

Mr. Spencer:

I am writing on behalf of the Department of the Treasury, Office of the General Counsel, General Law, Ethics and Regulation, to provide this office's position on the Merit Systems Protection Board's four alternative regulatory changes proposed at 78 FR 67076. We strongly support Option C, because it would for the first time create a procedure under which the MSPB would not be required to hold an evidentiary hearing on matters on which the appellant bears the burden of proof when there is no genuine issue of material fact to be resolved.

There is a full opportunity for discovery in MSPB proceedings, so appellants will suffer no prejudice to their substantive rights if they are required to develop facts establishing a basis for relief before advancing to a hearing. In addition, both parties and the Board will avoid the time and expense of a hearing where none is warranted, potentially resulting in savings to the government. In this era of fiscal austerity, the need for such savings cannot be questioned. Moreover, reducing the costs associated with adjudicative hearings would free MSPB resources to accomplish the Board's other important work. Finally, the change would conform the Board's procedure to that followed by the federal courts and many other federal administrative adjudicative systems. The well-established record of the practice in those fora confirms its efficacy, fairness and economy.

Thank you for considering our views in this matter.

Gregg S. Avitabile  
Attorney-Advisor  
U.S. Department of the Treasury  
Office of General Counsel (General Law, Ethics & Regulation)