



U.S. Merit Systems Protection Board

**Congressional
Budget
Justification
FY 2024**

**Prepared for the
Committee on Appropriations**

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The U.S. Merit Systems Protection Board
Congressional Budget Justification
Fiscal Year 2024

Introduction

The U.S. Merit Systems Protection Board's (MSPB or Board) fiscal year (FY) 2024 budget request is \$59,188,000 plus \$2,345,000 to be transferred from the Civil Service Retirement and Disability Fund, for a total FY 2024 budget request of \$61,533,000.

There is enormous pressure on MSPB to quickly adjudicate the inherited inventory of petitions for review (PFRs), even as the agency receives new PFRs. After over five years without a quorum of Board members, the quorum was restored in March 2022 with an inherited inventory of 3,793 PFRs and other types of cases handled by MSPB Headquarters (HQ). Moreover, MSPB's work has increased in complexity as new laws were enacted over the five years since the agency last had a quorum. MSPB's mission-critical work must be appropriately resourced to expeditiously resolve the cases in the inherited inventory, timely adjudicate newly filed cases at the regional and HQ levels, and fully support our studies function in the evolving Federal employment environment.

The Board lost its quorum on January 8, 2017. The quorum was restored on March 4, 2022, when Raymond Limon was appointed as a Member of the Board with the designation of Vice Chairman and Tristan Leavitt was appointed as a Member of the Board. Shortly thereafter, on June 1, 2022, Cathy Harris was appointed as a Member of the Board and subsequently designated Vice Chairman by the President on June 6, 2022. By statute, she is currently the Acting Chairman and her separate nomination as Chairman is pending in the Senate. Most recently, Tristan Leavitt departed after fulfilling his term, which ended on February 28, 2023. MSPB is incredibly grateful for his leadership and contributions prior to and during his term as Member.

Each Board member is staffed by, at a minimum, a chief counsel, and a confidential assistant. The Acting Chairman and Member Limon have each hired a confidential assistant. The remainder of the Board members' staffs are comprised of detailees from MSPB's career adjudicatory staff, primarily from HQ, and some from the regions. These MSPB employees play a key role in addressing the inherited inventory and the cases that MSPB receives at HQ each year. The Acting Chairman also has appointed a General Counsel and Executive Director and is in the process of filling other key leadership vacancies.

The inherited inventory consisted of 3,793 cases as of March 4, 2022, and the new Board has decided 1,219 cases (PFRs and other cases), 1,146 of which were part of the inherited inventory, as of February 28, 2023. Although career staff have drafted recommended decisions for the vast majority of the cases in the inherited inventory, it is an immense undertaking for the new Board to consider, vote, and issue decisions on such a high volume of cases, and it requires an increase in staffing levels with corresponding funding to support it. Additionally, with the restoration of the Board, MSPB has resumed its other statutory mission of preparing and releasing study reports to the President and Congress, and we have an ambitious new Research Agenda.

An additional challenge has been the COVID-19 pandemic, which has negatively affected parts of MSPB's operations. Although MSPB created a policy allowing limited filing by email and encouraged

parties to use MSPB's E-Appeal Online electronic filing system, the pandemic affected MSPB's ability to handle in-office operations, including processing paper appeals and case files, for approximately two years. The unprecedented volume of telework during that period strained MSPB's information technology (IT) and communication services and slowed the progress of the agency's critical IT modernization efforts. It also hampered MSPB's ability to complete the digitization of the PFR inventory, approximately 40% of which still consists of paper case files, many of which are voluminous.

Given these challenges, our ability to efficiently and successfully adjudicate the inherited inventory and transition the agency and our stakeholders to a new electronic filing and case management system at the end of FY 2023, while returning the agency to more normal operations, pose the biggest test in MSPB's history. While the stakes for the Federal Government and merit systems are high, MSPB, with appropriate staffing, will overcome these challenges and continue to protect the merit system principles (MSPs) and promote an effective Federal workforce free of prohibited personnel practices (PPPs). With this objective in mind, MSPB respectfully requests Congress' consideration of this full budget request.

Internal Challenges Affecting MSPB Operations

Board Quorum Restored

On January 8, 2017, the Board lost its quorum of members. Although agencies and appellants could still file PFRs of administrative judges' (AJ) decisions, during the lack of quorum, the Board could not issue decisions on PFRs and other cases at HQ until its quorum was restored on March 4, 2022. During the more than five-year absence of a quorum, the inventory of PFRs and other cases pending at HQ grew to 3,793 as of March 4, 2022. This figure represents about four times the number of PFRs, and other cases received by HQ in a typical year, historically.

Once the quorum was restored, the new Board members and MSPB career staff quickly shifted into action and began issuing decisions on March 18, 2022. However, with the restoration of the quorum, there has been a significant increase in MSPB's workload. In a typical year, approximately 11% of the Board's PFR decisions are remanded to the AJs for further adjudication. With the arrival of new Board members, whose priorities sometimes differ from those of the previous Board, an above-average percentage of cases may be remanded to the regional and field offices. For example, in FY 2022, cases were remanded at a rate of 13%. It is expected that this trend will continue. Moreover, additional remands may occur as the Board applies recent case law from our reviewing circuit courts to the cases it decides and issues regulations and precedent concerning new statutes that were enacted during the period MSPB lacked a quorum. Similarly, many recommended PFR decisions that already were drafted by career staff at HQ are requiring additional revision before issuance by the new Board to consider new case law, statutes, regulations, and the new Board's priorities. It is essential to fully staff MSPB's adjudication functions to address this significant additional workload. Currently, MSPB has 14 vacant HQ adjudication positions and 10 vacant regional adjudication positions. These positions were depleted through attrition and have not been backfilled due to funding constraints.

In addition to the absence of Board decisions during the lack of quorum period, MSPB was unable to release study reports to the President and Congress. MSPB conducts objective, independent

research supporting strong merit systems that protect the public's interest in a high-quality, diverse professional workforce managed under the MSPs and free from PPPs. MSPB's research has addressed topics such as hiring practices and authorities, sexual harassment in the Federal workplace, whistleblower protections, managing employee conduct and performance problems, and the effectiveness of the human resources (HR) workforce. The Board reviewed and approved a new MSPB research agenda. MSPB's Office of Policy and Evaluation (OPE) prepared the updated research agenda after soliciting ideas from stakeholders (including Federal employees and supervisors, unions and other employee groups, agency chief human capital officers, and the public) and evaluating over 300 ideas received against criteria such as importance, timeliness, and practicality.

The new Research Agenda for 2022-2026, published on September 29, 2022, will determine MSPB's studies workload for the next few years, including FY 2024. MSPB's studies program needs to remain fully staffed not only to carry out that research agenda, but also to conduct advanced data analysis on Federal workforce issues. Surveys are essential to many of the proposed studies, including those related to the incidence of PPPs and adherence to MSPs. MSPB previously procured a survey platform to avoid relying on a new contract for each survey, which shortens the timeline for MSPB survey activity and makes each survey more cost-effective. Additionally, as data collection tools have been modernized, OPE has received overwhelming interest in its reports and data. We must ensure OPE researchers have the appropriate skills, software, and training to answer the pressing questions about how well Federal workplaces observe merit principles. The research function, in conjunction with MSPB's adjudication of individual appeals and its authority to review Office of Personnel Management (OPM) regulations and significant actions, ensures that the Board both oversees Federal merit systems at the systemic level and remedies PPPs on an individual level.

Finally, the more than five-year absence of a quorum adversely affected MSPB's ability to promulgate regulations to reflect congressionally mandated changes in the agency's jurisdiction and procedures. The last substantial update to MSPB's regulations was in 2015. Since then, several changes to MSPB's regulations have become necessary to ensure they comply with newly enacted statutes and to reflect improvements in MSPB's procedures. Now that a quorum is restored, significant resources are required to update MSPB's regulations.

Retirement Eligibility and Human Capital Planning

MSPB's enacted budgets for FYs 2014–2021 allowed the agency to maintain a sufficient workforce to perform its statutory functions effectively, although they did not fully fund the authorized number of full-time equivalents (FTE). In addition, by the end of FY 2024, nearly 24% of MSPB employees will be eligible to retire. Reductions in our budget authority will inhibit the Board in replacing these critical vacancies, resulting in slower case processing times, including processing times mandated by statute and regulation; a slower decline in the inherited inventory; and a reduction in the number, scope, and depth of merit systems studies and publications. Such a reduction in MSPB's workforce also would limit the capacity for outreach and education services, which play a key role in ensuring that Federal agencies and their employees understand the Board's role and processes and interact in a timely and responsive way with MSPB. Educating the Federal workforce also improves efficiency and effectiveness throughout the government by helping agencies understand and act in accordance with MSPs, avoid PPPs, and promote the overall efficiency of the civil service.

MSPB's IT Modernization

In FY 2019, MSPB began modernizing its core business applications, starting with the development of a new cloud-based case management workflow system that is certified by the Federal Risk and Authorization Management Program (FedRAMP). This updated functionality will replace several legacy systems, including MSPB's E-Appeal Online, document management, and document assembly systems, which are at or nearing end-of-life and prevent MSPB from achieving 100% electronic adjudication of appeals. Although the project was paused for several months in FY 2020 as we adjusted our operations in response to the pandemic, we have continued to make significant progress toward project completion. The application will continue to evolve after implementation to fully support internal and external stakeholder needs. MSPB has been striving to improve user experience by designing this enterprise application to ensure that appellants, appellant representatives, and agency representatives are able to easily and intuitively file appeals and pleadings, as well as self-manage all aspects of their cases before the Board. This effort directly aligns with the second priority of the President's Management Agenda to improve customer experience.

In FY 2021, MSPB engaged in planning efforts to modernize all remaining legacy systems; upgrade its network architecture to support a hybrid workforce; increase internet capacity as MSPB transitions to cloud-based services; enhance cybersecurity consistent with Executive Order 14028, "Improving the Nation's Cybersecurity;" and transition business processes to comply with the government's transition to electronic records.

In FY 2022, MSPB began network transformation efforts to support a cloud-native environment. These efforts are continuing in FY 2023 with the migration of MSPB's analog phone system to a cloud-based softphone platform. MSPB plans to engage in several other modernization efforts in FY 2024, including replacing laptops and migrating MSPB's research and analysis tools to a cloud-based, software-as-a-service platform that will improve security and reliability and reduce the complexity of IT services. This solution also will allow for web integration so MSPB can publish survey dashboards.

Another IT priority is cybersecurity, for which MSPB is requesting an additional \$1.49 million to better comply with Office of Management and Budget (OMB) mandates, Department of Homeland Security binding operational and emergency directives, and Executive Order 14028. Without an enhanced budget specifically to support cybersecurity, MSPB will continue to be in a reactive posture, putting the organization at risk when it could instead, with adequate resources, take active measures to identify and protect against threats. The threat landscape is constantly shifting, and the tools, capabilities, and training needed to combat threats are always evolving; it is essential that the agency keep up. The table on page 5 provides a breakdown on the cost included in the FY 2024 request based on National Institute of Standard and Technology (NIST) categories. All of these investments and initiatives are directly in support of Executive Order 14028. The requested budgetary increase also will ensure MSPB IT staff have appropriate tools and knowledge to address threats and continue to help achieve MSPB's mission and strategic objectives.

NIST Category	Capability	Amount
Identify	Authorization and Policy	\$ 286,050.00
Protect	Credentialing and Access Management	\$ 65,000.00
Detect	Data Loss Prevention	\$ 20,000.00
Respond	Incident Management and Response	\$ 850,000.00
Protect	Other Protect	\$ 50,000.00
Protect	Other Protect Capabilities	\$ 66,950.00
Protect	Zero Trust Network Architecture	\$ 111,301.00
Protect	Security Log Management	\$ 50,000.00
Total		\$ 1,499,301.00

External Events Affecting MSPB Operations

Several recent external factors have affected MSPB’s operations and will continue to do so, resulting in the need for additional resources.

COVID-19 Pandemic

At MSPB—as everywhere else—the pandemic transformed daily life for everyone. Employees had to try to balance work and family life in new and more demanding ways. Shifting or delaying some tasks temporarily during the maximum telework period of the pandemic helped the agency triage certain duties during the pandemic. That said, the pandemic severely impeded our ability to appropriately staff work that can only be done in-office. MSPB officially began reentry in October 2021, although high levels of community transmission initially limited in-office staffing capacity pursuant to our COVID-19 Workplace Safety Plan. Additional reentry occurred in April and May 2022, as the quorum was restored. Ongoing pandemic-related stress, from the uncertainties of COVID-19 itself to the social and psychological isolation many have experienced, remains an ongoing challenge for employees and agency leaders.

Enactment of New Statutes by Congress

Whistleblower Protection Laws

In the first 20 years after the Civil Service Reform Act of 1978 established the original 11 PPPs, Congress added just one PPP. In the past 7 years, Congress has added two PPPs, both of which were prompted by concerns about whistleblower protection. Since the enactment of the Whistleblower Protection Enhancement Act of 2012 (WPEA), appeals filed in the regions and PFRs to the Board involving reprisal for whistleblowing or other activity protected by the WPEA have increased significantly. Currently, approximately 25% of all PFRs in MSPB’s inherited inventory involve such claims.

The WPEA and subsequent whistleblower legislation also increased the complexity of adjudicating whistleblower cases. Prior to the WPEA, for example, many whistleblower claims failed under then-current case law because the disclosure at issue was made to the alleged wrongdoer or was made in the appellant's normal course of duties. Such findings were made at the first step of a three-step analysis, and thus remaining issues were not adjudicated. Pursuant to the WPEA, such disclosures may now be found protected, requiring further legal analysis, and resulting in a greater number of hearings on the merits of a claim. As a result, the adjudication of cases under the WPEA has become more complex, time-consuming, and resource intensive.

Additionally, MSPB's jurisdiction over whistleblowing—even in the absence of an otherwise appealable action—may now extend over many more and varied concerns. Claims of retaliation based on the exercise of a right related to prior whistleblowing activity; assisting another individual in the exercise of any appeal, complaint, or grievance; cooperating with or disclosing information to an agency's inspector general (or any other component responsible for internal investigation or review) or the Office of Special Counsel (OSC); or refusing to obey an order that would require the individual to violate a law, rule, or regulation, have been added to MSPB's jurisdiction pursuant to statutory amendments in the past ten years. The National Defense Authorization Act (NDAA) for FY 2020, enacted December 20, 2019, explicitly protects whistleblower disclosures to Congress, including some classified disclosures. The NDAA for FY 2023, enacted December 23, 2022, included a provision permitting employees of the Federal Bureau of Investigation (FBI) to file whistleblower claims with MSPB. The increased complexity of whistleblower cases is likely to create a need for more in-person hearings, with associated increases in travel costs, and require additional adjudication resources at the regional and HQ levels.

As part of the WPEA, Congress introduced a pilot program permitting employees with cases involving reprisal for whistleblowing or other activities protected by the WPEA to appeal MSPB's decisions to any Federal circuit court of appeals of competent jurisdiction rather than only to the U.S. Court of Appeals for the Federal Circuit. Congress made the pilot program permanent effective November 26, 2017. Before the pandemic, this "all-circuit review" resulted in an increase in the travel of MSPB attorneys to argue cases in person throughout the country, and it will likely continue to require additional travel after the pandemic is over. As mentioned above, about 25% of the Board's inventory consists of these types of cases.

Some of the statutory changes related to whistleblower protection will impact the operation of Federal agencies. For example, both the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and the OSC Reauthorization Act contained provisions mandating proposed discipline for any supervisor found by the head of an agency, OSC, MSPB, an administrative law judge (ALJ), a Federal judge, or an inspector general to have committed whistleblower retaliation. For a first offense, the agency must propose a suspension of at least three days, and for a second offense, an agency must propose removal. While suspensions of 14 days and under are not otherwise appealable to MSPB, removals are directly appealable. This provision represents a significant transformation in how agencies are required to respond to alleged retaliators. Effective November 16, 2020, OPM issued implementing regulations that likely will have the effect of increasing awareness of and compliance with these provisions throughout Government.

As noted above, section 5304 of the NDAA for FY 2023 (P.L. 117-263) provides FBI employees who allege reprisal for protected whistleblower activities with the right to appeal a final determination or corrective action order to MSPB under 5 U.S.C. § 1221. It also allows for an appeal

to MSPB under § 1221 if no final determination or corrective action order has been made or issued within one-hundred eighty (180) days of the FBI being notified of the allegation of reprisal. FBI appeals generated by this statute may require the Board to obtain additional security clearances or, alternatively, to extend its contract with outside ALJs to hear these cases, leading to increased adjudication costs in either instance.

Overall, it is probable that both the number and complexity of WPEA-related appeals and PFRs will continue to grow in the coming years, requiring funding for additional resources to adjudicate them.

National Defense Authorization Act for FY 2017 (P.L. 114-328)

The NDAA for FY 2017 contained three provisions that have increased appeals to MSPB.

Section 512 provided limited appeal rights to dual-status military technicians serving in the National Guard. This was a significant change in the law with respect to such employees, who previously had no such rights.

Section 1138 enacted the Administrative Leave Act of 2016 (codified as 5 U.S.C. § 6329b), which expands MSPB's jurisdiction by adding to the possible grounds on which an employee might file an appeal. It makes placement on investigative leave for "not less than 70 workdays" a personnel action under the subsection 8 and 9 whistleblower protections of 5 U.S.C. § 2302(b).

Section 1140 expanded MSPB's jurisdiction in cases of voluntary separation during a personnel investigation. As codified in 5 U.S.C. § 3322, an employee who voluntarily resigns while under investigation is entitled to file an appeal with MSPB over the notation in their personnel file of an adverse finding resulting from the investigation.

Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017

The Department of Veterans Affairs (VA) Accountability and Whistleblower Protection Act of 2017 changed the requirements for appeals of adverse actions taken against VA employees. It lowered MSPB's standard of review for adjudication of VA adverse actions taken under 38 U.S.C. § 714 from preponderant to substantial evidence and requires an MSPB AJ to issue a decision on an appeal of such actions within 180 days. These changes to adjudicating § 714 cases influence the processing of all MSPB cases as schedules must shift to meet this statutory requirement. The law also effectively replaced the Veterans Access, Choice, and Accountability Act of 2014 for VA Senior Executive Service appeals.

Section 714 eliminated MSPB's authority to mitigate penalties in these types of cases. However, subsequent decisions of the Federal Circuit have found that MSPB must nonetheless review the legality of any agency penalty, including by applying the factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-06 (1981). See, e.g., *Connor v. Department of Veterans Affairs*, 8 F.4th 1319, 1326-27 (Fed. Cir. 2021). If MSPB finds the penalty is not supported by substantial evidence, or if the VA failed to consider the *Douglas* factors in determining the appropriate penalty, the case should be remanded to the VA for a redetermination of the penalty.

The Federal Circuit also found that the burden of proof to be applied by the VA when making its decision in an action taken under § 714 is preponderant evidence, not substantial evidence,

necessitating reversal or remand by MSPB when the VA fails to apply the correct burden of proof. *See Rodriguez v. Department of Veterans Affairs*, 8 F.4th 1290, 1297-1301 (Fed. Cir. 2021).

These two significant changes in the interpretation of a relatively new statute will likely result in many reversals and remands of VA actions taken under § 714. In addition, the Act contains a provision that is similar to the Governmentwide requirement that discipline be proposed for supervisors found to have committed whistleblower retaliation and includes matters such as conducting a negative peer review, opening a retaliatory investigation, or taking a personnel action against an employee in relationship to their participating in an audit or investigation by the Comptroller General, in addition to those listed in 5 U.S.C. § 2302. Although not all VA cases are brought under this law, MSPB has seen an overall increase in the number of VA cases filed since the law took effect.

Other External Factors Leading to Increased Appeals to MSPB

Executive Orders 14020 and 14035

On June 25, 2021, President Biden issued Executive Order 14020, “Establishment of the White House Gender Policy Council,” which established a policy to promote diversity and inclusion in the Federal workforce. On the same date, President Biden issued Executive Order 14035, “Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,” which similarly seeks to attain a Federal workforce that reflects all segments of society. As a result, there could be an increase in affirmative defenses based on discrimination being raised in cases when appellants believe their agencies have not complied with the letter or intent of these Executive Orders. Moreover, MSPB has a mandate to study the application of MSPs in Federal workplaces and will have an increased demand for an additional number of specific studies and reports, greater in scope and depth, analyzing the impacts of these Executive Orders.

Pregnant Workers Fairness Act and Providing Urgent Maternal Protections Act

On December 29, 2022, President Biden signed the Consolidated Appropriations Act for Fiscal Year 2023 (P.L. 117-328) which contained two provisions potentially impacting MSPB—the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act or the PUMP for Nursing Mothers Act. The PWFA adopts the same meaning of “reasonable accommodation” and “undue hardship” as used in the Rehabilitation Act, which applies to Federal employees and mirrors the standards of the Americans with Disabilities Act, with respect to employer obligations in responding to accommodation requests based on a physical or mental condition related to pregnancy, childbirth, and associated medical conditions. It also provides that an employer cannot require an employee to take paid or unpaid leave as an accommodation if another reasonable accommodation is available. As under the Rehabilitation Act, under the PWFA, employers are not required to provide employees with the desired accommodation where an alternative reasonable accommodation is available. The PUMP for Nursing Mothers Act expands existing obligations under the Fair Labor Standards Act to provide nursing employees with reasonable break times to express breast milk for a year after the child’s birth and describes specific requirements for lactation rooms. The PUMP for Nursing Mothers Act covers all employees.

Supreme Court Decision and Executive Actions Related to Lesbian, Gay, Bisexual, Transgender, Queer or Questioning Employment Rights

In *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020), the Supreme Court held that taking adverse employment actions against employees because of their sexual orientation or transgender status constitutes sex discrimination. Previously, discrimination based on either sexual orientation or transgender status had not been seen universally as a violation of Title VII. Separately, on January 25, 2021, President Biden issued Executive Order 13988, which requires that agencies promulgate agency actions (orders, regulations, policies, etc.) that prohibit discrimination on the basis of “gender identity or sexual orientation.” Executive Order 13988 and the holding in *Bostock* open the door for the filing and adjudication of more appeals raising sex discrimination on those bases as affirmative defenses, thus expanding the range of issues MSPB will review in such appeals.

Federal Circuit Decisions Related to Whistleblowing and Performance-based Actions

In *Hessami v. MSPB*, 979 F.3d 1362 (Fed. Cir. 2020), the Federal Circuit made several rulings which increase the likelihood that whistleblowing appeals to MSPB will proceed to a hearing on the merits of a claim. The court held that an appellant’s whistleblowing disclosure related to disputable policy matters does not preclude it from being protected because, under the WPEA, “policy decisions and disclosable misconduct are not mutually exclusive.”

The court also held that in determining whether an appellant made a nonfrivolous jurisdictional allegation under the WPEA, the Board may not consider evidence introduced by the agency. Instead, the Board is limited to “evaluating whether the appellant has alleged sufficient factual matter, accepted as true, to state a claim that is plausible on its face.” However, on January 19, 2022, the court issued *Smolinski v. MSPB*, 23 F.4th 1345 (Fed. Cir. 2022), which held that *Hessami* does not prohibit reliance on certain agency evidence supporting the appellant’s claim to jurisdiction. The holdings in these two cases will likely require continued significant analysis by MSPB and may result in a higher number of appeals proceeding past the jurisdictional stage to hearings on the merits of the cases.

In *Santos v. NASA*, 990 F.3d 1355 (Fed. Cir. 2021), the Federal Circuit significantly expanded the potential scope of admissible evidence and discovery in performance-based actions taken under 5 U.S.C. § 4302, holding that when an agency predicates removal on an employee’s failure to satisfy obligations imposed by a performance improvement period (PIP), the agency must further demonstrate that the employee’s performance justified imposing a PIP in the first instance. This will lead to more complex and lengthy adjudication of performance-based actions before MSPB.

All of these decisions increase the number, length, and complexity of hearings that are conducted in cases involving claims of whistleblowing and those based on performance under 5 U.S.C. § 4302, and will likely call for additional adjudication resources, including travel for hearings and court reporter costs. Additionally, expanded resources for the MSPB studies function may be required to research the consequences of these cases for Federal workplace practices.

Potential Workload Resulting from the COVID-19 Pandemic

As the COVID-19 pandemic subsides, Federal agencies are grappling with return-to-office, hybrid, and remote work policies. OPM and other agencies have issued and are working on additional

Governmentwide guidance about the future of work. It is also likely that Federal expenditures related to the COVID-19 pandemic will affect the budgets of Federal agencies into the future. While it is impossible to know for sure, agencies may face budget cuts or shortfalls, which may lead to reduction in forces (RIFs) or furloughs of agency employees. In addition, agencies have had to quickly develop and revise operational policies during the pandemic and in planning for the future of work.

The effect on employees of telework eligibility determinations, reentry and post-reentry plans and policies, safety and security protocols, accountability for health and safety behaviors, and sharing health-related information, for example, could affect merit-based management and the occurrence of PPPs. We may see an increase in whistleblowing and claims of retaliation for whistleblowing related to the pandemic. It is still too early to know the full extent of the effects of the pandemic and its aftermath on the Federal workplace and the degree to which they might increase appeals filed with MSPB; however, we have received appeals related to the pandemic. In the near term, MSPB must be prepared to ensure its studies function is able to assess potential impacts of the pandemic on merit-based management and the occurrence of PPPs, among other potential effects.

Workload Resulting from Department of Homeland Security, Transportation Security Administration (TSA) Expansion of Appeal Rights for Transportation Security Officers (TSOs)

In Department of Homeland Security, Secretary Alejandro N. Mayorkas's June 3, 2021, memorandum supporting the TSA workforce through improving the TSO employment experience, the Secretary directed a review and evaluation of whether its current standards align with Title 5 personnel protections. Expecting legislation that would provide MSPB appeal rights, TSA began to afford TSOs similar appeal rights as other TSA employees with MSPB appeal rights. On September 13, 2021, MSPB entered into a reimbursable agreement with TSA to adjudicate appeals. In FY 2022, MSPB adjudicated 52 appeals under their newly established rights, pending legislation that would otherwise increase our non-reimbursable workload. The agreement was renewed for FY 2023.

FY 2024 Budget Request

Appropriation Language

For necessary expenses to carry out functions of the U.S. Merit Systems Protection Board pursuant to Reorganization Plan Number 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. § 5509 note), as amended, including services as authorized by 5 U.S.C. § 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, direct procurement of survey printing, and not to exceed \$2,000 for official reception and representation expenses, \$59,188,000 to remain available until September 30, 2025, and in addition \$2,345,000, to remain available until September 30, 2025, 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 U.S. Merit Systems Protection Board.

The Board has authority to adjudicate appeals from a final administrative action or order affecting the rights or interests of an individual under 5 U.S.C. § 8347(d) (the Civil Service Retirement System) and 5 U.S.C. § 8461(e) (the Federal Employees' Retirement System). Pursuant to

5 U.S.C. § 8348(a)(3), the Fund is made available, subject to such annual limitation as Congress may prescribe, for any expenses incurred by the Board in the administration of such appeals.

Strategic Goals and Objectives

MSPB's FY 2024 Congressional Budget Justification is based on its Strategic Plan. The agency's performance goals cover the critical components of two strategic goals, and the 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 and safeguarding the civil service from prohibited personnel practices.

Strategic Objectives:

- 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.
 - 1A-RO: Provide understandable, high-quality resolution of initial appeals in the Regional and Field Offices, supported by fair and efficient adjudication and ADR processes.
 - 1A-HQ: Provide understandable, high-quality resolution of appeals at HQ, supported by fair and efficient adjudication and ADR processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal 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: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.
- 2B: Advance the understanding of merit, the MSPs, and the PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.

Management Objectives

- M1: Lead, manage, and develop employees to ensure a highly qualified, diverse, inclusive, and engaged workforce with the competencies to perform MSPB’s mission and support functions successfully.
- M2: Modernize IT to support agency mission and administrative functions.

FY 2024 Request by Object Class

MSPB requests a total budget authority of \$61,533,000 for FY 2024, which includes \$59,188,000 in appropriated funds and a transfer of \$2,345,000 from OPM’s Civil Service Retirement and Disability Fund. With this level of funding, MSPB will be appropriately resourced for the long and difficult process of adjudicating the inherited inventory and new appeals, issuing study reports on the merit systems in accordance with our Research Agenda, and supporting our cloud-native network modernization and transformation.

Personnel compensation and benefits constitute approximately 80% of MSPB’s budgetary expenses. Additionally, about 6% of MSPB’s budget authority is for rent to the General Services Administration (GSA) for MSPB office spaces. The remaining approximately 14% is spread across services from other government agencies (human resources, payroll, accounting, and ALJs), IT modernization and sustainment, and all other operational requirements (travel, printing, facilities maintenance, and general supplies). The budget constraints have been challenging to MSPB. Traditionally, MSPB has been authorized 235 full time equivalents (FTEs); however, the previously enacted budgets have not fully supported the authorized FTE levels. We respectfully request that this be changed for FY 2024 so that we can meet our mission’s longstanding personnel needs given the restoration of our quorum after more than five years and the unprecedented challenges we face, while maintaining operations and modernizing our IT systems.

Personnel Compensation & Benefits

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
11	Personnel Compensation	\$30,838	\$35,792	\$4,954
12	Benefits	\$9,740	\$11,205	\$1,465

Personnel compensation and benefit expenses are the largest component of the MSPB FY 2024 budget request. In this request, we are asking for budgetary resources to support 236 FTEs. MSPB’s current budget can support approximately 210 FTEs, and we require an additional 26 FTEs (14 FTEs for HQ adjudication, 10 FTEs for regional adjudication, and 2 FTEs for management support), for a total of 236 FTEs in FY 2024. These resources are vital to ensure MSPB

expeditiously and effectively responds to the inherited inventory, updates our regulations, executes Board priorities, and sustains current operations.

Now more than ever, MSPB requires a full complement of staff to support the mission. We have been diligent in our responsibilities to ensure the effective and efficient use of taxpayer dollars, and with 80% of MSPB’s budget supporting salaries and employee benefits, it is not possible to hire the staff we need without congressional commitment and support in this and future budget cycles.

Travel & Transportation of Persons

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
21	Travel & Transportation of Persons	\$200	\$410	\$210

MSPB anticipates an increase in travel as pandemic restrictions have been lifted. The Board’s AJs will increasingly resume in-person hearings and mediations, potentially involving travel. Courts are re-opening and attorneys are more frequently obligated to argue in person. Legislative changes have extended jurisdiction over appeals with whistleblower issues to all U.S. Federal circuit courts, potentially requiring MSPB’s attorneys to periodically travel to various Federal courts of appeals to represent the agency. This was rarely required before the enactment of the WPEA. Moreover, travel is required to support in person training, outreach events, site visits, interviews for studies, and presentations at conferences. The Board members plan to visit the regional and field offices and attend mission-related conferences, and they will request that regional directors periodically attend meetings at HQ.

The increase in travel in the MSPB FY 2024 request plans for inflation in travel costs and a significant increase in travel volume. Holding travel at previous budget levels would prohibit the organization from fully supporting in-person hearings and the Mediation Appeals Program (MAP). Among other benefits, in-person hearings allow the MSPB AJ to better assess the credibility of witnesses by better observing their demeanor. Virtual mediations deprive appellants and other participants of the opportunity to interact with the opposing party in a formal setting without interruption, which ultimately could impact the parties’ ability to settle. Additionally, this hinders MSPB from supporting presentations at legal symposia, mission-related conferences, and training events because in-person court appearances by our attorneys take precedence over these other engagements.

Transportation of Things

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
22	Transportation of Things	\$36	\$26	(\$10)

MSPB anticipates a cost savings in freight and courier services to support routine operations.

Rent, Communications, & Utilities

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
23	Rent, Communications & Utilities	\$4,810	\$5,169	\$359

The primary increase in this category is to account for the full cost of rent for MSPB’s nine office locations. Rent is the second-largest portion of MSPB’s budget, after salaries and benefits.

Telecommunication rentals is also included in this category and supports IT infrastructure and networks services (Managed Services and Data Services) via GSA’s Enterprise Infrastructure Solutions contract. This infrastructure and these services are the foundation of MSPB’s network, which is actively being modernized and is vital for MSPB’s daily operations.

Printing

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
24	Printing	\$64	\$37	(\$27)

MSPB utilizes the Government Publishing Office (GPO) for publishing in the Code of Federal Regulations, for photocopy services, and for the GPO Express program. MSPB has been using electronic distribution methods, which has reduced our printing costs. However, with the restoration

of the quorum and the approval of new studies and reports on the horizon, this category may see an uptick in expenses in future budget years.

Other Contractual Services

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
25	Other Contractual Services	\$3,288	\$4,010	\$722

The increase of \$722,000 is attributed to operating and maintaining the new E-Appeal, a modernized adjudication application in FY 2024, integrating the new application’s business intelligence reporting, and implementation of a cloud security solution. This category covers other services such as court reporting, maintenance of facilities, maintenance of equipment, and services from Government agencies.

This category funds critical operations via interagency agreements with other Government agencies for accounting, purchasing, and travel services (from the Bureau of the Fiscal Service (BFS)), personnel services (from the U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS)), and payroll services (from USDA’s National Finance Center (NFC)). Additionally, MSPB relies on the U.S. Coast Guard and the Federal Trade Commission for ALJ services.

Supplies & Materials

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
26	Supplies & Materials	\$359	\$351	(\$8)

This category funds electronic subscriptions (e.g., Westlaw and other legal research materials), which are critical to MSPB operations. MSPB has examined closely these requirements to yield cost savings in this category. General office supplies and IT peripheral devices, such as keyboards and docking stations costs, are included in this category.

Equipment

MOC	Description	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
31	Equipment	\$320	\$2,188	\$1,868

MSPB replaces equipment such as laptops, copiers, printers, scanners, and video teleconferencing equipment as it breaks down, is damaged, or reaches end-of-life. Additionally, software for IT operations is funded from this category, as are hard-copy law books and publications.

The FY 2024 request includes replacement of 25% of the agency’s laptop inventory and fully funding law books and publications. This category additionally includes a cybersecurity investment of \$1.49 million to align with Executive Order 14028. This significant investment will ensure that MSPB maintains a proactive posture to detect and neutralize vulnerabilities and threats, rather than a reactive posture that could result in the compromise and loss of data.

Budget Schedule O - Object Classification (Dollars In Thousands)

	FY 2022 Actuals (000)	FY 2023 Enacted (000)	FY 2024 Request (000)	Increase (decrease) over FY 2023 (000)
Direct Obligations:				
Personnel Compensation	\$26,997	\$30,838	\$35,792	\$4,954
Civilian Personnel Benefits	9,666	9,740	11,205	\$1,465
Travel of Persons	32	200	410	\$210
Transportation of Things	7	36	26	(\$10)
Rental Payments to GSA	3,375	3,600	3,914	\$314
Rental Payments to Others	108	65	121	\$56
Communications, Utilities, and Miscellaneous Charges	347	1,145	1,134	(\$11)
Printing and Reproduction	25	64	37	(\$27)
Other Services	2,750	1,276	975	(\$301)
Other Purchases of Goods and Services from Government Accounts	2,187	1,650	1,920	\$270
Maintenance of Facilities	20	26	22	(\$4)
Maintenance of Equipment and Software	904	336	1,093	\$757
Supplies & Materials	178	359	351	(\$8)
Equipment/Lease Improvement	782	320	2,188	1,868
Direct Obligation. . .	47,378	49,655	59,188	9,533
Reimbursable Obligations. . .	2,345	2,345	2,345	0
Total New Obligations. . .	49,723	52,000	61,533	9,533

Budget Schedule Q - Employment Summary

	FY 2022 Actuals	FY 2023 Enacted	FY 2024 Request	Change
Direct:				
Civilian Full-Time Equivalent Employment	186	223	224	1
Reimbursable:				
Civilian Full-Time Equivalent Employment	<u>12</u>	<u>12</u>	<u>12</u>	<u>0</u>
Total...	198	235	236	1

MSPB is authorized 235 FTEs in FY 2023, however funding in the FY 2023 enacted budget only supports 210 FTEs. During the previous budget cycles when MSPB was without a quorum, the organization held staffing levels constant at approximately 200 FTEs to stay within our enacted budgets. With the quorum restored, MSPB requires sufficient resources to fully fund our authorized FTE level to address the inherited inventory and process new appeals, execute our studies mission, and meet our IT modernization and cybersecurity requirements.

By way of example, upon the arrival of the Board members, five senior adjudication attorneys were detailed from the Office of Appeals Counsel (OAC) to the Board members' offices to ensure that they quickly attained fluency with MSPB's processes and procedures and could assume their adjudicatory functions as expeditiously as possible. The Board members continue to rely on those detailees to support the pace of work demanded by the inherited inventory and the arrival of new cases, leaving OAC, the office that drafts the recommended decisions upon which the Board members vote, effectively short-staffed since we do not have the funding to reach our authorized FTE level. Appropriately staffing MSPB's adjudication functions is critical to reducing the HQ case inventory that amassed during the five years without a quorum and to keeping up with incoming new HQ cases, as well.

To confront the challenges before us while maintaining the balance between high-quality and timely decisions, it is crucial to ensure sufficient adjudication staff with the necessary competencies, knowledge, and training to perform their work efficiently.

Conclusion

The merit system principles are designed to ensure fair treatment of employees, protect employees from misuse of authority, and ensure Federal employees are putting the public interest first. A Federal employee's removal, suspension of more than 14 days, reduction in grade or pay, and allegations of whistleblower reprisal, among numerous other concerns, are appealable to the Board. There are over 2,600 cases remaining in the inherited inventory (as of February 28, 2023) awaiting action by the Board members—cases that involve people who believe they have been unjustly treated in the Federal workplace or in other areas of MSPB's jurisdiction. Some of these individuals and their families have been waiting for a decision in their appeal for more than five years while MSPB was without a quorum and unable to issue Board-level decisions. Additionally, the agencies involved in these cases have been awaiting finality for years, in many instances effectively prevented from moving forward with hiring, reinstatements, and other actions. The next two years will be MSPB's most critical since its establishment in 1978. The agency faces unprecedented challenges in reducing the inherited inventory while simultaneously preparing to deploy its most significant IT modernization efforts in approximately 20 years. MSPB has taken the greatest care in assessing the resources it needs to truly succeed. MSPB respectfully requests the support of Congress for our FY 2024 budget request.

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 CSC in its quasi-judicial capacity; 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 MSPs and defined PPPs.

Board Organization

The Board members are the Chairman, Vice Chairman, and Member (but currently include the Acting Chairman and one Member). Board members are nominated by the President and confirmed by the Senate and serve overlapping, non-renewable seven-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 before them. By statute, the Chairman is the chief executive and administrative officer of MSPB. The office directors report to the Chairman through the Executive Director. The agency has its HQ in Washington, DC, with six regional and two field offices located throughout the United States in which AJs adjudicate cases at the initial appeal level, akin to a trial court.

Providing and Using Administrative Data for Statistical Purposes

MSPB does not have administrative datasets with the potential for statistical use as outlined in OMB Memorandum M-14-06, "Guidance for Providing and Using Administrative Data for Statistical Purposes." However, statistical data can be found in the Board's Annual Reports available at www.mspb.gov. The Annual Reports contain summaries of significant opinions issued by MSPB's reviewing courts, case-processing data for initial appeals and Board cases, and summaries of other merit systems activity, including articles posted on MSPB's website. It also contains a review of current OPM issues and summaries of MSPB's congressional, international, and outreach activities, and citations to MSPB work, internal management issues, and the external factors that affect the Board's work.

Adjudication

The majority of 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. The next-largest number of cases involves individual right of action cases, followed by 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 the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.; the Veterans Employment

Opportunity Act, 5 U.S.C. § 3330a et seq.; the Whistleblower Protection Act (WPA); P. L. 101-12; the WPEA, P. L. 112-199; NDAA 2017, P.L. 114-328; the VA Accountability and the Whistleblower Protection Enhancement Act, P. L. 115-41; the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, P.L. 115-73; NDAA 2023 P.L. 117-263; and additional authorities listed in the regulation 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 a within-grade increase (WGI); RIF actions; suitability determinations; OPM employment practices (the development and use of examinations, qualification standards, tests, and other measurement instruments); denials of restoration or reemployment rights; and certain terminations of probationary employees.

At the outset of a case, an appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An AJ in the office ensures that the parties receive the procedures called for in the law and MSPB's regulations and, after providing a full opportunity to develop the record on all relevant matters (including a hearing when requested), issues an initial decision. Beginning in March 2020, the regional and field offices adjusted their processes and procedures to conduct hearings in a virtual environment and continued to adjudicate appeals. Since October 2022, in-person hearings again have been offered in the regional and field offices. Unless a party files a PFR with the Board, the initial decision becomes final 35 days after issuance. Any party, OPM, or OSC may petition the full Board in Washington, DC, to review the initial decision. When a PFR is filed, the Board's decision on the PFR constitutes the final administrative decision on the appeal.

The Board's final decision, whether it is an initial decision of an AJ that has become final or the Board's decision on a PFR, may be appealed to the U.S. Court of Appeals for the Federal Circuit, or, in cases involving allegations of discrimination, to a U.S. District Court or the Equal Employment Opportunity Commission (EEOC). In addition, certain cases involving allegations of reprisal for whistleblowing may be appealed to any of the U.S. circuit courts of appeals with competent jurisdiction.

If a party in a case believes that the other party is not complying with an MSPB order or a settlement agreement entered into the record for MSPB enforcement, 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, depending on the number of issues raised, 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, MSPB's regulations require that the case be referred to the full Board to ensure that the non-complying party has reached compliance.

In addition to adjudicating cases on the merits, MSPB provides several ADR services to assist parties in resolving their cases. Use of these services is voluntary; however, these services provide the parties more control over the process and can effectively resolve a case. Also, resolving a case through ADR procedures can save time and reduce costs for the appellant, their agency, MSPB, and the Government (as compared to the more formal regulations and procedures involved with adjudication on the merits).

Mediation Appeals Program

The Mediation Appeals Program 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 an agreement that will aid in resolving their disputes and settling the appeal quickly, economically, and to the benefit of all concerned. Unlike traditional mediation, MAP charges no fees. Both parties must agree to its use before the appeal will be accepted for the MAP process, and both must agree on its resolution before any settlement is concluded. Unlike the traditional appeal process, the parties control the result of the case under the skilled guidance of the mediator, who plays no role in deciding the appeal should they not reach an agreement. Importantly, because most mediations occur near the beginning of adjudication, MAP saves time and money for 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 greater number of cases that have been mediated almost every year since the program's inception. Further, MAP mediators successfully settle more than half of the appeals referred to mediation. Moreover, even when the case ultimately 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. When mediators asked parties to complete evaluations at the end of each mediation, more than 95% stated they would use MAP again.

Merit Systems Studies and OPM Oversight

The Board 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 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 function, in conjunction with the agency's adjudication of individual appeals and its authority to review OPM regulations, ensures that the Board has the full legal authority necessary to oversee Federal merit systems at the systemic level and to remedy PPPs on an individual level. MSPB studies address the variety of challenges facing the Federal Government in managing its workforce.

Publications Issued between FY 2021 – FY 2023

The most recent reports were transmitted to the President and Congress in December 2022 and February 2023. Prior to that, no reports had been submitted since the loss of quorum in January 2017. In addition to regular editions of the Issues of Merit newsletter, MSPB's OPE issued the following report publications over the past few years:

[*Perceptions of Prohibited Personnel Practices: An Update*](#) (February 2023). This report analyzes survey data from 2010, 2016, and 2021 to track the prevalence of PPP perceptions, address the roles of the perceived offenders, and explain the potential consequences of a culture where PPPs are perceived.

[*Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem*](#) (December 2022). This report evaluates the prevalence of sexual harassment in Federal workplaces and Federal agency efforts to prevent and respond to such harassment.

[*U.S. Merit Systems Protection Board Research Agenda 2022-2026*](#) (September 2022) articulates a research agenda that broadly defines the topics that MSPB considers most important and promising for study in the near term. OPE did extensive stakeholder outreach to select 44 topics across 6 major areas of research to drive OPE research through 2026: Defending merit; Building and Effective Workforce; Recruitment and Hiring; Pay and Performance Management; Supervision and Leadership; and OPM Oversight.

[*Confidence in Ability to Perform Successfully*](#) (September 2021). This research brief discusses how organizations respond to unforeseen challenges and opportunities and are greatly influenced by how individual Federal workers think about the consequences of their own actions.

[*Agency Leader Responsibilities Related to Prohibited Personnel Practices*](#) (May 2021) discusses selected responsibilities assigned to the heads of Federal agencies by civil service law, such as to promote the prevention of PPPs, protect whistleblowers, and be accountable for proper exercise of personal authority. This research brief places these responsibilities in the context of the broader goal of a merit-based civil service and outlines the extent to which they can—and in some cases cannot—be delegated.

[*Determining an Acceptable Level of Competence for Step Increases*](#) (April 2021) reviews data and practices related to the WGI, a periodic fixed-pay increase that is granted provided that the employee performs at “an acceptable level of competence.” This research brief explores factors that are important to the WGI process, the role of the WGI in addressing under-performance, and some lessons learned for agencies to consider.

[*Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes*](#) (February 2021) discusses Federal agency use of direct hire authorities (DHAs): streamlined procedures to appoint new employees without regard to selected merit system and public policy provisions, including ranking and veterans’ preference. This research brief then looks more closely at the DHA covered under 5 U.S.C. § 3304(a)(3) which is approved and overseen by OPM. As discussed, although agencies believe that section 3304 DHAs are useful, their vision of the authority’s purpose and use appears to differ from OPM’s.

[*The Importance of Job Fit for Federal Agencies and Employees*](#) (October 2020). This research brief draws on professional literature and selected items from the 2016 Merit Principles Survey (MPS) to describe three distinct ways employees may fit with their job; discusses how job fit relates to workplace outcomes, such as job satisfaction, employee engagement, performance appraisal ratings, and intention to leave; and outlines actions in areas such as job design, hiring, training, and performance management that might help Federal managers and employees improve job fit.

Other Studies Activity

Planning is underway for a FY 2024 Merit Principles Survey that will provide data to support several topics on the research agenda, such as, whistleblowing protections, fair and equitable treatment in the Federal workplace, employee engagement, supervisory and employee challenges with performance management, and dual career tracks for supervisors and technical specialists.

Information Technology

MSPB's Office of Information Resources Management (IRM) designs, develops, implements, and maintains the agency's IT infrastructure, systems, and cybersecurity program. IRM's mission is to support the modern, efficient, and cost-effective use of IT at MSPB. Our vision—supported by a number of active projects—is to migrate all MSPB business systems to a cloud-based architecture. IRM provides technical and operational support to MSPB to guarantee IT efficiency, effectiveness, compliance, and cybersecurity to enable the agency's mission.

Human Resources

MSPB contracts with USDA's APHIS for selected HR administrative and operational services through an interagency agreement. The agreement is developed between the two agencies and monitored within MSPB's Office of Financial and Administrative Management.

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 its employees throughout the country. In addition, the agency contracts with FOH to offer all employees access to the Employee Assistance Program (EAP). The EAP assists agency employees by providing both prevention and intervention for employee problems, which ultimately improves employee health, functioning, and 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 employee with respect to workplace or onsite availability of services, the agency does strive to ensure that each employee understands that it fully supports a healthy and safe workplace for all employees.

Additionally, it is of the utmost importance to MSPB leadership that the agency hires and retains a diverse and highly qualified legal, research, analytical, and administrative workforce to support MSPB's mission now and in the future.

Financial Management

MSPB has initiated cross-servicing agreements with the Treasury Department's BFS for its accounting, financial auditing, purchasing, and travel-related services and support. Since 2002, BFS has processed MSPB's administrative payments and prepared its accounting reports. The Board has received unqualified/unmodified opinions on its audits since the agency has been subject to audits of its financial statements.

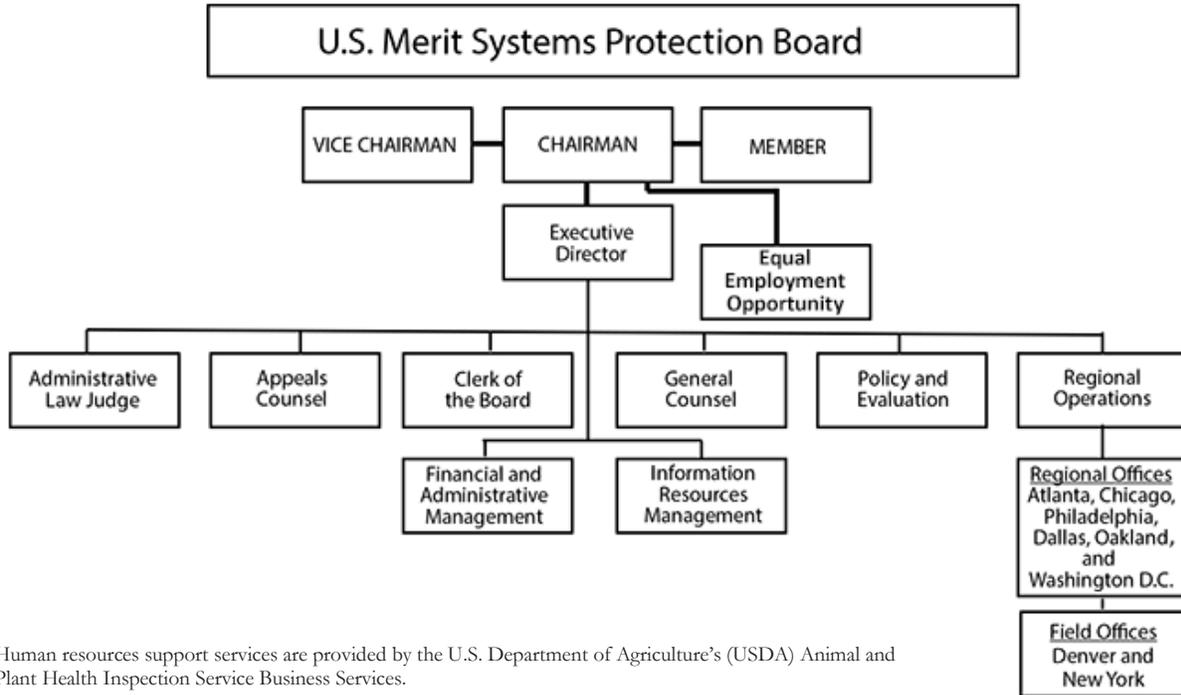
In addition to the agreement in place for personnel services, MSPB contracts with USDA's NFC for processing payroll and payroll-related activities, including earnings and leave statements, W-2

information, and debt management. The cross-servicing relationships with these organizations have provided MSPB with timely responses and more accurate processing of information from larger pools of knowledgeable staff than would be possible with a smaller in-house staff alone. BFS, APHIS, and NFC have the resources to stay current with the latest technologies, thereby providing these services efficiently and economically.

Equal Employment Opportunity

MSPB's Office of Equal Employment Opportunity (OEEO) plans, implements, and evaluates the agency's affirmative employment programs and initiatives; advises senior executives, managers and supervisors about these programs and initiatives; oversees diversity and inclusion initiatives; and provides all employees training on rights and remedies available under the anti-discrimination laws and whistleblower protection laws. OEEO provides equal employment opportunity counseling, formal complaint processing, and ADR services to current and former employees and applicants who allege discrimination. OEEO evaluates and reports MSPB's complaint data to Congress, EEOC, OPM, and other external stakeholders; and workforce demographics by occupation and grade to the EEOC. The EEO Director also coordinates MSPB's Diversity and Inclusion Council.

Organization Chart



Human resources support services are provided by the U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service Business Services.

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

Accounting services are provided by the Department of the Treasury’s Bureau of the Fiscal Service.

Office of Administrative Law Judge (ALJ) functions are performed by ALJs employed by the U.S. Coast Guard and Federal Trade Commission and the under reimbursable interagency agreements.

List of Abbreviations and Acronyms

ADR	Alternate Dispute Resolution
AJ	Administrative Judge
ALJ	Administrative Law Judge
APHIS	Animal and Plant Health Inspection Service
BFS	Bureau of the Fiscal Service
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
DHA	Direct Hire Authority
EAP	Employee Assistance Program
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FBI	Federal Bureau of Investigation
FedRAMP	Federal Risk and Authorization Management Program
FOH	Federal Occupational Health
FTE	Full Time Equivalent
FY	Fiscal Year
GPO	Government Publishing Office
GSA	General Services Administration
HQ	Headquarters
HR	Human Resources
IRM	Information Resources Management
IT	Information Technology
MAP	Mediation Appeals Program
MPS	Merit Principles Survey
MSPs	Merit System Principles

MSPB	Merit Systems Protection Board
NDAA	National Defense Authorization Act
NIST	National Institute of Standards and Technology
NFC	National Finance Center
OAC	Office of Appeals Counsel
OEEO	Office of Equal Employment Opportunity
OMB	Office of Management and Budget
OPE	Office of Policy and Evaluation
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PFR	Petitions for Review
PIP	Performance Improvement Plan
PPPs	Prohibited Personnel Practices
PUMP	Providing Urgent Maternal Protections for Nursing Mothers Act
PWFA	Pregnant Workers Fairness Act
RIF	Reduction in Force
TSA	Transportation Security Administration
TSO	Transportation Security Officers
USDA	U.S. Department of Agriculture
VA	Department of Veterans Affairs
WGI	Within Grade Increase
WPA	Whistleblower Protection Act
WPEA	Whistleblower Protection Enhancement Act of 2012

FY 2024 Program Increases/Decreases from FY 2023 Enacted Budget

Merit Systems Protection Board

(Dollars in Thousands)

	FY 2023 Enacted	FY 2024 Request
Salaries and Expenses		
Base	\$52,000	\$52,000
<u>Maintain Current Services</u>		
Federal Pay	30,643	30,643
Federal Pay Proposal (5.2%)	0	1,722
Promotions and Within Grade Adjustments	195	136
Benefits	9,740	9,740
CSR&D Fund	2,345	2,345
<u>Inflationary Adjustments</u>		
GSA Space Rental Cost	3,600	3,914
Communications & Utilities	1,145	1,134
Government Services	1,650	1,920
Maintenance of Equipment and Software	336	726
Equipment/Lease Improvement	320	320
Other Services	1,276	1,276
Supplies and Materials	359	351
Maintenance of Facilities	26	22
Rental Payments to Others	65	121
Travel of Persons	200	200
Printing and Reproduction	64	37
Transportation of Things	36	26
Current Services Total	\$52,000	\$54,633
<u>Program Changes (Increases Decreases)</u>		
HQ Adjudication Staff (14 Unfunded Vacant Positions)		2,667
Regional Adjudication Staff (10 Unfunded Vacant Positions)		1,793
Management Support Staff (2 Unfunded Vacant Positions)		296
New E-Appeal Business Intelligence and Reporting		222
New E-Appeal Data and Cloud Security		145
Cybersecurity Implementation per EO 14028		1,499
IT Hardware Refresh (Phased Laptop Lifecycle Replacement)		369
Decommissioning of Legacy E-Appeal Applications		(301)
Travel Increase for In-Person Hearings and Mediations		210
<u>Program Increases/Decreases</u>		6,900
Total Appropriated	\$52,000	\$61,533
Projected Available Carryover as of February 2023	495	0
Total Amount Available	\$52,495	\$61,533
Total FTEs	210	236