



**U.S. Merit Systems Protection Board**

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**Congressional  
Budget  
Justification  
FY 2014**

**Prepared for  
The Committee on Appropriations**

**April 2013**

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**United States**  
**Merit Systems Protection Board**



**Congressional Budget  
Justification  
For Fiscal Year 2014**

**Submitted to the  
Committee on Appropriations**

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## Table of Contents

<b>Introduction</b> .....	<b>1</b>
About MSPB .....	1
<b>Overview</b> .....	<b>1</b>
<b>External Trends Affecting MSPB’s Mission and Performance</b> .....	<b>2</b>
<b>Organization and structure of MPSB</b> .....	<b>4</b>
Board Organization.....	4
Organization Chart.....	6
<b>FY 2014 Budget Request</b> .....	<b>6</b>
Summary of FY 2014 Independent Budget Request .....	6
Appropriation Language.....	7
Strategic Goals .....	7
FY 2014 request by object class .....	8
Request to increase Agency FTE from 226 to 239 by Office.....	11
Budget Schedules – O Object Classification.....	14
Budget Schedules – Q Employment Summary.....	15

# The U.S. Merit Systems Protection Board

## FY 2014 Budget Request

### Introduction

A highly qualified Federal workforce managed under the Merit System Principles (MSPs) is critical to ensuring effective and efficient Federal agency performance and service to the public. In fact, the MSPs are in essence good management practices as such, and the most fundamental function of the Merit Systems Protection Board (MSPB or Board) is to ensure that these good management practices are employed in the management of the Federal workforce. The MSPs help ensure that the Federal Government is able to recruit, select, develop, and maintain a high quality workforce and thereby reduce staffing costs and improve organizational results that serve the public. A fully funded, well-run MSPB is critical to protecting the Federal merit systems, ensuring due process, promoting Government wide MSPs, and preventing Prohibited Personnel Practices (PPPs). With this request MSPB is exercising our independent authority to request \$47,758,000 in budget authority to ensure the agency can meet its mission.

### 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 19<sup>th</sup> 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;<sup>1</sup> the Office of Personnel Management (OPM) to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority (FLRA) 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.<sup>2</sup>

### Overview

The MSPB is using its statutory independent budget authority to submit a budget that is 12% more than the President's request on behalf of MSPB. This by-pass request is based on several factors, including:

- Potential significant increase in caseload resulting from furlough appeals filed by federal employees. Such appeals could result in the Board's caseload more than doubling;
- Likely increase in appeals resulting from the passage of the Whistleblower Protection Enhancement Act of 2012; and
- Lower staffing levels and reduced training as a result of the \$2 million sequestration cut.

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<sup>1</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, Journal of the Federal Circuit Historical Society, Volume 4, 2010.

<sup>2</sup> Title 5 U.S.C. § 2301 and Title 5 U.S.C. § 2302, respectively.

At MSPB, we recognize the financial challenges facing our nation with increasing pressure to cut fiscal spending and to reduce the size of the Federal government. On March 1, 2013, government-wide “sequestration” was implemented and the Board sustained a decrease of over 2 million dollars from its budget. Moreover, as a result of sequestration, a number of agencies<sup>3</sup>, including the Department of Defense, the Environmental Protection Agency, and the Federal Aviation Administration have announced that they intend to furlough staff. Most federal employees will have a statutory right to appeal these furloughs to the Board. If even 1% of all furloughed federal employees decide to file appeals, the Board’s case workload would nearly double. Without a corresponding increase in budget authority to fund staffing needs to meet this increased workload, the Board’s ability to fulfill its statutory responsibility to adjudicate cases will be severely compromised.

As we assess our needs for FY 2014, any additional decreases in MSPB’s budget authority will have a direct, adverse impact on our ability to perform our mission, which will cause a continuous increase in case processing time. MSPB’s shrinking budget authority has resulted in position vacancies, which have already contributed to the slowing of PFR processing times and could impact the Board’s ability to fulfill its statutory mission to conduct special studies of the civil service. In addition, we are severely limited in our ability to provide the outreach and education services that are essential to the effectiveness and efficiency of our adjudication and studies functions. If our budget continues to decrease and our appellate workload increases, we will not be able to improve the timeliness of PFR processing and are likely to experience significant reductions in the timeliness of initial appeals processing. A short fall in funding will also jeopardize our studies output and impact in the near and long term, and will delay internal improvements in our management processes.

Below are the external trends affecting MSPB’s mission and performance along with the fiscal year 2014 Congressional Budget Justification of \$47.758 million in budget authority. The total MSPB discretionary request of \$47.758 million includes a transfer of \$2.345 million from the Civil Service Retirement and Disability Fund.

### **External Trends Affecting MSPB’s Mission and Performance**

A number of significant external trends and issues are likely to affect MSPB’s mission to protect the Federal merit systems through FY 2014.

#### **External Trends**

- Government-wide adjustments from increasing retirements and the after effects of budget cuts, Reductions in Force (RIF), and furloughs.

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<sup>3</sup> It has been reported that a number of federal agencies are planning to furlough their employees because of sequestration. For instance, according to reports, on April 3, 2013, the Environmental Protection Agency notified its employees that a first round of furloughs – which would entail four unpaid furlough days through June 15, 2013 – would begin on April 21, 2013. Similarly, the Department of Labor sent 4,700 employees furlough notices on March 5, 2013, which provided that furloughs would begin on April 15, 2013. Finally, officials at the Department of Defense recently announced that the vast majority of its 800,000 civilian workers would be furloughed for 14 days during the fiscal year. Additional information regarding federal agency plans to furlough because of sequestration can be found at: <http://www.govexec.com/management/2013/04/furlough-watch-potential-agency-agency-impacts-sequestration/61535/>

- Expected increase in federal employee appeals required by government-wide sequestration.
- Expected increase in appeals due to retirements (benefits claims appeals).
- Expected increase in appeals due to the WPEA, RIFs, agency realignments, and other actions to reduce or restructure the workforce.
- Veterans' rights and other potential changes in law and jurisdiction.
  - Increasing number of veterans returning from two wars.
  - Potential increases in adjudication workload, case complexity, and jurisdiction due to large scale changes in law or regulation affecting merit systems and appeals.
- Revisions to Federal management and employee flexibilities.
  - Increases in appeals workload.
  - Increased intricacy in conducting studies and providing recommendations to ensure changes are managed under MSPs and free from PPPs.
  - Additional requirements to educate management officials and employees.
- Modernization of the Federal workforce toward a knowledge-based workforce.
  - Additional observation and assessment of changes to ensure innovative practices that support MSPs and avoid violating PPPs.
  - Will require coordinated modernization efforts across the Government in conjunction with other agencies and departments.

#### **Actions Required to Address External Trends**

- Preserving the integrity and enhancing the capabilities of adjudication services.
  - Fund adjudication staffing levels to account for the anticipated increase in appeals.
  - Continuing focus on performance measures to ensure equal agency emphasis on the quality, fairness and timeliness of hearings and decisions.
  - Expanding outreach to stakeholders to improve adjudication efficiency, and promote understanding of the adjudicatory process to Government agencies, employee unions, management organizations, and other stakeholders.
  - Greater emphasis on enforcement of compliance decisions.<sup>4</sup>
- Preserving the integrity of merit studies; developing regulation oversight capabilities.
  - Expanded promotion of merit studies to realize the full beneficial potential of study findings to the rest of the government.
  - Escalating outreach with Government agencies and other groups on policy and practice issues that affect MSPs and PPPs, restricting the implementation and impact of study recommendations, and the coordination of research planning.
  - Meet appropriate staffing levels to fulfill mission requirements (regulation oversight).
- Enhancements to the flexibility and stability of the MSPB workforce.
  - Improve employee development, career training and management opportunities to support sudden adjustments in mission operations.

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<sup>4</sup> Title 5 U.S.C. § 1204(a)(2)

- Create opportunities for legal staff to cross-train as mediators and specialists to support sudden service demands (such as through a RIF, furloughs, etc.).
- Cross-train IT and business support staff.

## **Organization and structure of MSPB**

### **Board Organization**

The agency has its headquarters in Washington, DC and eight regional and field offices located throughout the United States. The agency is currently authorized to employ 226 Full-time Equivalents (FTEs) to conduct and support its statutory duties.

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 **Office of the Administrative Law Judge (ALJ)** adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. The functions of this office are currently performed by ALJs at the Federal Trade Commission (FTC), the Coast Guard, and the Environmental Protection Agency (EPA) under interagency agreements.

The **Office of Appeals Counsel (OAC)** conducts legal research and prepares proposed decisions for the Board for cases in which a party files a Petition for Review (PFR) of an initial decision issued by an Administrative Judges (AJ) and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of rulings made by AJs, makes recommendations on reopening cases on the Board's own motion, and provides research, policy memoranda, and advice to the Board on legal issues.

The **Office of the Clerk of the Board (COB)** receives and processes cases filed at MSPB headquarters, rules on certain procedural matters, and issues MSPB decisions and orders. The office serves as MSPB's public information center, coordinates media relations, produces public information publications, operates MSPB's library and on-line information services, and administers the Freedom of Information Act (FOIA) and Privacy Act (PA) programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, legal research systems, the Government in the Sunshine Act program, and open government responsibilities.

The **Office of Equal Employment Opportunity (EEO)** plans, implements, and evaluates MSPB's equal employment opportunity programs. It processes complaints of alleged discrimination brought by agency employees and provides advice and assistance on affirmative employment initiatives to MSPB's managers and supervisors.

The **Office of Financial and Administrative Management (FAM)** administers the budget, accounting, travel, time and attendance, human resources, procurement, property management, physical security, and general services functions of MSPB. It develops and coordinates internal management programs, including review of agency internal controls. It also administers the agency's cross-servicing agreements with the U.S. Department of Agriculture (USDA), National Finance Center for payroll services, U.S. Department of the Treasury, Bureau of the Public Debt for accounting services, and USDA's Animal and Plant Health Inspection Service for human resources management services.

The **Office of the General Counsel (OGC)** as legal counsel to MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents MSPB in litigation; coordinates the review of OPM rules and regulations; prepares proposed decisions for the Board to enforce a final MSPB decision or order, in response to requests to review OPM regulations, and for other assigned cases; conducts the agency's PFR settlement program; and coordinates the agency's legislative policy and congressional relations functions. The office drafts regulations, conducts MSPB's ethics program, performs the Inspector General function, and plans and directs audits and investigations.

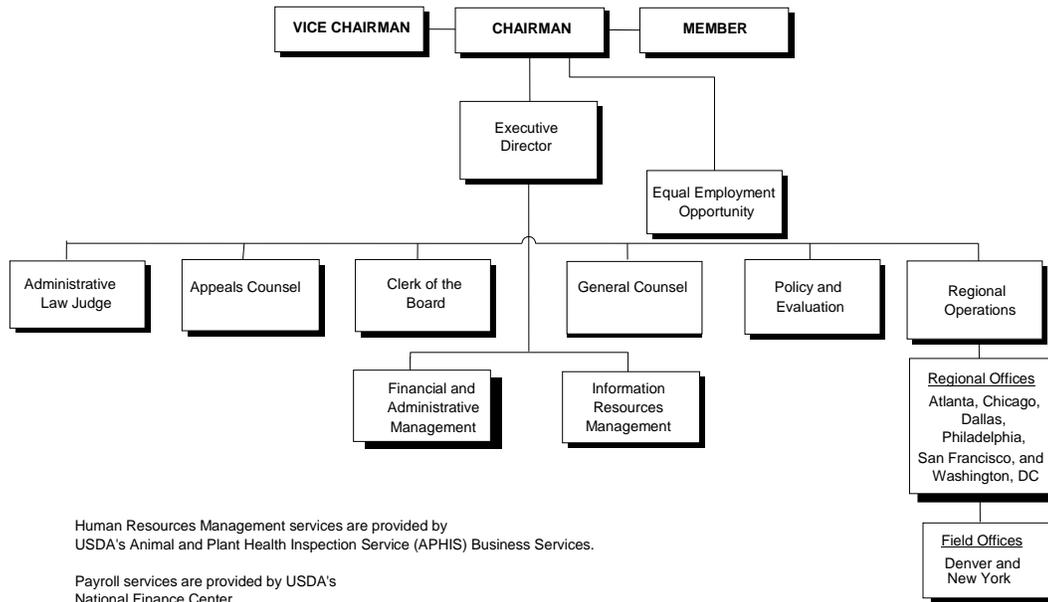
The **Office of Information Resources Management (OIRM)** develops, implements, and maintains MSPB's automated information systems to help the agency manage its caseload efficiently and carry out its administrative and research responsibilities.

The **Office of Policy and Evaluation (OPE)** carries out MSPB's statutory responsibility to conduct special studies of the civil service and other Federal merit systems. Reports of these studies are sent to the President and the Congress and are distributed to a national audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office reviews and reports on the significant actions of OPM. The office also conducts special projects and program evaluations for the agency and has responsibility for preparing MSPB's strategic and performance plans and performance reports required by the Government Performance and Results Act Modernization Act of 2010.

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

## Organization Chart

### U.S. Merit Systems Protection Board



Human Resources Management services are provided by USDA's Animal and Plant Health Inspection Service (APHIS) 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 Public Debt.

## FY 2014 Budget Request

### Summary of FY 2014 Independent Budget Request

The agency has determined it must exercise its statutory independent budget authority in order to request additional funds to perform its statutory functions. Specifically, the agency requests an increase of \$4,358,000, which accounts for accurate funding of FTEs at the level necessary to cover critical functions, vacant positions, succession planning, as well as a modest increase to related object classes. The \$47,758,000 bypass request for FY 2014 includes a transfer of \$2,345,000 from the Civil Service Retirement and Disability Fund. The table below summarizes the agency's independent budget requests for FY 2013 and FY 2014.

	<b>FY 2013 Independent Budget Request</b>	<b>FY 2014 Independent Budget Request</b>
Salaries and Expense (net of sequester reductions)	\$ 41,055,000	\$ 45,413,000
CSRD Reimbursement	<u>2,345,000</u>	<u>2,345,000</u>
<b>Total</b>	<b>\$ 43,400,000</b>	<b>\$ 47,758,000</b>

The additional resources we are requesting reflect the requirements necessary to maintain current operational standards and manage an imminent loss of institutional knowledge and staff that will affect case processing times and quality of decisions. The cost to MSPB will include increased time to process appeals, limitations on mediation program availability, possible implementation of flawed personnel regulations, and a decrease in special studies and educational materials on MSPs for Federal employees and managers. These service deficiencies can lead to lower employee satisfaction and confidence among the Federal workforce, which can result in an increased number of appeals filed with the MSPB.

The Board's decision to exercise independent budget authority comes after heavy deliberation and exhaustion of other avenues of potential relief. This decision was made to ensure that the agency can meet its operational requirements, which will impact the operation of the Federal government as a whole. In exercising its independent authority, the MSPB requests \$45,413,000 in general funds for FY 2014 to provide for salaries and related expenses and to ensure that the agency continues to meet its strategic and annual performance goals.

The agency also requests a transfer of \$2,345,000 from the Civil Service Retirement and Disability Fund to cover personnel compensation and benefit costs and other operating expenses associated with adjudicating retirement appeals. MSPB 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 MSPB in the administration of such appeals. The total FY 2014 bypass request of \$47,758,000 will fund 239 FTEs.

### **Appropriation Language**

For necessary expenses to carry out functions of the U.S. Merit Systems Protection Board pursuant to Reorganization Plan No. 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, \$45,413,000, to remain available until September 30, 2015, together with not to exceed \$2,345,000, to remain available until September 30, 2015, 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. The Chairman is authorized to accept and use any gift or donation to carry out the work of the Board.

### **Strategic Goals**

Our FY 2014 CBJ is structured on the basis of the MSPB FY 2012 – FY 2016 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 are:

**Strategic Goal 1: Serve the public interest by *protecting* Merit System Principles and *safeguarding* the civil service from Prohibited Personnel Practices; and**

**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.**

**FY 2014 request by Object Class**

The MSPB’s FY 2014 budget request of \$47,758,000 reflects an **increase** of \$4,358,000 from our FY 2013 by-pass request of \$43,400,000. With this level of funding, MSPB expects to support a staffing level of 239 FTE, to continue to maintain quality services in support of the agency functions and meet the goals and objectives of the Strategic Plan. Our request includes inflationary adjustments common to most Federal agencies. With the requested amount, MSPB is prepared to undertake mission critical tasks and an array of new and continuing initiatives in FY 2014 that will allow MSPB to achieve its strategic goals in an efficient and cost-effective manner.

A discussion of our more significant increases over the FY 2013 appropriation level follows:

***Personnel Compensation and Benefits – an increase of \$ 3,046,000***

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
11	Personnel Compensation	\$25,218	\$27,815	\$2,597
12	Personnel Benefits	\$6,584	\$7,033	\$449

Approximately 77% of the agency’s funding is for personnel compensation and benefit costs, which make up the largest amount of our budget submission. Thus, any reduction in resources affects our ability to hire and maintain a highly qualified staff at our requested FTE level. Our request assumes our authorized FTE will be increased to 239.

Our ability to maintain adequate staffing levels was adversely impacted before the sequester cut and the sequester cut of \$2 million made it much more difficult to maintain staffing levels. The reduction in FTE levels has affected the organization’s ability to meet the agency mission. MSPB currently has more than 20 vacancies and is facing the prospect of having a significant number of employee retirements (24% of our current staff is eligible for immediate retirement in 2014).

Although we are striving to meet our Performance Goals, further reductions of funding will make it impossible for the agency to meet the expected increase in cases that will inevitably result from Federal agencies taking adverse personnel actions to furlough and reduce staff in order to meet funding reductions. Additionally, with the newly signed WPEA legislation, the agency is likely to experience a significant workload increase.

*Travel – an increase of \$27,000*

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
21	Travel & Transportation of Persons	\$450	\$477	\$27

Management will continue to strive to control travel costs although it is likely the MSPB case load will increase as Federal agencies reorganize their work force because of Government wide budget cutbacks. To meet our mission, AJs must frequently travel to hearing sites located a considerable distance from the various regional offices. Additionally, as a result of the WPEA, which strips the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. of exclusive jurisdiction over appeals filed by whistleblowers, MSPB attorneys may be required to travel to various federal courts of appeal to represent the agency. While we are making better use of video conferencing for hearings, we have little control over the number of hearings that might require travel.

*Transportation of Things – an increase of \$3,000*

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
22	Transportation of Things	\$77	\$80	\$3

This category covers freight related costs and various courier services.

*Rent, Communications, & Utilities – an increase of \$141,000*

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
23	Rent, Communications & Utilities	\$4,462	\$4,603	\$141

The agency makes rental payments to the General Services Administrations (GSA) for office space in Atlanta, Chicago, Dallas, New York, Philadelphia, Denver and San Francisco. MSPB currently has a commercial lease for office space at our Washington Regional office (WRO) which is located in Alexandria, VA. The WRO office lease will become a GSA lease in the summer of FY 2013.

The balance of our request for this object class will be for network contract services, the Internet, and mandated Managed Trusted Internet Protocol services as well as other telecommunication services such as voice over Internet protocol and video conferencing. We expect significant

increases for telecommunications, due to the increase in case load and more cases being held through video conferencing.

***Printing – an increase of \$33,000***

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
24	Printing & Reproduction	\$169	\$202	\$33

The Government Printing Office (GPO) has two printing programs (printing of case files and our Issues of Merit newsletter) specifically designed for MSPB. Additionally, as our caseload increases, we anticipate we will need more printing services from GPO.

***Other Contractual Services – an increase of \$680,000***

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
25	Other Contractual Services	\$3,135	\$3,815	\$680

This object class includes the Agency’s Reimbursable Service Agreements (RSA) with the Treasury Department’s Bureau of Public Debt (\$460,000) for accounting, purchasing, and travel-related services and our RSA with the Department of Agriculture Animal and Plant Health Inspections Service (\$370,000) for personnel services.

Other RSA’s included in this object class fund our Administrative Law Judges (agreements with the Coast Guard, EPA, and FTC totaling \$150,000), as well as agreements with the National Archives and Records Administration (\$70,000) for records management storage.

The cost of employee training and various equipment related service agreements for Information Technology (IT) hardware is included in this object class. The remaining balance of our request for this category includes consulting services, maintenance and operations of facilities and IT equipment, and miscellaneous services.

*Supplies and Subscriptions – an increase of \$55,000*

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
26	Supplies & Materials	\$583	\$638	\$55

Includes an estimate of \$200,000 for on-line legal research. Additionally, we are requesting \$240,000 to implement an Electronic Records Management System to improve our records management program.

*Equipment – an increase of \$373,000*

MOC	Description	FY 2013 Request (000)	FY 2014 Request (000)	Increase (decrease) over FY 2013 (000)
31	Equipment	\$377	\$750	\$373

Most of our equipment expenditures will be for items that have exceeded their useful life such as laptops, copiers, printers and scanners, as well as annual renewals of various software license agreements.

**REQUEST TO INCREASE AGENCY FTE FROM 226 TO 239 BY OFFICE**

Vacant staff positions have adversely affected agency performance as MSPB continues to hold key positions vacant including administrative judges, legal counsels, attorneys, study analysts, administrative specialists and high-level management positions. Low staff numbers contribute to a backlog of Board-level cases and prevent succession planning for administrative judges. Further reductions in budgetary resources will hamper our ability to meet our performance goals and targets.

At the time of this submission, MSPB has more than 20 vacant positions (203 currently filled positions) in addition to the 13 additional FTE we are requesting. Uncertainty about the level of budgetary resources we will receive for FY 2013 has forced MSPB to suspend filling vacant positions. As a result of the sequester cuts and because the sequester cuts are supposed to continue for years to come, MSPB will continue to hold on filling a number of vacancies. Additionally, the agency has experienced several retirements and can expect more, *as there are currently 48 employees who are eligible to retire within one year – about 24% of our current staff.*

As noted, the Board is requesting to be funded and authorized at 239 FTE, an increase of 13 FTE from our present authorized level of 226. The Board submits this request because of the previously mentioned anticipated increase in its workload as a result of government-wide sequestration and the WPEA. Specifically, the Board anticipates that if it is held to its current FTE levels, case processing

times will increase and the Board may not be able to meet the demands it will likely face once employees begin exercising their expanded rights under the WPEA, and exercise their right to appeal furloughs.

The discussion that follows identifies the additional FTEs requested for the respective offices. It should be noted that many of the offices requesting additional FTE are staffed below their current authorized FTE levels.

**Office of Appeals Counsel (OAC) – Additional FTE requested: 3**

The OAC is central to the MSPB core mission of adjudicating disputes between employees and executive branch agencies that arise under the civil service laws. Fully funding our FY 2014 request would permit OAC to fill current vacancies and hire 3 additional FTE (attorneys at the GS 13/14/15 level).

Our request for additional FTEs is based on changes in law and jurisdiction, most notably concerning whistleblower cases and the potential impact of furlough appeals that could result from the sequester. The WPEA extended the MSPB's jurisdiction to matters not previously covered and expanded its adjudicatory authority in whistleblower cases. The changes made by the WPEA are expected to increase the number of whistleblower appeals and PFRs the MSPB adjudicates. Additionally, the WPEA will likely make the adjudication of each whistleblower case more time-consuming because the expanded definition of what constitutes a protected disclosure will mean fewer cases are dismissed for lack of jurisdiction and more will be resolved on the merits. Typically, a case dismissed for lack of jurisdiction is more quickly adjudicated than one resolved on the merits. The WPEA also provides for review of MSPB whistleblower decisions by multiple federal courts of appeals, which will increase the complexity of the MSPB's legal analysis in whistleblower cases, as different courts may disagree on legal issues and establish differing lines of precedent. Further, we anticipate an increased number of addendum claims for attorneys' fees, compensatory damages, and enforcement of MSPB decisions. These changes will have a dramatic effect on the MSPB at both the initial appeal and PFR levels and will require additional resources to enable the MSPB to implement Congress's mandate.

Additionally, OAC will likely face a significant increase in workload since agency furloughs are being implemented due to the sequester. Since agencies are implementing furloughs during the spring of 2013, it is likely MSPB will be receiving and processing furlough appeals throughout FY 2013 and FY 2014.

**Office of the General Counsel (OGC) – Additional FTEs requested: 2**

Fully funding our FY 2014 request would permit OGC to fill current vacancies and hire two additional FTEs (attorneys at the GS-13/14/15 level). The increase in staffing should ensure the important roles the OGC has in the day-to-day operations of MSPB are being met. The increase in FTE would enhance the performance of the office, permitting it to meet its duties to the agency in litigation; reviewing and responding to petitions for enforcement; coordinating the agency's legislative policy and congressional relations functions as well as reviewing and responding to OPM regulations.

**Office of Policy and Evaluation (OPE) – Additional FTEs requested: 1**

OPE is requesting one additional FTE, a GS-14 Research/Program Analyst. This position would support MSPB's statutory functions of merit system studies and OPM oversight and strategic planning and performance improvement activities required by the Government Performance Results Act (GPRA) and the GPRA Modernization Act of 2010. The analyst would augment OPE's ability to (1) conduct merit system studies; (2) support evidence-based merit system studies, strategic planning, and performance improvement; (3) carry out strategic planning and performance measurement activities for MSPB (e.g., develop and maintain the agency Strategic Plan and Resources Management Plan and produce the Annual Report); and (4) conduct outreach and develop materials to educate policymakers and stakeholders about merit system issues and policy recommendations.

**Clerk of the Board (COB) – Additional FTEs requested: 2**

COB is requesting 2 additional FTE. The FTE increases include a GS-11 Records Management Specialist to: (1) aid in the audit and inspection of all MSPB records and recordkeeping practices; (2) propose additions and alterations to the MSPB's retention schedules based on the information learned in the audit process; (3) process the backlog of inactive records stored at facilities around the country to ensure proper disposal of agency records; (4) prepare and implement records management training for all MSPB staff; and (5) ensure that recordkeeping requirements are considered in all new, manual and electronic record systems or requirements agency-wide.

Additionally, COB is requesting a GS-11 FOIA/PA Specialist to develop, implement, manage, and coordinate all requests for information in accordance with the FOIA and PA, to include developing and delivering agency-wide mandatory FOIA and PA training and preparing the Annual Federal Information Security Management Act Report and Annual FOIA Report.

**Financial and Administrative Management (FAM) – Additional FTEs requested: 2**

FAM is requesting 2 additional FTE for FY 2014. The FTE increases include: (1) a GS-13 Security Specialist that will develop and maintain the physical means, which are used for protection and security. This position will also develop, implement and maintain procedural and technical methods to enhance physical protection throughout the organization; and (2) a GS-12 Writer/Editor Specialist that will research, analyze, distill, and present information that has benefit to the Agency as it relates to policies and procedures. The individual will perform the following tasks: (A) write policy; (B) prepare reports on management and administrative activities; (C) explain the programmatic rules and regulations that affect the Agency, especially those concerning rights and obligations; (D) report results of research and investigations; (E) announce regulations; and (F) provide training and operating manuals for the use of employees.

**Office of Regional Operations (ORO) – Additional FTEs requested: 3**

ORO is requesting an additional 3 FTE for FY 2014. If approved, we expect to fill the additional requested FTE (Attorney and Administrative Judge (AJ) positions at the GS-14/15 level). The quality of MSPB's customer service depends most heavily on having a staff of highly skilled and well-trained AJs, led by actively involved Chief AJs, to adjudicate employee appeals. The

understaffing of the regional and field offices over a period of years has left the agency unprepared for the current wave of retirements of its most experienced AJs. Without taking significant action now, the success of the Board's core statutory mission is at risk. As with the OAC, the recent passage of the WPEA and the anticipated increase in employee appeals due to furloughs are expected to dramatically increase the workload of ORO. Moreover, the WPEA requires that ORO staff record case outcomes with greater specificity, so that the Board can report those outcomes to Congress, as required by the law.

**Budget Schedules - Schedule O - Object Classification (In Thousands of Dollars)**

	<b>FY 2012 Actual</b>	<b>FY 2013 By-Pass</b>	<b>FY 2014 By-Pass</b>	<b>Change</b>
Direct obligations:				
Personnel compensation	24,164	25,218	27,815	2,597
Civilian personnel benefits	6,444	6,584	7,033	449
Benefits for former personnel	0	0	0	0
Travel and transportation of persons	303	450	477	27
Transportation of things	34	77	80	3
Rental payments to GSA	3,320	3,400	3,650	250
Rental payments to others	420	291	175	-116
Communications, utilities, and miscellaneous charges	586	771	778	7
Printing and reproduction	121	169	202	33
Advisory and assistance services	0	50	50	0
Other services	755	1,425	1,690	265
Other purchases of goods and services from government accounts	1,222	1,159	1,445	286
Operation & maintenance of facilities	4	26	30	4
Operation & maintenance of equipment	400	475	600	125
Supplies & Materials	161	583	638	55
Equipment	<u>588</u>	<u>377</u>	<u>750</u>	<u>373</u>
Direct Obligations...	38,522	41,055	45,413	4,358
Reimbursable and Carryover Obligations...	<u>2,648</u>	<u>2,345</u>	<u>2,345</u>	<u>0</u>
<b>Total New Obligations...</b>	<b>\$41,170</b>	<b>\$43,400</b>	<b>\$47,758</b>	<b>\$4,358</b>

**Schedule Q - Employment Summary**

	<b>FY 2012 Actual</b>	<b>FY 2013 Appropriation</b>	<b>FY 2014 By-Pass</b>	<b>Change</b>
Direct:				
Civilian full-time equivalent employment	198	211	224	13
Reimbursable:				
Civilian full-time equivalent employment	<u>15</u>	<u>15</u>	<u>15</u>	<u>0</u>
<b>Total...</b>	<b>213</b>	<b>226</b>	<b>239</b>	<b>13</b>