

**SUPPORTING STATEMENT**  
**OMB Control No. 3124-009**  
**ICR Ref. No. 200612-3124-001**

**PART A. JUSTIFICATION**

**1. Circumstances that make the collection of information necessary.**

The Merit Systems Protection Board (MSPB or the Board) is authorized to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. See 5 U.S.C. §§ 1204, 1221, 3330a and 7701, and 38 U.S.C. § 4324. The Board has published its regulations for processing appeals at 5 C.F.R. Parts 1201, 1208, and 1209.

The Board requires that certain information be provided when an appeal is filed so that the Board can determine whether it has jurisdiction over the appeal and whether it has been filed within the applicable time limit. Although an appeal may be filed in any format, including letter form, the MSPB provides an appeal form so that a person seeking to initiate an appeal will know that he or she is providing all information required for the Board to initiate processing.

The Government Paperwork Elimination Act (GPEA) required Federal agencies, by October 21, 2003, to offer customers the option, where practicable, of sending information to the agency and receiving information from the agency in electronic form. In response to this mandate, the MSPB developed an electronic application, e-Appeal, for filing an appeal via the Internet (<https://e-appeal.mspb.gov/>). The Board's electronic application collects the same information as the paper form. In addition to the difference in medium, e-Appeal differs from the static form in that the question and answer process is interactive, i.e., the responses to earlier questions affect the follow-up questions that will be asked. This eliminates the need for an appellant to answer "not applicable" to or otherwise skip some portions of the form

**2. Reason for Adding Partial Social Security Numbers to the Appeal Form.**

Several editorial changes are being made to the appeal form in this revision to make it more understandable to appellants. The only substantive change being made is to require appellants to supply the Board with the last four digits of their Social Security numbers. The reason for adding this requirement is to enable the Board to ascertain whether appellants have filed previous appeals with the MSPB that may affect the processing of the new appeal. Under the legal doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion), a party can be precluded from litigating legal claims and issues that have already been resolved in a previous proceeding. Recent examples where the Board has applied these doctrines include *Green v. U.S. Postal Service*, 103 M.S.P.R. 279 (2006) (appellant precluded by res judicata from relitigating agency's denial of restoration); *Ward v. Office of Personnel Management*, 103 M.S.P.R. 24 (2006) (appellant precluded by res judicata from relitigating disability retirement claim); *Batiste v. U.S. Postal Service*, 100 M.S.P.R. 369 (2005) (appellant precluded by collateral estoppel from relitigating claim of constructive suspension).

Knowing a new appellant's name and address is insufficient to determine whether that person has filed previous appeals with the Board because people move, change their names, or list their names differently from one appeal to the next. As explained in our first Federal Register notice, section 7(a) of the Privacy Act precludes the Board from requiring appellants to provide

their Social Security numbers when they file an appeal, but it does not preclude the Board from requiring that appellants provide us with the last four digits of their Social Security numbers. We are attaching a copy of an advisory memorandum prepared by our Office of General Counsel (OGC). We note that OGC spoke with a Policy Analyst with OMB's Information Policy and Technology branch, who concurred with OGC's legal conclusions.

Notwithstanding the need to collect this information, the MSPB is very aware of the sensitive nature of even portions of appellants' Social Security numbers. For that reason, our policy will be to redact this information from documents supplied in response to requests for information under the Freedom of Information and Privacy Acts. This information will be available to MSPB personnel only, and will be used solely to determine whether a person filing a new appeal has previously filed an appeal raising similar claims or issues.

**3. Uses of the information and consequences of not collecting it.**

Both the e-Appeal application and MSPB Form 185 request basic information from persons who initiate proceedings before the Board, including: name and address; the name and address of the appellant's designated representative (if any); the name and address of the agency that took the appealed action, the nature of the action, an explanation of why the appellant believes the action was wrong, and a statement of the remedy the appellant is seeking. The specific requirements are set forth in the Board's regulations at 5 C.F.R. §§ 1201.24, 1208.13, 1208.23, and 1209.6. The appeal form (both paper and electronic) also give appellants the opportunity to raise additional claims and affirmative defenses, including claims of discrimination and other prohibited personnel practices, and harmful procedural error. Although use of either e-Appeal or MSPB Form 185 is voluntary, each helps to ensure that an appellant will provide the basic information necessary for the Board to determine whether the action falls within its appellate jurisdiction, and to enable the Board to docket the appeal and obtain the file on the appealed action from the appropriate agency.

**4. Efforts to identify duplication.**

No duplication will exist since the responses are personal and based on specific circumstances applicable to an individual appellant.

**5. Why similar information already available cannot be used.**

No similar information is already available since the responses are personal and based on specific circumstances applicable to an individual appellant.

**6. Methods used to minimize burden on small businesses or other small entities**

This information collection is not applicable to small businesses or other small entities.

**7. Consequences if information was conducted less frequently.**

Respondents provide the information only one time per appeal.

**8. Special circumstances requiring collection inconsistent with guidelines in 5 C.F.R. 1320.6..**

None.

**9. Efforts to consult with persons outside the agency on the availability of the information.**

Not applicable.

**10. Describe assurances of confidentiality given to respondents.**

The Privacy Act Statement on both e-Appeal and MSPB Form 185 state that the decisions of the Board are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in the appeal file may be released as required by the Freedom of Information Act. Certain information about appeals will also be used in depersonalized form as a database for program statistics.

**11. Justification for any questions of a sensitive nature.**

The Privacy Act Statement on both e-Appeal and MSPB Form 185 state that the personal information requested is relevant and necessary to reach a decision in an appeal. The Board collects the information in order to process an appeal under its statutory and regulatory authority. Since an appeal is a voluntary action, the appellant is not required to give any personal information. However, failure to supply the Board with all the essential information could result in the rejection or dismissal of an appeal.

The Board received one response to its 60-day Federal Register notice, from a Personnel Management Specialist with the Federal Trade Commission, regarding the requirement that appellants provide the last four digits of their Social Security numbers:

We have concerns about protecting the privacy of appellants. The last four digits of the SSN, in combination with any other amount of personal information about the appellant, the complete SSN can be determined.

In our 30-day Federal Register notice, we responded to this comment as follows:

We appreciate and share the concern about protecting appellants' privacy, but our investigation failed to disclose a method for accurately determining a person's complete Social Security number having knowledge of the last four digits (plus some other personal information). More importantly, as stated in our earlier Federal Register notice, the MSPB will not be disclosing these four-digit numbers to persons outside the agency. These numbers, along with other personal identifiable information, would be redacted before releasing copies of Board records to persons making requests under the Freedom of Information Act or the Privacy Act.

We note in this regard that, according to the Social Security Administration's website, ([http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std\\_adp.php?p\\_faqid=87](http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std_adp.php?p_faqid=87)) the first three digits of a Social Security number relate to the area where the person resided when the card was issued. For example, Iowa residents are assigned numbers between 478 and 485. The middle two digits range from 01 to 99, but are not assigned in consecutive order, and the final four digits run consecutively from 0001 through 9999. The commenter did not articulate, and we do not see, any way that someone could readily obtain someone's full Social Security number knowing only the last four digits, even when this knowledge is coupled with other information such as date and/or place of birth.

**12. Estimated annualized cost to the Federal Government and to the respondents, and description of the method used to estimate cost.**

Both e-Appeal and MSPB Form 185 have been in use for a substantial period of time. The only costs to the Federal Government entailed in the proposed revision to the appeal form are staff time devoted to researching and editing the paper form and the related electronic

processes. We no longer incur printing costs for Form 185, making it available for download from our public website, and mailing paper copies when requested. The only additional cost to respondents is the few seconds required to provide the last four digits of their Social Security numbers.

*Cost of Revising Form 185.* Although others were consulted and asked for input, the bulk of the work of revising Form 185, preparing the required Federal Register notices, and preparing the submission of this information collection to OMB for approval was done by two employees: a GS-14 step 10, and a GS-13 step 10, who spent approximately 40 and 10 hours respectively. Adding 23% to the gross salary amounts for these employees and dividing by 2,087 work hours in a year, their per hour salary costs are \$70 and \$59, bringing the total cost to \$3,390.

*Cost of Maintaining e-Appeal.* The Board's e-Appeal website (<https://e-appeal.mspb.gov/>) is hosted by an outside contractor, who also performs significant programming/de-bugging work on the website. The charge for hosting the website is approximately \$40,000 per year; the costs of the programming/de-bugging are approximately \$200,000 per year. Only a portion of these costs can properly be allocated to this information collection, however, because the e-Appeal website handles more than the receipt of new appeals; it handles electronic filing of other pleadings with the Board, as well as distribution of MSPB documents to e-filers. As incoming appeals represent only about 10% of the documents handled by the e-Appeal system, we estimate that \$24,000 (10% of \$240,000) is properly allocated to this information collection.

Accordingly, our estimated annualized cost to the Federal Government for this information collection is \$27,390.

**13. Provide estimates of the burden of the collection of information on respondents.**

The public burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form and instructions, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information.

**14. Outline Plans for use and publication.**

Both e-Appeal and MSPB Form 185 will only be used by MSPB to elicit pertinent information from appellants. The only use is to provide information to the Board necessary to adjudicate an appeal.

**PART B.**

**COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The methodology for identifying respondents will not rely on statistical methods. Rather, respondents may use e-Appeal or MSPB Form 185 on an as-needed basis.