



U.S. MERIT SYSTEMS PROTECTION BOARD

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Clerk of the Board

November 13, 2012

Mr. Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Bershteyn,

In response to my letter dated October 24, 2012, the Office of Management and Budget approved emergency reinstatement of Information Collection Request (ICR) 3124-0009, E-Appeal/US Merit Systems Protection Board Appeal Form (Form 185), which expired on March 31, 2012. This included approval of a revised version of Form 185. We sincerely appreciate your staff's guidance in preparing our request and promptly approving it.

Regrettably, I prematurely included the revised Form 185 in the ICR, and I now request emergency reinstatement of the same ICR *but with the previous version of Form 185*. We request your approval on or before November 27, 2012. The reasons for this request are outlined below.

Recently, for the first time in our 33-year existence, the Merit Systems Protection Board (MSPB) revised its adjudicatory regulations. The Notice of Proposed Rulemaking was published on June 7, 2012, and the Final Rule was published on October 12, 2012, and becomes effective *today*, November 13, 2012. For more information on our efforts, please see <http://www.mspb.gov/regulatoryreview/index.htm>.


In my haste to repair the lapsed ICR and in preparation for the new regulations, I included the revised Form 185 in lieu of requesting emergency reinstatement of the previous version of the form. We are concerned that the abrupt implementation of the revised version of the form will be confusing to the parties appearing before MSPB. Indeed, if we implement the revised version only to modify it further following the requisite notice and comment periods under the Paperwork Reduction Act (PRA), we believe that it will add to any confusion and result in inefficiencies in processing appeals. Most significantly, last week we learned that it will take our information technology staff

up to six months to implement the revised form in our e-Appeal Online filing system. This delay will create further confusion for e-filers. If you approve my request for emergency reinstatement of this ICR with the previous version of Form 185, we will issue the 60-day Federal Register notice seeking public comment on the revised version of the form and begin the process of incorporating and testing the revisions in a non-production environment with e-Appeal Online.

As we begin that process in consultation with your staff, I request the emergency reinstatement of ICR 3124-0009 for 180 days, and we are publishing the requisite notice in the Federal Register. Prior to the expiration of that period, we will resubmit the ICR with the final version of Form 185 for reinstatement. In support of our request, I believe we took all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information. The collection of information is needed prior to the expiration of time periods established under the PRA; it is essential to the mission of MSPB; and MSPB cannot reasonably comply with the normal clearance procedures under the PRA because public harm is reasonably likely to result if normal clearance procedures are followed and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

Thank you for considering this emergency request for reinstatement of ICR 3124-0009. If you have any questions, please have your staff contact Darryl Aaron at 202-254-4474 or via email at Darryl.Aaron@mspb.gov.

Sincerely,



William D. Spencer