hired a new HR Director and detailed an employee to serve as the Acting EEO Director to replace the previous Director who transferred to another agency.

FY 2008 Administered internal HR and EEO customer satisfaction surveys. Convened a team of employees to recommend changes to MSPB's hiring process and prepared a report containing a number of recommended initiatives for the Chairman's review and comment.

FY 2009 Feedback received from senior management concerned communication regarding the year-end procurement process which will be further addressed in FY 2010. The MSPB implemented a hiring make-over team to review hiring processes and procedures and make recommendations on options to our hiring process with a goal of more timely, efficient hiring procedures. The team is currently tracking the recruitment process from initial planning to onboard.

Targets

FY 2009 Increase customer satisfaction among senior officials, managers, and employees by 5 percent based on feedback from internal customer surveys and recommendations from the team convened to review the hiring process.

FY 2010 TBD based on FY 2009 results of hiring makeover project.

3.1.d: Effectively implement human capital authorities and flexibilities.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Forwarded employee OPFs to contractor for scanning and began using the electronic Official Personnel Folder (e-OPF) for all new employees; received provisional certification from OPM on our SES Performance Appraisal System; HR Director visited APHIS Service Center to discuss operational processes and opportunities for change.

FY 2008 Updated the interagency agreement between APHIS and MSPB to better reflect the service needs of the agency; received full certification of our SES Performance Management Plan from OPM which was endorsed by OMB.

FY 2009 The e-OPF was implemented which allows MSPB employees immediate

access to their personnel information. Arranged an on-site pre-retirement seminar for MSPB employees, conducted two brown-bag lunch seminars on human resources topics, and detailed MSPB health and wellness initiatives in a report to OMB that was selected as a template for other agency submissions. No modification of the SES Performance Appraisal System was required due to a full certification evaluation of the current plan by OPM.

Targets

FY 2009 Continue to comply with new and existing program requirements; review and evaluate HR delegations and authorities to determine if additional authorities may be delegated to managers; evaluate and modify SES Performance Appraisal System based on FY 2008 results.

FY 2010 Continue to comply with new and existing program requirements; retain full certification of SES Performance Management Plan; evaluate first year of the e-OPF program.

Summary results for Performance Goal 3.1: This Performance Goal was **MET**. The MSPB increased its use of automated hiring tools to improve the timeliness of the hiring process, tracked the recruitment process from initial planning to onboarding, implemented e-OPF, worked to increase the awareness and appreciation of diversity within its workforce, and provided a variety of health and wellness programs to its employees. The FY 2010 targets reflect MSPB's plan to maintain its management of human capital and EEO programs.

Performance Goal 3.2: Effectively use information technology to enhance organizational performance and efficiency, and provide appropriate access to and dissemination of MSPB information.

3.2.a: Support e-Government objectives by increasing appeals and pleadings filed electronically.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 29% of initial appeals filed were filed electronically through e-Appeal (1763/5991).

FY 2008 37% of initial appeals were filed electronically (2,175/5,891). E-Appeal was selected as a finalist for the FY 2008 Web Managers Best Practice Award and listed as one of the 10 great .GOV websites by *Government Computer News* magazine.

FY 2009 39% of initial appeals were filed electronically (2,546/6,586), and 28% of pleadings were filed electronically (11,156/40,276).

Targets

FY 2009 35% or more of initial appeals are filed electronically and 25% or more of pleadings are submitted electronically.

FY 2010 40% or more of initial appeals are filed electronically and 28% or more of pleadings are submitted electronically.

3.2.b: Improve customer service by conforming with established IRM service level agreements (SLA).

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 88% of technical support tickets (or requests) were resolved in one business day.

FY 2008 87% of the 4,120 technical support tickets were resolved in one business day.

FY 2009 88% of the 3,589 technical support tickets were resolved in one business day. In addition, 2,877 tickets were resolved from external customers.

Targets

FY 2009 88% of tickets resolved within one business day.

FY 2010 86% of tickets resolved within one business day.

3.2.c: Measure success in enhancing organizational performance and efficiency through IRM customer satisfaction surveys.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Conducted an internal IRM customer satisfaction survey; 86% of the 64 MSPB staff who responded to the survey indicated they were satisfied or very satisfied with IRM meeting their needs.

FY 2008 89% of the 89 survey respondents were satisfied or very satisfied with IRM meeting their needs.

FY 2009 86% of the 116 survey respondents were satisfied or very satisfied with IRM meeting their needs.

Targets

FY 2009 84% or more of MSPB staff who respond to the survey will report being satisfied or very satisfied with IRM meeting their needs.

FY 2010 85% or more of MSPB staff who respond to the survey will report being satisfied or very satisfied with IRM meeting their needs.

3.2.d: Comply with information management regulatory requirements.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Federal Information Security Management Act (FISMA) compliance was reviewed by an outside contractor and the final FISMA report was submitted to OMB; 100% of MSPB employees completed annual security awareness training; remained in full compliance with FISMA, HSPD-12, and IPv6 (Internet Protocol Version 6).

FY 2008 Complied with FISMA including 100% of MSPB employees completing security awareness training, completion of FISMA security audit, and submission of annual FISMA report. Complied with requirements for e-Gov Act, IPv6, TIC (Trusted Internet Connections), Networx, and FDCC (Federal Desktop Core Configuration).

FY 2009 Began tracking FISMA Plan of Action and Milestones tasks on a weekly basis and continued to work with auditors on the FISMA report as the deadline was postponed by OMB due to new reporting requirements. To minimize vulnerabilities from further virus attacks, servers were established at Headquarters, the regions, and field offices to download and apply Microsoft patches, all PCs and servers were upgraded to the Symantec latest antivirus client version, and servers were programmed to push virus definition files to all PCs and servers on a daily basis. Potential disaster recovery sites were visited and we obtained a commitment from one site to host MSPB servers. Other compliance activities included the Networx transition and its associated statement of work, TIC (Trusted Internet Connections), and DNSSEC (Domain Name Service Security).

Targets

FY 2009 Comply with FISMA and other regulatory requirements.

FY 2010 Comply with information management regulatory requirements.

Summary results for Performance Goal 3.2: This Performance Goal was **MET**. The percent of initial appeals and pleadings that were filed electronically in FY 2009 both exceeded the performance targets for the year. Thirty-nine percent of initial appeals were filed electronically (the performance target was 35 percent) and 28 percent of pleadings were filed electronically (the performance target was 25 percent). The proportion of technical support tickets resolved within the service level agreement of one business day met the performance target of 88 percent. In addition, MSPB resolved 2,877 technical support tickets from external customers. The response rate to the internal customer satisfaction survey continues to improve. The FY 2009 response rate was 30 percent higher than the FY 2008 response rate, which was itself 39 percent higher than the FY 2007 response rate. Eighty-six percent of the FY 2009 respondents were satisfied or very satisfied, which exceeded the performance target of 84 percent. The MSPB also complied with FISMA and other regulatory information resources requirements. FY 2010 performance targets include 40 percent or more of initial appeals filed electronically and 28 percent or more of pleadings submitted electronically. Given the large amount of tickets that are being resolved from external sources, the FY 2010 target for tickets resolved within one business day is 86 percent. The performance target for internal MSPB staff satisfaction with IRM meeting their needs is 85 percent. In FY 2010, the MSPB will also continue to comply with information management regulatory requirements.

Performance Goal 3.3: Effective and efficient operation of financial, budget and other support programs.

3.3.a: Maintain accurate and legally sound budget accounts and accountings ledgers.

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Achieved unqualified opinion on the FY 2006 financial audit; maintained accurate, up-to-date budget and accounting ledgers; began update of internal Financial Management Manual.

FY 2008 Achieved unqualified opinion on the FY 2007 financial audit.

FY 2009 Achieved unqualified opinion on the FY 2008 financial audit.

Targets

FY 2009 Achieve unqualified opinion on the annual financial audit.

FY 2010 Achieve unqualified opinion on the annual financial audit.

3.3.b: Customer satisfaction of employees with other support programs (i.e., payroll, travel, printing and procurement).

Results

FY 2005-2006 New measure in FY 2007.

FY 2007 Used customer feedback to review and update support program manuals; issued new procurement manual; began update of Time and Attendance; hired new travel coordinator and a second employee as a procurement specialist.

FY 2008 Completed an internal customer satisfaction survey for other management programs and an additional survey of MSPB Administrative Management staff.

FY 2009 Customer satisfaction has increased by 10% for most support programs except in one area in procurement regarding issues with spending during the fourth quarter. These issues will be addressed in the next fiscal year. The MSPB began pilot testing a new electronic purchase requisition system which will provide for a more efficient procurement process and better tracking of orders from inception of order to receipt of item. Agency video conferencing equipment was updated to include Internet Protocol access which will allow MSPB to connect to sites that were previously unavailable with the older equipment.

Targets

FY 2009 Increase customer satisfaction by 10% over FY 2008 results. Develop methods to disseminate information in a more timely manner and provide more human resources management training to staff.

FY 2010 Develop and administer an updated customer satisfaction survey; initiate an electronic procurement requisition system.

Summary results for Performance Goal 3.3: This Performance Goal was **MET**. The MSPB achieved an unqualified opinion on its FY 2008 financial audit and increased customer satisfaction with most of its administrative support programs. In FY 2010, the MSPB will achieve an unqualified opinion on its FY 2009 financial audit and will continue to increase customer satisfaction with its administrative support programs.

FINANCIAL ACCOUNTABILITY REPORT



U.S. MERIT SYSTEMS PROTECTION BOARD

Financial and Administrative Management
1615 M Street, NW
Washington, DC, DC 20036

Phone: (202) 653-6772, ext. 1119; Fax: (202) 653-7831; E-Mail: charlie.roche@mspb.gov

Message from the Chief Financial Officer

I am pleased to present the U.S. Merit Systems Protection Board (MSPB) financial statements for fiscal year 2009 and to report that the MSPB has earned an unqualified opinion on its FY 2009 consolidated financial statements. I am also particularly pleased to report that, once again, under the leadership of our Chairman, Neil A.G. McPhie, no material weaknesses were identified in the auditor's report on internal controls. We are proud of our accomplishments in receiving this unqualified opinion as it validates our efforts in preserving the integrity of our financial reporting.

The MSPB has partnered with the Department of the Treasury Bureau of Public Debt (BPD) in Parkersburg, West Virginia since 1992. BPD, designated by the Office of Management and Budget as a Center of Excellence, is responsible for handling our administrative payments and preparing our financial statements. Through its franchise operation, BPD has provided us with timely and complete reports to satisfy our day-to-day operating needs as well as the reporting requirements for Congress, our auditors, and other external reviewing organizations.

This working relationship between MSPB and BPD has facilitated the agency's compliance with all external reporting requirements. The timeliness and completeness of the reports allow us to operate more efficiently and to identify and correct any potential problems quickly. Reports and communications between MSPB and BPD are virtually all electronic, in compliance with the President's Management Agenda initiative to increase the use of e-government applications.

We take our financial accountability seriously and are committed to strengthening our financial performance in accordance with the Presidential Management Agenda initiative.

While we are proud of our accomplishment of unqualified opinions for the past seven years, we are committed to continue our work on improving our financial management performance during the coming years while efficiently accomplishing the mission of MSPB – to protect Federal merit systems and the rights of individuals within those systems.

A handwritten signature in cursive script that reads "Charles J. Roche".

Charles Roche
Chief Financial Officer
November 13, 2009

LETTER TO THE AUDITOR ON MANAGEMENT CONTROLS



U.S. MERIT SYSTEMS PROTECTION BOARD

1615 M Street, NW
Washington, DC, DC 20036

Phone: (202) 653-7263; Fax: (202) 653-7831

November 9, 2009

Mr. Tyrone Brown, CPA
Managing Member
Brown & Company CPAs, PLLC
1101 Mercantile Lane
Suite 122
Largo, MD 20774

Dear Mr. Brown:

This letter is in connection with your audit of the U.S. Merit Systems Protection Board's Principal Statements (also referred to as "financial statements") as of September 30, 2009 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, 2009.

Certain representations in this letter are described as being limited to matters that are material. For purposes of this letter, matters are considered material if they involve \$426,000 or more. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

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 periods 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:
 - a. financial records and related data,
 - b. where applicable, Board of Directors minutes or summaries of actions of recent meetings for which minutes have not been prepared, and
 - c. 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. The U.S. Merit Systems Protection Board 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 U.S. Merit Systems Protection Board is contingently liable have been properly reported or disclosed.
8. Related-party transactions and related receivables or payables, including assessments, loans, transfers, and guarantees have been appropriately recorded and disclosed.
9. All intra-entity transactions and activities 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 asset, liability and revenue amounts as required by OMB Bulletin 97-01, as amended.

Page 3 of 5

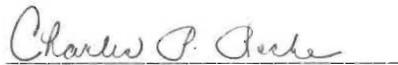
10. There are no:
 - a. violations or possible violations of laws and regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency,
 - b. unasserted claims or assessments that are probable of assertion and must be disclosed, that have not been disclosed, or
 - c. material liabilities or gain or loss contingencies that are required to be accrued or disclosed, that have not been disclosed.
11. Management acknowledges its responsibility for the design and implementation of programs and controls to prevent and detect fraud. We confirm that management has no:
 - a. knowledge of any fraud or suspected fraud affecting the organization involving management, employees who have significant roles in internal control, and others, where the fraud could have a material effect on the financial statements.
 - b. knowledge of any allegations of fraud or suspected fraud affecting the organization received in communications from employees, former employees, analysts, regulators, short-sellers, or others.
12. Pursuant to the Federal Managers' Financial Integrity Act, we have assessed the effectiveness of the U.S. Merit Systems Protection Board's internal control in achieving the following objectives:
 - a. reliability of financial reporting – transactions are properly recorded, processed, and summarized to permit the preparation of the Principle Statements and Required Supplementary Stewardship Information in accordance with accounting standards generally accepted in the United States of America, and that assets are safeguarded against loss from unauthorized acquisition, use, or disposition;
 - b. 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

- c. 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.
13. 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.
 14. We have assessed the financial management systems to determine whether they comply substantially with these Federal management systems requirements. Our assessment was based on guidance issued by OMB.
 15. The financial management systems complied substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the SGL at the transaction level as of September 30, 2009.
 16. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
 17. We are responsible for the U.S. Merit Systems Protection Board’s compliance with applicable laws and regulations.
 18. 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.
 19. We believe that the effects of the uncorrected financial statement misstatements summarized in the accompanying schedule (if any) are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.
 20. No events have occurred subsequent to the date of the statement of financial position that would require adjustment to, or disclosure in, the financial statements.
 21. No material events or transactions have occurred subsequent to September 30, 2009 that have not been properly recorded in the financial statements and required supplementary stewardship information or disclosed in the notes thereto.
 22. We have used the materiality threshold of \$426,000 for reporting items in this management representation letter. Items below this threshold would not be considered exceptions or reported as such in the representation letter.

23. The information presented on the agency's Statement of Budgetary Resources agrees with the information submitted on the agency's year-end Reports on Budget Execution and Budgetary Resources (SF 133). This information will be used as input for the fiscal year 2009 actual column of the Program and Financing Schedules reported in the fiscal year 2009 Budget of the U.S. Government. Such information is supported by the related financial records and related data.



Neil A.G. McPhie
Chairman



Charles P. Roche
Chief Financial Officer

INDEPENDENT AUDITOR'S REPORT ON THE FINANCIAL STATEMENTS



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 (MSPB) as of September 30, 2009 and 2008, and the related statements of net cost, changes in net position, and budgetary resources, for the years then ended (collectively referred to as the financial statements). These financial statements are the responsibility of MSPB's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *U.S. Government Auditing Standards*, issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 07-04 require that we plan and perform the audit to obtain reasonable assurance about whether the financial 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 audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the MSPB as of September 30, 2009 and 2008 and its net costs, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *U.S. Government Auditing Standards* and OMB Bulletin No. 07-04, we have also issued a report dated November 13, 2009 on our consideration of the MSPB internal control over financial reporting and its compliance with provisions of laws and regulations. Those reports are an integral part of an audit performed in accordance with *U.S. Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

The MSPB's Management's Discussion & Analysis contains a wide range of information, some of which is not directly related to the financial statements. We do not express an opinion on this information. However, we compared this information for consistency with the financial statements and discussed the methods of measurement and presentation with MSPB officials. Based on this limited work, we found no material inconsistencies with the financial statements, U.S. generally accepted accounting principles, or OMB guidance.

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

Largo, Maryland
November 13, 2009

LARGO
1101 MERCANTILE LANE, SUITE 122
LARGO, MD 20774
(240) 492-1400 • FAX: (301) 773-2090
mail@brownco-cpas.com

RICHMOND
1504 SANTA ROSA ROAD, SUITE 107
RICHMOND, VA 23229
(804) 288-2006 • FAX: (804) 288-2233
tdavis@brownco-cpas.com

AUDITED FINANCIAL STATEMENTS

U. S. MERIT SYSTEMS PROTECTION BOARD
BALANCE SHEET
AS OF SEPTEMBER 30, 2009 AND 2008
(In Dollars)

	2009	2008
Assets:		
Intragovernmental:		
Fund Balance With Treasury (Note 2)	\$ 7,046,543	\$ 7,144,161
Accounts Receivable (Note 3)	3,566	2,314
Total Intragovernmental	7,050,109	7,146,475
Accounts Receivable (Note 3)	2,133	3,538
Property, Equipment, and Software (Note 4)	363,296	1,253,007
Total Assets	\$ 7,415,538	\$ 8,403,020
Liabilities:		
Intragovernmental:		
Accounts Payable	\$ 44,954	\$ 744,605
Other (Note 6)	385,661	323,508
Total Intragovernmental	430,615	1,068,113
Accounts Payable	302,674	251,185
Federal Employee and Veterans' Benefits	556,448	477,688
Other (Note 6)	3,676,919	3,414,806
Total Liabilities	\$ 4,966,656	\$ 5,211,792
Net Position:		
Unexpended Appropriations - Other Funds	\$ 5,189,555	\$ 4,807,211
Cumulative Results of Operations - Other Funds	(2,740,673)	(1,615,983)
Total Net Position	\$ 2,448,882	\$ 3,191,228
Total Liabilities and Net Position	\$ 7,415,538	\$ 8,403,020

The accompanying notes are an integral part of these financial statements.

U. S. MERIT SYSTEMS PROTECTION BOARD
STATEMENT OF NET COST
FOR THE YEARS ENDED SEPTEMBER 30, 2009 AND 2008
(In Dollars)

	2009	2008
Program Costs: (Note 9)		
Adjudication:		
Gross Costs	\$ 36,901,074	\$ 36,954,647
Less: Earned Revenue	8,725	2,579,000
Net Program Costs	\$ 36,892,349	\$ 34,375,647
Other Programs:		
Management Support:		
Gross Costs	\$ 4,802,539	\$ 4,380,045
Net Program Costs	\$ 4,802,539	\$ 4,380,045
Merit System Studies:		
Gross Costs	\$ 1,926,510	\$ 1,796,264
Net Program Costs	\$ 1,926,510	\$ 1,796,264
Net Cost of Operations	\$ 43,621,398	\$ 40,551,956

The accompanying notes are an integral part of these financial statements.

U. S. MERIT SYSTEMS PROTECTION BOARD
STATEMENT OF CHANGES IN NET POSITION
FOR THE YEARS ENDED SEPTEMBER 30, 2009 AND 2008
(In Dollars)

	2009	2008
Cumulative Results of Operations:		
Beginning Balances	\$ (1,615,983)	\$ 834,998
Budgetary Financing Sources:		
Appropriations Used	37,836,123	36,187,704
Transfers In/Out Without Reimbursement	2,579,000	-
Other Financing Sources (Non-Exchange):		
Imputed Financing Sources	2,081,585	1,913,271
Total Financing Sources	42,496,708	38,100,975
Net Cost of Operations	43,621,398	40,551,956
Net Change	(1,124,690)	(2,450,981)
Cumulative Results of Operations	\$ (2,740,673)	\$ (1,615,983)
Unexpended Appropriations:		
Beginning Balances	\$ 4,807,211	\$ 4,460,316
Budgetary Financing Sources:		
Appropriations Received	38,811,000	37,507,000
Other Adjustments	(592,533)	(972,401)
Appropriations Used	(37,836,123)	(36,187,704)
Total Budgetary Financing Sources	382,344	346,895
Total Unexpended Appropriations	\$ 5,189,555	\$ 4,807,211
Net Position	\$ 2,448,882	\$ 3,191,228

The accompanying notes are an integral part of these financial statements.

U. S. MERIT SYSTEMS PROTECTION BOARD
STATEMENT OF BUDGETARY RESOURCES
FOR THE YEARS ENDED SEPTEMBER 30, 2009 AND 2008
(In Dollars)

	2009	2008
Budgetary Resources:		
Unobligated Balance:		
Unobligated Balance Brought Forward, October 1	\$ 2,064,072	\$ 2,358,121
Recoveries of Prior Year Unpaid Obligations	613,845	527,160
Budget Authority		
Appropriation	38,811,000	37,507,000
Spending Authority From Offsetting Collections		
Earned		
Collected	5,159	2,579,000
Change In Receivables From Federal Sources	3,566	-
Expenditure Transfers From Trust Funds	2,579,000	-
Subtotal	41,398,725	40,086,000
Less: Permanently Not Available	592,533	972,401
Total Budgetary Resources	\$ 43,484,109	\$ 41,998,880
Status of Budgetary Resources:		
Obligations Incurred		
Direct	\$ 38,436,003	\$ 37,355,808
Reimbursable	2,587,725	2,579,000
Subtotal	41,023,728	39,934,808
Unobligated Balance		
Apportioned	554,686	431,152
Unobligated Balance Not Available	1,905,695	1,632,920
Total Status of Budgetary Resources	\$ 43,484,109	\$ 41,998,880
Change in Obligated Balance:		
Obligated Balance, Net		
Unpaid Obligations, Brought Forward, October 1	\$ 5,080,089	\$ 4,307,118
Obligations Incurred Net	41,023,728	39,934,808
Less: Gross Outlays	40,900,244	38,634,677
Less: Recoveries of Prior Year Unpaid		
Obligations, Actual	613,845	527,160
Change In Uncollected Customer Payments		
From Federal Sources	(3,566)	-
Obligated Balance, Net, End of Period		
Unpaid obligations	4,589,728	5,080,089
Less: Uncollected Customer Payments From		
Federal Sources	3,566	-
Total, Unpaid Obligated Balance, Net, End of Period	\$ 4,586,162	\$ 5,080,089
Net Outlays:		
Net Outlays:		
Gross Outlays	\$ 40,900,244	\$ 38,634,677
Less: Offsetting Collections	2,584,159	2,579,000
Net Outlays	\$ 38,316,085	\$ 36,055,677

The accompanying notes are an integral part of these financial statements.

U.S. Merit Systems Protection Board

Notes to the Financial Statements

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The U.S. 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 MSPB 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. The MSPB reporting entity is comprised of General Funds and General Miscellaneous Receipts.

General Funds are accounts used to record financial transactions arising under congressional appropriations or other authorizations to spend general revenues. General Fund Miscellaneous Receipts are accounts established for receipts of non-recurring activity, such as fines, penalties, fees and other miscellaneous receipts for services and benefits.

The MSPB has rights and ownership of all assets reported in these financial statements. We do not possess any non-entity assets.

B. Basis of Presentation

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, and the status and availability of budgetary resources of the MSPB. The statements are a requirement of the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994 and the Accountability of Tax Dollars Act of 2002. They have been prepared from, and are fully supported by, the books and records of the MSPB in accordance with the hierarchy of accounting principles generally accepted in the United States of America, standards approved by the principals of the Federal Accounting Standards Advisory Board (FASAB), OMB Circular A-136, *Financial Reporting Requirements* and the MSPB accounting policies which are summarized in this note. These statements, with the exception of the Statement of Budgetary Resources, are different from financial management reports, which are also prepared pursuant to OMB directives that are used to monitor and control the MSPB's use of budgetary resources.

C. Budgets and Budgetary Accounting

Congress usually enacts appropriations to permit the MSPB to incur obligations for specified purposes. In fiscal years 2009 and 2008, we were accountable for General Fund appropriations. We recognize budgetary resources as assets when cash (funds held by the U.S. Treasury) is made available through the Department of Treasury General Fund warrants.

D. Basis of Accounting

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds.

E. Revenues & Other Financing Sources

Congress enacts annual, multi-year, and no-year appropriations to be used, within statutory limits, for operating, capital and grant expenditures. Additional amounts are obtained from service fees and reimbursements from other government entities and the public.

Appropriations are recognized as a financing source when expended. Revenues from service fees associated with reimbursable agreements are recognized concurrently with the recognition of accrued expenditures for performing the services.

We recognize as an imputed financing source the amount of accrued pension and post-retirement benefit expenses for current employees paid on our behalf by the Office of Personnel Management (OPM).

F. Taxes

The MSPB, as a Federal entity, is not subject to Federal, State, or local income taxes, and, accordingly, no provision for income taxes has been recorded in the accompanying financial statements.

G. Fund Balance with Treasury

The U.S. Treasury processes cash receipts and disbursements. Funds held at the Treasury are available to pay agency liabilities. The MSPB does not maintain cash in commercial bank accounts or foreign currency balances. Foreign currency payments are made either by Treasury or the Department of State and are reported by the MSPB in the U.S. dollar equivalents.

H. Accounts Receivable

Accounts receivable consists of amounts owed to the MSPB by other Federal agencies and the public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts receivable from the public is established when, based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay.

I. Property, Equipment, and Software

Property, equipment and software represent furniture, fixtures, equipment, and information technology hardware and software which are recorded at original acquisition cost and are depreciated or amortized using the straight-line method over their estimated useful lives. Major alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred. The MSPB's capitalization threshold is \$50,000 for individual purchases and \$500,000 for bulk purchases. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, equipment, and software.

Leasehold improvements are depreciated over the period of the lease. The useful life classifications for all other capitalized assets are as follows:

Description	Useful Life (years)
Office Equipment	10
IT Software	5

J. Advances and Prepaid Charges

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable agreements, subscriptions and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

K. Liabilities

Liabilities represent the amount of monies or other resources likely to be paid by the MSPB as a result of transactions or events that have already occurred. No liability can be paid, however, absent an appropriation or other funding. Liabilities for which an appropriation has not been enacted or other funds received are, therefore, classified as not covered by budgetary resources. There is no certainty that the appropriation will be enacted. Additionally, the Government, acting in its sovereign capacity, can abrogate liabilities. Liabilities not covered by budgetary resources on the Balance Sheet are equivalent to amounts reported as components requiring or generating resources on the Reconciliation of Net Cost to Budget.

L. Accounts Payable

Accounts payable consists primarily of amounts owed to other Federal agencies and the public for contracts for goods or services, such as leases, utilities, telecommunications and consulting and support services.

M. Annual, Sick, and Other Leave

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. The balance in the accrued leave account is adjusted to reflect current pay rates. Liabilities associated with other types of vested leave, including compensatory, restored leave, and sick leave in certain circumstances, are accrued at year-end, based on latest pay rates and unused hours of leave. Funding will be obtained from future financing sources to the extent that current or prior year appropriations are not available to fund annual and other types of vested leave earned but not taken. Nonvested leave is expensed when used. Any liability for sick leave that is accrued but not taken by a Civil Service Retirement System (CSRS)-covered employee is transferred to the Office of Personnel Management upon the retirement of that individual. No credit is given for sick leave balances upon the retirement of Federal Employees Retirement System (FERS)-covered employees.

N. Accrued and Actuarial Workers' Compensation

The Federal Employees' Compensation Act (FECA) administered by the U.S. Department of Labor (DOL) addresses all claims brought by the MSPB employees for on-the-job injuries. The DOL bills each agency annually as its claims are paid, but payment of these bills is deferred for two years to allow for funding through the budget process. Similarly, employees that the MSPB terminates without cause may receive unemployment compensation benefits under the unemployment insurance program also administered by the DOL, which bills each agency quarterly for paid claims. Future appropriations will be used for the reimbursement to DOL. The liability consists of (1) the net present value of estimated future payments calculated by the DOL, and (2) the unreimbursed cost paid by DOL for compensation to recipients under the FECA.

O. Retirement Plans

The MSPB employees participate in either the CSRS or the FERS. The employees who participate in CSRS are beneficiaries of the MSPB's contribution, equal to seven percent of pay, distributed to their annuity account in the Civil Service Retirement and Disability Fund.

FERS went into effect on January 1, 1987. FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired prior to January 1, 1984 elected to join either FERS and Social Security, or remain in CSRS. FERS offers a savings plan to which the MSPB automatically contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, the MSPB also contributes the employer's matching share of Social Security.

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

The MSPB recognizes the imputed cost of pension and other retirement benefits during the employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and communicate these factors to the MSPB for current period expense reporting. OPM also provides information regarding the full cost of health and life insurance benefits. The MSPB recognized the offsetting revenue as imputed financing sources to the extent these expenses will be paid by OPM.

The 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 OPM.

P. Use of Estimates

The preparation of the accompanying financial statements in accordance with generally accepted accounting principles requires management to make certain estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses. Actual results could differ from those estimates.

Q. 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. The MSPB recognized imputed costs and financing sources in fiscal years 2009 and 2008 to the extent directed by OMB.

R. Contingencies

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. The MSPB recognizes contingent liabilities, in the accompanying balance sheet and statement of net cost, when it is both probable and can be reasonably estimated. The MSPB discloses contingent liabilities in the notes to the financial statements when the conditions for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the U.S. Treasury rather than from the amounts appropriated to the MSPB for agency operations. Payments from the Judgment Fund are recorded as an "Other Financing Source" when made.

S. Expired Accounts and Cancelled Authority

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account in 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 cancelled.

NOTE 2. FUND BALANCE WITH TREASURY

Fund balance with Treasury account balances as of September 30, 2009 and 2008 were as follows:

Fund Balances:

	2009	2008
Appropriated Funds	\$ 7,046,543	\$ 7,144,161
Total	\$ 7,046,543	\$ 7,144,161

Status of Fund Balance with Treasury:

	2009	2008
Unobligated Balance		
Available	\$ 554,686	\$ 431,152
Unavailable	1,905,695	1,632,920
Obligated Balance Not Yet Disbursed	4,586,162	5,080,089
Total	\$ 7,046,543	\$ 7,144,161

NOTE 3. ACCOUNTS RECEIVABLE

Accounts receivable balances as of September 30, 2009 and 2008 were as follows:

	2009	2008
Intragovernmental		
Accounts Receivable	\$ 3,566	\$ 2,314
With the Public		
Employee Recievable	2,133	3,538
Total Accounts Receivable	\$ 5,699	\$ 5,852

Historical experience has indicated that the majority of the receivables are collectible. There are no material uncollectible accounts as of September 30, 2009 and 2008.

NOTE 4. PROPERTY, EQUIPMENT, AND SOFTWARE

Property, equipment, and software account balances as of September 30, 2009 and 2008 were as follows:

Schedule of Property, Equipment, and Software as of September 30, 2009

Major Class	Acquisition Cost	Accumulated Amortization/Depreciation	Net Book Value
Leasehold Improvements	\$ 1,702,413	\$ 1,341,217	\$ 361,196
Furniture & Equipment	73,776	73,776	-
IT Software	9,415,576	9,413,476	2,100
Total	\$ 11,191,765	\$ 10,828,469	\$ 363,296

Schedule of Property, Equipment, and Software as of September 30, 2008

Major Class	Acquisition Cost	Accumulated Amortization/Depreciation	Net Book Value
Leasehold Improvements	\$ 1,703,459	\$ 1,162,090	\$ 541,369
Furniture & Equipment	73,776	67,321	6,455
IT Software	9,415,576	8,710,393	705,183
Total	\$ 11,192,811	\$ 9,939,804	\$ 1,253,007

NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on the MSPB’s Balance Sheet as of September 30, 2009 and 2008 include liabilities not covered by budgetary resources. Congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

	2009	2008
Intragovernmental – FECA	\$ 136,718	\$ 101,570
Annual Leave	2,412,935	2,295,585
Actuarial FECA	556,448	477,688
Total Liabilities	\$ 3,106,101	\$ 2,874,843

NOTE 6. OTHER LIABILITIES

All Other Liabilities are considered current liabilities.

	2009	2008
Intragovernmental Liabilities		
FECA Liability	\$ 136,718	\$ 101,570
Payroll Taxes Payable	248,943	211,938
Other Post-Employment Benefits Due and Payable	-	10,000
Total Intragovernmental Liabilities	\$ 385,661	\$ 323,508

	2009	2008
With the Public		
Payroll Taxes Payable	\$ 38,212	\$ 43,550
Accrued Funded Payroll and Leave	1,225,772	1,075,671
Unfunded Annual Leave	2,412,935	2,295,585
Total Public Liabilities	\$ 3,676,919	\$ 3,414,806

NOTE 7. LEASES

Operating Leases

The MSPB occupies office space or warehouse space at four locations with lease agreements that are accounted for as operating leases. The first lease for office space (MSPB Headquarters) began on June 1, 2000 and expires on May 31, 2010. The agency pays annual rent of \$1,504,295, increased by 3% per annum beginning with the first anniversary of the lease commencement date. There was an additional \$2.50 per rentable square foot (RSF) increase in the escalated square foot rate in the beginning of the sixth lease year. Operating costs are subject to annual adjustments, based on the percentage change in the Cost of Living Index. The second lease for office space (Washington Regional Office) began on September 15, 2000 and expires on September 14, 2010. The agency pays annual rent of \$152,216, increased annually by 2.5% of the prior year's adjusted annual rent beginning with the first anniversary of the lease commencement date, except in year six. In year six (in lieu of the 2.5% increase), there was a \$1.50 increase per RSF over the adjusted annual rent per RSF paid in the previous twelve months. Operating costs are subject to annual adjustments, based on the percentage change in the Cost of Living Index. The third agreement (Denver Field Office) began on November 1, 2001 and expires on December 31, 2011. The agency pays annual rent of \$98,802, increased each year by 2% of the prior year's adjusted annual rent beginning with the first anniversary of the lease commencement date. Operating costs are subject to annual adjustments, based on the percentage change in the Cost of Living Index. The fourth lease (Washington, DC warehouse) began on April 1, 2003 and expires on March 31, 2013. The agency pays annual rent of \$22,800, increased each year by 4% beginning with the first anniversary of the lease commencement date. The MSPB also makes annual lump sum payments to cover its share of increases in real estate taxes over taxes paid for the calendar year in which its Headquarters and Washington Regional Office leases commenced (base year). Below is a schedule of future payments for the terms of the leases.

Fiscal Year	Buildings
2010	\$ 1,781,411
2011	154,059
2012	63,284
2013	16,226
Total Future Payments	\$ 2,014,980

The operating lease amounts do not include estimated payments for leases with annual renewal options.

Note: Future minimum lease payments are based on estimated Cost of Living Index adjustments.

NOTE 8. CONTINGENT LIABILITIES

The MSPB records commitments and contingent liabilities for legal cases in which payment has been deemed probable and for which the amount of potential liability has been estimated, including certain judgments that have been issued against the agency. As of the end of the period beginning on October 1, 2008, and ending on September 30, 2009, there was one case pending in the U.S. District Court for the District of Columbia. An unfavorable outcome is considered unlikely. An estimated amount or range of potential loss is unknown. There were no contingent liabilities as of September 30, 2009.

NOTE 9. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

Intragovernmental costs and intragovernmental exchange revenue represent goods and services exchange transactions made between two reporting entities within the Federal government, and are in contrast to those with non-federal entities (the public). Such costs and revenue are summarized as follows:

	2009	2008
Adjudication		
Intragovernmental Costs	\$ 8,758,513	\$ 8,305,714
Public Costs	28,142,561	28,648,933
Total Program Costs	36,901,074	36,954,647
Less: Intragovernmental Earned Revenue	8,725	2,579,000
Net Program Costs	\$ 36,892,349	\$ 34,375,647
Management Support		
Intragovernmental Costs	\$ 1,012,464	\$ 908,915
Public Costs	3,790,075	3,471,130
Total Program Costs	\$ 4,802,539	\$ 4,380,045
Merit Systems Studies		
Intragovernmental Costs	\$ 300,424	\$ 280,174
Public Costs	1,626,086	1,516,090
Total Program Costs	\$ 1,926,510	\$ 1,796,264
Total Intragovernmental costs	\$ 10,071,401	\$ 9,494,803
Total Public costs	33,558,722	33,636,153
Total Costs	43,630,123	43,130,956
Less: Total Intragovernmental Earned Revenue	8,725	2,579,000
Total Net Cost	\$ 43,621,398	\$ 40,551,956

NOTE 10. IMPUTED FINANCING SOURCES

The MSPB recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management (OPM). For the fiscal years ended September 30, 2009 and 2008, respectively, imputed financing from OPM was \$2,081,585 and \$1,913,271.

NOTE 11. BUDGETARY RESOURCE COMPARISONS TO THE BUDGET OF THE UNITED STATES GOVERNMENT

The President's Budget that will include FY09 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2010 and can be found at the OMB Web site: <http://www.whitehouse.gov/omb/>. The 2010 Budget of the United States Government, with the Actual column completed for 2008, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

NOTE 12. APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED

Obligations incurred and reported in the Statement of Budgetary Resources in 2009 and 2008 consisted of the following:

	2009	2008
Direct Obligations, Category A	\$ 38,436,003	\$ 37,355,808
Reimbursable Obligations, Category A	2,587,725	2,579,000
Total Obligations Incurred	\$ 41,023,728	\$ 39,934,808

NOTE 13. UNDELIVERED ORDERS AT THE END OF THE PERIOD

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the fiscal years ended September 30, 2009 and 2008, undelivered orders amounted to \$2,729,174 and \$2,743,139, respectively.

NOTE 14. CUSTODIAL ACTIVITY

The MSPB's custodial collection primarily consists of Freedom of Information Act requests. While these collections are considered custodial, they are neither primary to the mission of the MSPB nor material to the overall financial statements. The MSPB's total custodial collections are \$4,247 and \$1,322 for the fiscal years ended September 30, 2009, and 2008, respectively.

NOTE 15. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

The MSPB has reconciled its budgetary obligations and non-budgetary resources available to its net cost of operations.

	2009	2008
Resources Used to Finance Activities:		
Budgetary Resources Obligated		
Obligations Incurred	\$41,023,728	\$39,934,808
Less: Spending Authority from Offsetting Collections and Recoveries	3,201,570	3,106,160
Net Obligations	37,822,158	36,828,648
Other Resources		
Imputed Financing from Costs Absorbed by Others	2,081,585	1,913,271
Total Resources Used to Finance Activities	\$39,903,743	\$38,741,919
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Change in Budgetary Resources Obligated for Goods, Services and		
Benefits Ordered But Not Yet Provided	\$ (13,965)	\$ 640,944
Resources That Fund Expenses Recognized in Prior Periods	-	7,117
Resources That Finance the Acquisition of Assets	(1,046)	64,184
Other Resources or Adjustments to Net Obligated Resources		
That Do Not Affect Net Cost of Operations	(2,579,000)	-
Total Resources Used to Finance Items Not Part of the Net Cost of Operations	(2,594,011)	712,245
Total Resources Used to Finance the Net Cost of Operations	\$42,497,754	\$38,029,674
Components of the Net Cost of Operations That Will Not Require or Generate Resources in the Current Period		
Components Requiring or Generating Resources in Future Periods		
Increase in Annual Leave Liability	\$ 117,350	\$ 2,200
Other	113,908	477,688
Total Components of Net Cost of Operations That will Require or Generate Resources in Future Periods	231,258	479,888
Components Not Requiring or Generating Resources		
Depreciation and Amortization	888,666	2,043,754
Other	3,720	(1,360)
Total Components of Net Cost of Operations That will not Require or Generate Resources	892,386	2,042,394
Total Components of Net Cost of Operations That will not Require or Generate Resources in the Current Period	\$ 1,123,644	\$ 2,522,282
Net Cost of Operations	\$43,621,398	\$40,551,956

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING



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 financial statements of the U.S. Merit Systems Protection Board (MSPB) as of and for the year ended September 30, 2009 and have issued our report thereon dated November 13, 2009. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; and the standards applicable to financial audits contained in *U.S. Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*.

In planning and performing our audit, we considered the MSPB's internal control over financial reporting by obtaining an understanding of the MSPB's 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. 07-04. The objective of our audit was not to provide an opinion on internal control and therefore, we do not express an opinion on internal control.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be significant deficiencies. Under standards issued by the American Institute of Certified Public Accountants and OMB Bulletin No. 07-04, a significant deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be a material weakness. A material weakness is a significant deficiency, or combination of significant deficiencies, that result in a more than remote likelihood that a material misstatement of the financial statements will not be prevented or detected. Because of inherent limitations in internal controls, misstatements, losses, or non-compliance may nevertheless occur and not be detected. However, we noted no matters involving the internal control and its operation that we considered to be significant deficiencies or material weaknesses as defined above.

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

Largo, Maryland
November 13, 2009

LARGO
1101 MERCANTILE LANE, SUITE 122
LARGO, MD 20774
(240) 492-1400 • FAX: (301) 773-2090
mail@brownco-cpas.com

RICHMOND
1504 SANTA ROSA ROAD, SUITE 107
RICHMOND, VA 23229
(804) 288-2006 • FAX: (804) 288-2233
tdavis@brownco-caps.com

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS



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 financial statements of the U.S. Merit Systems Protection Board (MSPB) as of and for the year ended September 30, 2009, and have issued our report thereon dated November 13, 2009. We conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *U.S. Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*.

The management of the MSPB is responsible for complying with laws and regulations applicable to the MSPB. As part of obtaining reasonable assurance about whether the MSPB's 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. 07-04. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the MSPB.

The results of our tests of compliance disclosed no reportable instances of noncompliance with other laws and regulations discussed in the preceding paragraph that are required to be reported under *U.S. Government Auditing Standards* or OMB Bulletin No. 07-04.

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. However, we noted no noncompliance with laws and regulations, which could have a direct and material effect on the determination of financial statement amounts.

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

Largo, Maryland
November 13, 2009

LARGO
1101 MERCANTILE LANE, SUITE 122
LARGO, MD 20774
(240) 492-1400 • FAX: (301) 773-2090
mail@brownco-cpas.com

RICHMOND
1504 SANTA ROSA ROAD, SUITE 107
RICHMOND, VA 23229
(804) 288-2006 • FAX: (804) 288-2233
tdavis@brownco-cpas.com

APPENDIX: ABBREVIATIONS AND ACRONYMS

AJ	Administrative Judge
ALJ	MSPB Office of Administrative Law Judge
APHIS	U.S. Department of Agriculture Animal and Plant Health Inspection Service
CAA	Congressional Accountability Act
CPDF	OPM's Central Personnel Data File
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
e-OPF	Electronic Official Personnel Folder
FAM	MSPB Office of Financial and Administrative Management
FISMA	Federal Information Security Management Act
FY	Fiscal Year
GPRA	Government Performance and Results Act
HR	Human Resources
IPv6	Internet Protocol Version 6
IRM	MSPB Office of Information Resources Management
MAP	Mediation Appeals Program
MOU	Memorandum of Understanding
MPS	Merit Principles Survey
MSPB	Merit Systems Protection Board
OAC	MSPB Office of Appeals Counsel
OCB	MSPB Office of the Clerk of the Board
OGC	MSPB Office of General Counsel
OMB	Office of Management and Budget
OPE	MSPB Office of Policy and Evaluation
OPF	Official Personnel Folder
OPM	Office of Personnel Management
ORO	MSPB Office of Regional Operations
PAR	Performance and Accountability Report
RIF	Reduction in Force
SES	Senior Executive Service

U.S. MERIT SYSTEMS PROTECTION BOARD
1615 M STREET, N.W.
WASHINGTON, DC 20419

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

PRSR STD
U.S. POSTAGE PAID
WASHINGTON DC
PERMIT NO. G-113



PERFORMANCE AND ACCOUNTABILITY REPORT
FY 2009