



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Vice Chairman
1615 M Street, NW
Washington, DC 20419-0002

Phone: (202) 653-7105; Fax: (202) 653-7208; E-Mail: vc@mspb.gov

Vice Chairman

July 13, 2018

The Honorable Trey Gowdy, Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings, Ranking Member
Committee on Oversight & Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Cummings:

I want to thank you and the Committee for considering reauthorization legislation for the U.S. Merit Systems Protection Board (MSPB) for a period of five years. Reauthorization is an effective and efficient means of ensuring that the employment policies and procedures of the Federal government are consistent with statutorily mandated merit principles. The MSPB's most recent authorization was enacted in 2002 and expired on September 30, 2007. Pursuant to the Congressional Budget Act of 1974 as amended, 31 U.S.C. § 1110, the MSPB has submitted requests for reauthorization to Congress several times since the last authorization expired.

Established by the Civil Service Reform Act of 1978 (CSRA) (Pub. L. No. 95-454) as a successor agency to the U.S. Civil Service Commission, the MSPB is an independent, quasi-judicial agency that adjudicates employee appeals of certain adverse personnel actions. The majority of the cases brought to the MSPB are appeals of agency adverse actions—that is, removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less. Challenges to Office of Personnel Management determinations in retirement matters are also a major category of appeals that are adjudicated by the Board. Other types of actions that may be appealed to the MSPB include: performance-based removals or reductions in grade, denials of within-grade salary increases, reduction in force actions, OPM suitability determinations, denials of restoration or reemployment rights, individual right of action appeals under the Whistleblower Protection Act and certain terminations of probationary employees. The MSPB also hears complaints of alleged violations of the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act.

In addition to adjudicating employee appeals, the MSPB's second statutory mission is to conduct studies of the Federal civil service and other merit systems in the Executive Branch to ensure that these systems are free from prohibited personnel practices. The MSPB conducts independent, nonpartisan, objective research that supports the merit system values, enhances human resources management, and promotes the public interest in a viable merit-based civil service. Our studies and reports are based on objective, independent research using established scientific methods. The MSPB has traditionally issued four to six reports a year and publishes periodic newsletters annually.

Under the CSRA, the MSPB's enabling statute, authorizing appropriations for MSPB was permanent. Subsequently, under the Whistleblower Protection Act of 1989, the MSPB's authorization

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was changed to a 6-year period that expired at the end of FY 1994. (Pub. L. No. 101-12, 13 Stat. 34, 5 U.S.C. 5509 note). In 1994, the MSPB's authorization was extended through FY 1997 (Pub. L. No. 103-424, 108 Stat. 4361), placing it on the same reauthorization schedule as that of the Office of Special Counsel. The MSPB was subsequently reauthorized for five years, through FY 2002 (Pub. L. No. 104-208, 110 Stat. 3009) and, as mentioned above, again through FY 2007 (Pub. L. No. 107-304, 116 Stat. 2364).

It is important that agencies and Federal employees have an avenue of appeal that provides for the fair and prompt review of adverse personnel actions. Reauthorization of the MSPB will reaffirm the Federal government's commitment to merit-based employment and to an independent, fair, neutral, and timely process for review of adverse Federal agency employment actions. By safeguarding and monitoring the integrity of the nation's Federal employment systems, the MSPB plays a major role in assisting all Federal agencies to achieve their missions. While the MSPB has jurisdiction over Executive branch agencies and limited jurisdiction over state government agencies, its decisions are often used as guidance by Federal agencies in the legislative and judicial branches of government and by state government agencies.

I am particularly pleased that the legislation contains some provisions that I have been discussing with committee staff for the past eighteen months. The five include: (1) allowing the MSPB to institute a single filing fee at the beginning of the adjudication process; (2) allowing for summary judgment; (3) redefining what type of furlough constitutes an adverse action for MSPB jurisdictional purposes; (4) allowing for the reappointment of the three MSPB members; and (5) technical corrections regarding MSPB organizational structure referenced in statutes dealing with the Department of Veterans Affairs. These provisions are intended to bring more efficiency to the MSPB adjudication process, better organization to its other statutory responsibilities and clarification to some current statutory ambiguities. Notably, I do not believe these proposals will cost American taxpayers one cent.

As you may know, the MSPB has lacked a quorum of Senate-confirmed members since January 8, 2017. Three nominees are now pending Senate consideration, and a confirmation hearing has been scheduled by the Senate Homeland Security and Government Affairs Committee for July 19, 2018.

I am available to discuss the agency's reauthorization request and the additional legislative proposals with you at your convenience. Your staff may contact Rosalyn L. Coates, Legislative Counsel, at (202) 254-4485.

Sincerely,



Mark A. Robbins
Vice Chairman*

Enclosures

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* Because the office of Chairman currently is vacant, the functions of the chief executive and administrative officer of the Merit Systems Protection Board are vested in the Vice Chairman pursuant to 5 U.S.C. § 1203(b).