



U.S. Merit Systems Protection Board

**Congressional
Budget
Justification
FY 2019**

**Prepared for the
Committee on Appropriations**

February 2018

Table of Contents

| | |
|--|----------|
| Introduction | 1 |
| Events Impacting MSPB's Operations..... | 1 |
| FY 2019 Budget Request..... | 4 |
| Appropriation Language..... | 4 |
| Strategic Goals and Objectives | 4 |
| FY 2019 Request by Object Class..... | 5 |
| Schedule O - Object Classification (In Thousands of Dollars) | 9 |
| Schedule Q – Employment Summary | 10 |
| About MSPB | 10 |
| MSPB Organization..... | 10 |
| Adjudication | 10 |
| Mediation Appeals Program..... | 12 |
| Merit Systems Studies and OPM Oversight | 12 |
| Management Support | 13 |
| Information Technology..... | 13 |
| Human Resources | 14 |
| Financial Management | 14 |
| Equal Employment Opportunity | 14 |
| Organization Chart..... | 16 |

**The U.S. Merit Systems Protection Board
Congressional Budget Justification for
Fiscal Year 2019**

Introduction

The U.S. Merit Systems Protection Board (MSPB) FY 2019 budget request is \$44,490,000 to support 235 Full Time Equivalents (FTEs). This amount includes \$2,345,000 for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund. In an effort to maintain spending restraint in light of our nation's long-term fiscal challenges, MSPB's request reflects a decrease of \$2,321,000 from our FY 2018 annualized level provided by the continuing resolution and a decrease of \$2,641,000 from the FY 2017 enacted levels. With this level of funding, we will continue our efforts to maintain MSPB resources dedicated primarily to our Title 5 statutory responsibilities of processing appeals from Federal employees involving, among others, adverse actions, whistleblower claims and veterans concerns, and issuing study reports related to the civil service.

MSPB's FY 2019 request is based on the assumption that the workload will remain relatively stable over the next two years. Should circumstances occur that lead to an increase in appeals (e.g., an increase in reduction in force (RIF) actions or furloughs), or should additional legislation be enacted that further expands MSPB's jurisdiction, MSPB's workload could increase significantly. Such circumstances have not been taken into consideration in this request.

In general, MSPB resources are dedicated primarily to processing appeals from Federal employees involving, among others, adverse actions, whistleblower claims and veterans issues. Analysis of the workload over the last few years indicates we can expect that in FY 2019, the administrative judges (AJs) will receive about 6,500-7,000 appeals and other cases in our regional and field offices; and the Board members will receive approximately 1,350 cases at headquarters.

We recognize the financial challenges facing our Government and the increasing pressures to cut Federal spending and to reduce the size of the Federal Government. As such, MSPB appreciates the appropriations it has received in the last several years. As we address our needs for FY 2019, decreases in MSPB's funding beyond the \$2.6M reduction from MSPB's FY 2017 enacted level will have a direct, adverse impact on our ability to perform our mission, to include: possible increases in processing times for initial decisions by our AJs, and decisions by the Board members on petitions for review (PFRs); and reducing the level of studies output and limiting or delaying internal improvements in our management. Therefore, it is imperative MSPB receives the requested funds to maintain and train the adjudication staff so that the number of cases and processing times remain at a manageable, effective and efficient level.

Events Impacting MSPB's Operations

A number of significant events have impacted, or are likely to impact, MSPB's mission to protect the Federal merit systems through FY 2019 and should be considered as the Congress determines funding levels for the MSPB in FY 2019. The significant events likely to have an impact on MSPB's operations include: Congressional legislation; Government-wide budget reductions that may lead to appealable furloughs or RIFs; the increased number of retirement claims; modernizing MSPB's core business applications and data center migration; and the lack of a quorum of Board members since January 8, 2017.

Congressional Legislation – Resulting Impact on the MSPB

Recent legislation concerning the Department of Veterans Affairs (DVA) is anticipated to contribute to the increased receipts of initial appeals and PFRs. In 2017, the Department of Veterans Affairs Accountability & Whistleblower Protection of 2017 was enacted. See 38 U.S.C. § 714. This law provides that the Board must uphold the DVA's adverse action against an employee if its decision is supported by substantial evidence, rather than by the higher burden of proof of preponderant evidence as required by chapter 75 of Title V. Further, 38 U.S.C. § 714 states that the Board may not mitigate the DVA's chosen penalty. Because of the lowering of their burden of proof and eliminating the possibility of mitigating penalties, the DVA may take more adverse actions than it had in the past, which may lead to an increase in initial appeals and PFRs. Moreover, the law sets a deadline by which Board administrative judges (AJs) must issue a "final and complete" decision in each case. Although we will attempt to comply with this Congressional mandate with the number of AJs we currently have, if that should not be possible, it may require additional resources to keep up.

Second, 38 U.S.C. § 731 (adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints) provides that the DVA must take disciplinary actions against supervisory employees "whom the Secretary, an administrative judge, the [MSPB], the Office of Special Counsel [OSC], an adjudicating body provided under a union contract, a Federal judge, or the Inspector General of the Department determines committed a prohibited personnel action." Previously, DVA had the discretion to decide whether to take a disciplinary action against supervisors who were found to have committed a prohibited personnel practice. By removing management discretion, DVA may take more disciplinary actions against managers, which may lead to more initial appeals and PFRs filed with MSPB.

Furthermore, the Congress has recently given the Board jurisdiction over an additional personnel action. Under 5 U.S.C. § 3322, if an employee who is under investigation resigns prior to the investigation's resolution, and the investigation results in an adverse finding about that employee, the agency head must make a permanent notation about the adverse finding in the employee's official personnel file. This decision to make a permanent notation is appealable to the Board. Because this notation mechanism is mandatory and appealable, it is anticipated that numerous additional appeals and PFRs will result each year from this statute.

Another statutory change that is likely to increase the Board's workload is the Follow the Rules Act, 5 U.S.C. § 2302(b)(9)(D). Prior to this Act's enactment, the general rule was that an employee must first comply with an order and then, if the employee disagrees with it, register his complaint or grievance later, except in certain very limited circumstances. The Follow the Rules Act now permits an employee to refuse to obey an order that would require him to violate a law, rule, or regulation. This includes agency-specific rules and regulations. This new law may lead to increased litigation when agencies attempt to discipline employees for refusing to obey an order that an employee believes would require him to violate a law, rule, or regulation.

In addition, the National Defense Authorization Act of 2017 added MSPB appeal rights for up to 11,500 National Guard military technicians for various actions taken against them when they are not in a military pay status, or when the issue does not involve fitness for duty in the reserve component. This is likely to increase the number of appeals filed with the regional and field offices and the resulting number of PFRs filed at the Board level.

Impact on MSPB Workload Resulting from Government-wide Budget Reductions

It is unclear whether Government-wide budget reductions may occur in FY 2018, FY 2019 and beyond. Budget decreases will potentially cause furloughs, early retirement and resignation incentives (Voluntary Early Retirement Authority and Voluntary Separation Incentive Payment), and the increased use of RIF by agencies, all of which would lead to an increase in the filing of initial MSPB appeals and PFRs. In fact, several agencies have already announced that they will be significantly reducing staff due to budget reductions.

Increase in Federal Employee Retirements Resulting in MSPB Appeals

Among other changes in the demographics of the Federal workforce, the number of Federal employees eligible to retire, and the number of employees being added to the retirement rolls is increasing. As retirements increase, for whatever reasons, we expect to see an increase in retirement appeals. Indeed, from 2011-2015, MSPB received slight increases each year in the number of retirement initial appeals. The number of retirement claims filed with MSPB dropped by 24 percent in FY 2016 and 5 percent in FY 2017. However, recently published research indicates that employee retirements increase in the first three years of a new Administration. The Office of Personnel Management's (OPM) backlog of retirement claims varies considerably, but it generally has decreased since 2012, thereby increasing the number of retirement decisions that may be appealable to MSPB.

Modernizing our Core Business Applications & Migrating our Data Center to the Cloud

We continue our transition to 100 percent electronic adjudication (e-Adjudication) in order to process cases more efficiently, improve service to our customers, comply with Government-wide requirements, and reduce costs. MSPB's primary case tracking and data storage systems are client-server software, which are at end-of-life. These off-the-shelf systems are heavily customized to support MSPB's paper-based business process, and as a result, cannot easily, or without great expense, be upgraded to modern software standards, nor can they easily be modified to support the emerging electronic case processing at MSPB. Therefore, MSPB must replace our primary case-related software systems, including our e-Appeal Online filing system, with a modern, cloud-based, unitary solution.

MSPB implemented mandatory e-filing for agencies and attorney representatives in two regional offices in 2012. For the past two years, the Denver Field Office has utilized 100 percent electronic case files in their assigned appeals as a proof-of-concept and an opportunity to study changes to the current Board process required to support 100 percent e-Adjudication. Business rules for e-Adjudication are being defined now during the requirements-development phase of modernizing our core business applications. This six-month requirements-gathering project will result in business process documentation and software systems requirements to then solicit modern core business applications by the end of FY 2018. In FY 2019, we will select a vendor (if not completed in FY 2018), and the implementation of the new system will continue through FY 2020 as we operate our legacy systems in parallel with the modern system prior to cutover.

Beginning this fiscal year, MSPB will migrate its on-premises data center to a managed services environment in the cloud, including creating a test environment that mirrors our production environment, disaster recovery capabilities, etc. We will complete that transition in FY 2019. We

believe migrating the data center to the cloud will save MSPB approximately 30 percent in recurring IT costs over time.

Impact from Lack of Quorum of Board Members

MSPB currently lacks a quorum of Board members (since January 2017). Although agencies and appellants can file PFRs of AJs' decisions with the Board, the Board cannot issue decisions unless it has a quorum. With a quorum, the Board would issue on average approximately 90 PFR decisions each month. Without a quorum, those PFRs will wait for the nomination and confirmation of at least one additional Board member before decisions can be issued. Although Vice Chairman and Acting Chairman Mark Robbins can review the pending PFRs, decisions regarding these PFRs cannot be issued until the Board has a quorum again. As of February 2018, the Board had a backlog of over 800 PFRs. Additionally, the Board cannot release studies to the President and Congress without a quorum, or promulgate regulations to reflect Congressionally-mandated changes in our jurisdiction or procedures.

FY 2019 Budget Request

Appropriation Language

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. § 5509 note), including services as authorized by 5 U.S.C. § 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, direct procurement of survey printing, and not to exceed \$2,000 for official reception and representation expenses, \$42,145,000, to remain available until September 30, 2020, and in addition not to exceed \$2,345,000, to remain available until September 30, 2020, for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts to be determined by the Merit Systems Protection Board.

Strategic Goals and Objectives

Our FY 2019 Congressional Budget Justification is structured on the basis of the MSPB's FY 2018–FY 2022 Strategic Plan. The agency's performance goals cover the critical components of two strategic goals, and our performance measures support MSPB's ability to manage and report performance over time. The strategic goals and objectives are:

Strategic Goal 1: Serve the public interest by protecting Merit System Principles (MSPs) and safeguarding the civil service from Prohibited Personnel Practices (PPPs).

Strategic Objectives:

1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution processes.

1B: Enforce timely compliance with MSPB decisions.

1C: Conduct objective, timely studies of the Federal merit systems and human capital management issues.

1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.

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

Strategic Objectives:

2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.

2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.

2C: Advance the understanding of the concepts of merit, MSPs, and PPPs through the use of educational standards, materials, and guidance established by MSPB.

FY 2019 Request by Object Class

The FY 2019 budget request of \$44,490,000 is \$2,641,000 (5.6%) less than the FY 2017 enacted level of \$47,131,000. With this level of funding, MSPB expects to continue to maintain quality service in support of the agency functions and to meet the goals and objectives of the Strategic Plan. With the requested amount, MSPB is prepared to undertake mission critical tasks in FY 2019 that will allow MSPB to achieve its strategic goals in an efficient and cost-effective manner. However, any reduction to our requested amount will have a devastating impact on meeting organizational goals and objectives as outlined in the Strategic Plan.

As reflected in the tables below, 81 percent of the MSPB FY 2019 budget request provides for payroll and benefits expenses. The remaining 19 percent comprises rent and internet services, interagency agreements for various administrative services, supplies and equipment (including IT hardware and software), official travel, printing, maintenance, and miscellaneous services. A discussion of our more significant changes from the FY 2018 Annualized Continuing Resolution level is outlined below:

Personnel Compensation & Benefits – a decrease of \$1,943,000

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|------------------------|------------------------|-----------------------------|---|
| 11 | Personnel Compensation | \$28,000 | \$26,410 | (\$1,590) |
| 12 | Benefits | \$7,700 | \$7,347 | (\$353) |

Approximately 81% of the agency’s funding is for personnel compensation and benefit costs, which make up the largest amount of our budget submission. Our request includes a \$1,943,000 decrease to reflect a decrease in FTEs. In addition, our request does not include a pay increase in FY 2019.

Travel & Transportation of Persons – no increase requested

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|--------------------------------------|------------------------|-----------------------------|---|
| 21 | Travel and Transportation of Persons | \$280 | \$280 | \$0 |

To accomplish our mission, AJs must frequently travel to hearing sites located at considerable distance from the various regional offices. While we are making increasing use of video conferencing for hearings, we have little control over the number of hearings that might require travel. In the past two years, travel costs have stabilized at \$280,000 per year.

Transportation of Things – no increase requested

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|--------------------------|------------------------|-----------------------------|---|
| 22 | Transportation of Things | \$35 | \$35 | \$0 |

This category covers freight-related costs and various courier services.

Rent, Communications, & Utilities – an increase of \$127,000

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|----------------------------------|------------------------|-----------------------------|---|
| 23 | Rent, Communications & Utilities | \$4,157 | \$4,284 | \$127 |

The agency makes rental payments to the General Services Administrations (GSA) for office space in our Washington headquarters as well as all of our regional and field offices. Our request includes an increase of \$127,000 to cover expected increases in internet services and mandated Managed Trusted Internet Protocol services as well as other telecommunication services such as Voice Over Internet protocol and video conferencing.

Printing – no increase requested

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|-------------|------------------------|-----------------------------|---|
| 24 | Printing | \$75 | \$75 | \$0 |

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

Other Contractual Services – a decrease of \$399,000

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|----------------------------|------------------------|-----------------------------|---|
| 25 | Other Contractual Services | \$3,585 | \$3,186 | (\$399) |

This object class includes the Agency’s Reimbursable Service Agreements (RSA) with the Department of Treasury’s Bureau of Fiscal Services (BFS) for accounting, purchasing, and travel-related services and our RSA with the Department of Agriculture, Animal and Plant Health Inspections Service (APHIS) for personnel services. Other RSAs included in this object class fund are Administrative Law Judges (agreements with the U.S. Coast Guard, Environmental Protection Agency, and Federal Trade Commission), as well as agreements with the National Archives and Records Administration for records management storage.

Additionally, this category includes court reporting services, employee training, Automatic Data Processing (ADP) hardware and software maintenance renewals, license renewals for software, and the operation and maintenance of non-ADP equipment. MSPB plans to reduce some training and other contractual services related costs.

Supplies & Materials – an increase of \$25,000

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|----------------------|------------------|-----------------------|--|
| 26 | Supplies & Materials | \$150 | \$175 | \$25 |

Expenses for supplies and materials are expected to increase in FY 2019.

Equipment – a decrease of \$147,000

| MOC | Description | FY 2018 CR (000) | FY 2019 Request (000) | Increase (decrease) over FY 2018 (000) |
|-----|-------------|------------------|-----------------------|--|
| 31 | Equipment | \$500 | \$353 | (\$147) |

As in the past, most of our equipment expenditures will be for replacing items due to equipment breakdowns as well as equipment that has exceeded its useful life, such as servers, laptops, copiers, printers, scanners, and video teleconferencing equipment. Many of these items (laptops and some printers) were replaced in FY 2016 and FY 2017, and their useful life should extend well into FY 2019. However, we will prepare for a 25 percent lifecycle refresh of laptop computers and peripherals in FY 2019 to coincide with the sunset of Windows 7 and the need to upgrade our operating system to realize the capabilities of our new core business applications and cloud environment. Therefore, we expect our purchase of equipment will decrease by approximately \$147,000.

Schedule O - Object Classification (In Thousands of Dollars)

| Merit Systems Protection Board | FY 2017 Actual | FY 2018 CR | FY 2019 Request | Change |
|--|---------------------------|------------------------|----------------------------|-------------------------|
| Direct obligations: | | | | |
| Personnel compensation | \$26,802 | \$28,000 | \$26,410 | (\$1,590) |
| Civilian personnel benefits | 8,580 | 7,700 | 7,347 | (353) |
| Travel of persons | 290 | 280 | 280 | 0 |
| Transportation of things | 28 | 35 | 35 | 0 |
| Rental payments to GSA | 3,595 | 3,617 | 3,625 | 8 |
| Rental payments to others | 97 | 65 | 65 | 0 |
| Communications, utilities, and miscellaneous charges | 831 | 475 | 594 | 119 |
| Printing and reproduction | 50 | 75 | 75 | 0 |
| Other services | 1,356 | 1,325 | 1,101 | (224) |
| Other purchases of goods and services from Government accounts | 1,475 | 1,650 | 1,454 | (196) |
| Maintenance of facilities | 12 | 35 | 35 | 0 |
| Maintenance of equipment | 615 | 575 | 596 | 21 |
| Supplies & Materials | 129 | 150 | 175 | 25 |
| Equipment/Lease Improvements | 926 | 500 | 353 | (147) |
| Direct Obligations... | <u>\$44,786</u> | <u>\$44,482</u> | <u>\$42,145</u> | <u>(\$2,337)</u> |
| Reimbursable Obligations... | <u>2,345</u> | <u>2,329</u> | <u>2,345</u> | <u>16</u> |
| Total New Obligations... | <u><u>\$47,131</u></u> | <u><u>\$46,811</u></u> | <u><u>\$44,490</u></u> | <u><u>(\$2,321)</u></u> |

A full year 2018 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2018 (Division D of Pub. L. No. 115-56, as amended). The amounts included for 2018 reflect the annualized level provided by the continuing resolution. Additionally, for FY 2017 actuals, MSPB incurred \$6,219,000 in obligations utilizing FY 16/17 carryover funds.

Schedule Q – Employment Summary

| | FY 2017 Actual | FY 2018 CR | FY 2019 Request |
|--|-------------------|-------------------|--------------------|
| Direct: | | | |
| Civilian full-time equivalent employment | 208 | 220 | 220 |
| Reimbursable: | | | |
| Civilian full-time equivalent employment | <u>15</u> | <u>15</u> | <u>15</u> |
| Total | <u><u>223</u></u> | <u><u>235</u></u> | <u><u>235*</u></u> |

About MSPB

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

MSPB Organization

The **Board Members** include the Chairman, Vice Chairman, and Board Member. Board Members are appointed by the President, confirmed by the Senate, and serve overlapping, non-renewable 7-year terms. No more than two of the three Board Members can be from the same political party. The Board Members adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer of MSPB. The Office Directors report to the Chairman through the Executive Director. The agency has its headquarters in Washington, DC with six regional and two field offices located throughout the United States.

Adjudication

The majority of the cases brought to the Board are appeals of adverse actions--that is, removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less.

* To reconcile with the President's Budget, Schedule Q reflects the FTE level at 235; however, MSPB's revised FTE level is 226 to coincide with the personnel compensation and benefits decrease in our Congressional Budget Justification submission.

The next largest number of cases involves appeals of OPM and some agency determinations in retirement matters. Congress has given the Board jurisdiction to hear cases and complaints filed under a variety of other laws including, but not limited to, the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.*; the Veterans Employment Opportunity Act, 5 U.S.C. § 3309 *et seq.*; the Whistleblower Protection Act, Pub. L. No. 101-12, 103 Stat. 16; the Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199; the Veterans Access, Choice and Accountability Act of 2014, Pub. L. No. 113-146; 5 U.S.C. § 4304; 5 U.S.C. § 7513; and regulations set out at 5 C.F.R. § 1201.3.

Other types of actions that may be appealed to the Board include: performance-based removals or reductions in grade; denials of within-grade salary increases; reduction-in-force actions; furloughs; suitability determinations; OPM employment practices (the development and use of examinations, qualification standards, tests, and other measurement instruments); denials of restoration or reemployment rights; and certain terminations of probationary employees.

An appellant files an appeal with the appropriate Board or MSPB regional or field office having geographical jurisdiction. An AJ in the office assures that the parties receive the due process procedures called for in statutes, case law, and regulations and, after providing a full opportunity to develop the record on all relevant matters, issues an initial decision. Unless a party files a PFR with the Board, the initial decision becomes final 35 days after issuance. Any party, or OPM or the Office of Special Counsel, may petition the full Board in Washington to review the initial decision. The Board's decision on a PFR constitutes the final administrative action on the appeal.

The Board's final decision, whether it is an AJ's initial decision that has become final or the Board's decision on a PFR, may be appealed to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) or, in cases involving allegations of discrimination, to a U.S. district court or the Equal Employment Opportunity Commission. Between December 27, 2012 and December 27, 2017, cases involving allegations of reprisal for whistleblowing could have been appealed to any of the numbered U.S. Circuit Courts of Appeal pursuant to a multi-year pilot that has now expired. It is unknown at this time whether Congress will act to reinstate all-Circuit review for cases involving allegations of whistleblower reprisal.

If one party in a case believes that the other party is not complying with an MSPB order or MSPB-approved settlement agreement, the party can file a petition for enforcement with the regional or field office that issued the initial decision. Once the AJ issues an initial decision, which may find compliance, non-compliance, or partial compliance and partial non-compliance, either party may file a PFR with the full Board. Additionally, even if neither party files a PFR of an initial decision finding non-compliance, the Board's regulations require that the case be referred to the full Board to render a final decision on the issues of compliance. The Board also provides a prevailing appellant the opportunity to seek payment of reasonable attorney fees and costs expended in support of the appeal.

In addition to adjudicating cases on the merits, the Board also provides Alternative Dispute Resolution (ADR) services to assist parties in resolving the case. Use of these services is voluntary, provides the parties with more control over the process and can result in effective resolution of a case. In addition, resolving a case through ADR procedures can save time and reduce costs to the appellant, agency, and MSPB associated with the more formal process of adjudication on the merits.

Mediation Appeals Program

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

Because of these advantages, MAP has become a popular and successful program, as shown by the fact that a greater number of cases have been mediated almost every year since the program's inception. Moreover, while MAP had been settling approximately half the cases mediated (nearly 60 percent when those that eventually settle after returning to the traditional adjudication track are considered), in recent years the overall success rate has remained relatively steady at about 60%. Even when the case is resolved by an AJ's decision, the mediation process often helps sharpen the parties' focus on the matters truly in dispute and the resolution they seek. Moreover, based on the evaluations the parties have been asked to complete at the end of each mediation, more than 95 percent of the participants have stated that they would use MAP again.

Merit Systems Studies and OPM Oversight

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

MSPB studies address the variety of challenges facing the Federal Government in managing its workforce.

Publications Issued In FY 2017

- *Adverse Actions: A Compilation of Articles* (January 2017) discusses selected aspects of the Title 5 system for taking an adverse action (i.e., suspension, demotion, or removal) for reasons of conduct or performance. This compilation outlines, in a format geared to policymakers and practitioners, key concepts such as due process and nexus and important considerations such as the labeling of charges, assuring the independence and discretion of deciding officials, and preventing and rectifying procedural errors.

- *The Merit System Principles: Keys to Managing the Federal Workforce* (January 2017) provides an orientation to the merit system principles for policymakers and officials who will manage civil service employees, such as non-career Presidential appointees. This publication draws on both the Office of Policy Evaluation research and MSPB decisions to explain and illustrate the nine merit system principles to help Federal officials exercise personnel authority responsibly and lead Federal employees fairly and effectively.

Reports Prepared for Board Member Review in FY 2017

- *Improving Federal Leadership Through Better Probationary Practices* examines how the supervisory and managerial probationary periods are being used by agencies. The probationary period allows agencies to observe a new hire's performance before finalizing the appointment. When used properly, the probationary period can help ensure that the Federal Government has qualified and competent leaders. MSPB found that agencies rarely use the probationary period to take action against unsuccessful leaders. Some of the identified barriers can be addressed by changing agency practices, such as extending the length of probationary periods, which can be done at the agency head's discretion. Others, however, do not have easy solutions. Therefore, the most effective way to improve the cadre of new supervisors is to reduce the likelihood of making a bad hire in the first place, including improving hiring, employee development, and supervisory preparation.
- *Perceptions of Prohibited Personnel Practices: An Update*. The PPPs are a set of proscribed actions, codified at 5 U.S.C. § 2302(b), which were augmented in 2012 to prohibit non-disclosure policies or agreements (NDAs) that fail to inform the employee of his or her right to blow the whistle on wrongdoing. An additional PPP became effective in 2017, too late to be discussed in this report. This report compares data from Merit Principles Surveys conducted in 2010 and 2016, which show that employee perceptions of the occurrence of PPPs has increased. Notably, only 54 percent of respondents in 2016 indicated that they had observed no PPPs, compared to 78 percent in 2010. The report also discusses employee perceptions related to the new PPP concerning NDAs, with many employees indicating that their agency's non-disclosure policies and agreements did not include the required language about whistleblowing rights.

Other Activity

MSPB conducted a large survey in 2016 and is working on several studies that rely in part on survey data. Those studies cover areas such as individual drivers of employee engagement, sexual harassment, performance management, effectiveness of the HR workforce, and the Pathways program.

Management Support

Information Technology

MSPB's primary mission is to provide for independent adjudication of appeals of personnel actions for Federal employees. Generally, about 50 percent of appeals filed with the agency are from *pro se* appellants--employees representing themselves. All appellants (represented or not) are expected to file an appeal and to respond to orders in a timely manner or risk having their cases

dismissed. The Board's electronic filing system, e-Appeal Online, allows Federal agencies and appellants instant access to party filings and Board issuances through e-Appeal as soon as they are filed or issued. Parties who elect to file electronically through e-Appeal receive orders and issuances from MSPB by email instantaneously, rather than having to wait for service by regular mail.

Human Resources

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

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

Financial Management

MSPB has initiated cross-servicing agreements with U.S. Department of Treasury, Bureau of Fiscal Service (BFS) for its accounting, financial auditing, purchasing, and travel-related services and support. BFS has processed our administrative payments and prepared our accounting reports since FY 2002. MSPB has received unqualified/unmodified opinions on its audits since the agency has been subject to audits of its financial statements.

The agency also has an agreement in place with APHIS for personnel services and the USDA National Finance Center (NFC) for processing of payroll and payroll-related activities including earnings and leave statements, W-2 information, and debt management. Our cross-servicing relationships with these organizations have provided the Board with timely responses and more accurate processing of information from larger pools of knowledgeable staff than would be possible with smaller in-house staff. APHIS, BFS and NFC have the resources to stay current with the latest technologies so they can provide these services more efficiently and economically.

Equal Employment Opportunity

The Office of Equal Employment Opportunity (OEEO) plans, implements and evaluates MSPB's affirmative employment programs and initiatives, advises senior executives, managers and

supervisors about these programs and initiatives and provides all employees training on rights and remedies available under the anti-discrimination laws and whistleblower protection laws. OEEO provides EEO counseling, formal complaint processing and alternative dispute resolution services to current and former employees as well as applicants who allege discrimination. OEEO also resolves and/or processes complaints filed by individuals who allege discrimination based on disability in their access to MSPB's programs and activities.

Organization Chart

