



U.S. Merit Systems Protection Board
Supporting Statement A for Paperwork Reduction Act Submissions

OMB Control Number: 3124-0NEW

Title: E-Appeal/U.S. Merit Systems Protection Board Appeal Form

The U.S. Merit Systems Protection Board (MSPB or Board) is seeking approval of a new Information Collection Request (ICR) in accordance with the Paperwork Reduction Act (PRA). The ICR will be submitted to the Office of Management and Budget (OMB) for review and clearance. This information collection is part of MSPB's statutory mission to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. The information collection instruments consist of the Initial Appeal Form in different collection mediums: paper, Portable Document Format (PDF), and through MSPB's electronic filing system, e-Appeal. Through this collection and approval process, MSPB is complying with normal clearance procedures.

MSPB has a currently approved collection, OMB No. 3124-0009, E-Appeal/U.S. Merit Systems Protection Board Appeal Form, which will be discontinued once this collection has been approved. The Initial Appeal Form (Form 185) for this new collection is substantially similar to the currently approved Initial Appeal Form. Also following approval of this new collection, MSPB will deploy a new, modernized platform for its e-Appeal system that collects the information required to initiate an appeal. Included in this process are collections related to the administration of the appeals process, including point of contact information and technical support request form.

JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

MSPB is authorized to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. *See* 5 U.S.C. § 7701(a); 5 U.S.C. § 1204. The Board has published its regulations for processing appeals at 5 C.F.R. Parts 1201, 1208, and 1209, which include the information required to be submitted with a new appeal. Individuals must provide this information in writing and are not required to use a particular format.

2. Purpose and Use of the Information Collection

The purpose of collecting the information is to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations. While no specific format is required, MSPB provides an appeal form, MSPB Form 185 (Initial Appeal Form), to assist individuals in the efficient and timely submission of the required information. Included in this process are collections related to the administration of the appeals process, including point of contact information for appellant attorney representatives who will use the e-Appeal system and technical support request form for e-Appeal users.

As set forth in statute and regulation, MSPB is a quasi-judicial agency of limited jurisdiction. The Board's regulations require that appellants provide certain information when filing an appeal so that the Board can determine whether it has jurisdiction over the appeal and whether the appeal has been filed within the applicable time limit. Although an appeal may be filed in any written format, including letter form, the Initial Appeal Form is designed to assist individuals in submitting the required information, and to ensure that individuals file appeals that meet the jurisdictional requirements of MSPB. The information required to be included with an appeal is set forth at 5 C.F.R. §§ 1201.24, 1208.13, 1208.23, and 1209.6. Once obtained, this information allows MSPB to docket the appeal for assignment to an administrative judge or administrative law judge to adjudicate the appeal. If this information is not collected, the process of determining whether MSPB has jurisdiction over any given appeal and any subsequent adjudication will be less efficient and more time consuming.

While this is a new information collection, MSPB has a currently approved information collection, OMB No. 3124-0009, which collects the same information. MSPB has used the information collected through OMB No. 3124-0009 to determine whether MSPB has jurisdiction over any given appeal, and to docket those appeals for adjudication. MSPB is submitting this information collection as a new collection—instead of a renewal of the existing collection—to make an administrative change to the type of collection in accordance with the PRA. This change is unrelated to the overall purpose and use of the information collection. Following OMB approval of this new collection, the existing collection, OMB No. 3124-0009, will be discontinued.

3. Use of Automated Collection Procedures

The collection of information through the Initial Appeal Form uses automated, electronic, mechanical, or other technological collection techniques or other forms of information technology to the maximum extent possible. As set forth in 5 C.F.R. § 1201.14 and 1201.24, MSPB offers an Initial Appeal Form through its e-Appeal system, which provides an interactive interview process as a method of submitting the required information to file an appeal electronically, as well as a fillable PDF version. To utilize the Initial Appeal Form through e-Appeal, MSPB collects information to facilitate the creation of an online account. A copy of the Initial Appeal Form in PDF and copies of the screenshots for the Initial Appeal Form available on MSPB's e-Appeal have been posted to MSPB's website, *available at* [U.S. Merit Systems Protection Board | Paperwork Reduction Act Information Collections \(mspb.gov\)](https://www.mspb.gov/paperwork-reduction-act-information-collections).

While there is no requirement that individuals utilize MSPB's Initial Appeal Form through e-Appeal or PDF options, the purpose of this form is to assist individuals in filing their appeal and providing the required information for MSPB to docket an appeal and initiate processing. Other than the difference in medium, the e-Appeal version of the Initial Appeal Form differs from the paper version in that the question-and-answer process is interactive, i.e., the responses to questions determine subsequent questions. The law firm point of contact information and e-Appeal technical support request forms are available electronically.

MSPB makes every effort to reach our customers using information technology that would reduce their burden while ensuring the validity and breadth of the information that must be obtained to docket and adjudicate an appeal. MSPB provides the Initial Appeal Form in paper for individuals who may find electronic means (through e-Appeal) not available or practical.

4. Duplication of Information

No similar data are gathered or maintained by MSPB or are available from other sources known to MSPB.

5. Impact on Small Businesses

Small businesses or other small entities may be involved in these efforts to the extent that they serve as representatives for individuals filing an appeal. The Initial Appeal Form minimizes the burden on such entities by identifying the exact information required to file an appeal. Using the PDF version of the Initial Appeal Form or e-Appeal minimizes the need to consult statutory or other authorities to determine how to file an appeal with MSPB.

6. Consequences of Not Conducting Collection

Without the information collection, MSPB would be unable to satisfy its statutory and regulatory duties to adjudicate the appeals within its authority.

7. Special Circumstances

Certain statutory authorities require respondents to prepare a written response to MSPB's collection of information in fewer than 30 days after receipt of it.

There are no special circumstances that would cause the information collected to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established

in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

To the extent that the information is used for statistical purposes, the information will be anonymized.

8. Consultations with Persons Outside the Agency

A 60-day Federal Register Notice inviting public comments was published on April 25, 2023, 88 FR 25026. No comments were received.

A 30-day Federal Register Notice inviting public comments was published on August 9, 2023, 88 FR 53929.

No consultation was conducted with persons outside the agency.

9. Payments or Gifts to Respondents

MSPB will not provide payment or other forms of remuneration to individuals or their representative for initiating an appeal.

10. Assurance of Confidentiality

The Initial Appeal Form will contain a Privacy Act Statement and information regarding MSPB's system of records notice MSPB/GOVT – 1, Appeals and Case Records, 77 FR 65206 (October 25, 2012).

11. Justification for Any Questions of a Sensitive Nature

MSPB collects the information to process an appeal under its statutory and regulatory authority. This may include information sensitive in nature, as it pertains to the basis for the appeal. While MSPB does not require any specific information that may be sensitive in nature, individuals may end up submitting this information in order to provide the information necessary to initiate and adjudicate an appeal. Examples of sensitive information may include religious or medical information related to the personnel or retirement action that the individual is appealing to MSPB.

The information submitted by individuals is used in determining whether MSPB has jurisdiction and in adjudicating the appeal. Individuals are provided with MSPB's Privacy Act Statement in the Initial Appeal Form, and in the Acknowledgement Order at the beginning of the appeal. The Privacy Act Statement notifies the individual that information collected and

maintained as part of an MSPB appeal is subject to the Privacy Act of 1974 and to the Freedom of Information Act.

12. Estimates of Annualized Costs for Collection of Information

We anticipate that a total of up to 5,000 individuals will submit an appeal annually during the three-year period covered by this information collection. The submission, whether by providing the required information contained in MSPB's regulations for filing an appeal or by using the Initial Appeal Form, will generally take between 60 and 120 minutes to complete, with an average completion time of 90 minutes. Multiplying 90 minutes (1.5 hours) by 5,000 respondents yields a total maximum burden on respondents of 7,500 hours.

According to the U.S. Department of Labor's Bureau of Labor Statistics' website ([May 2021 National Occupational Employment and Wage Estimates \(bls.gov\)](https://www.bls.gov/news.release/occ202105.pdf)), the wage rate category for All Occupations is estimated to be \$39.21 per hour (mean hourly wage times the 1.4 wage rate multiplier). Therefore, the estimated burden cost to respondents is \$294,075 (\$39.21 times 7,500 hours).

13. Total Cost to Respondents or Record Keepers

There are no annualized costs to respondents other than the labor burden costs addressed in Section 12 of this document to complete this collection.

14. Estimates of Annualized Costs to the Federal Government

The anticipated annualized costs to the Federal Government are approximately \$1,040,729.20. This amount is calculated as follows:

- \$474,849.20: Seven (7) GS-11, step 5 employees spending approximately 50% of their time annually in-taking, reviewing, processing, troubleshooting, and performing other case processing or case administration related functions for the information collection. This includes the 1.4 wage rate multiplier to reflect the fully-loaded wage rate.
- \$195,140.40: Six (6) GS-12, step 5 employees spending approximately 20% of their time annually in-taking, reviewing, processing, troubleshooting, and performing other case processing or case administration related functions for the information collection. This includes the 1.4 wage rate multiplier to reflect the fully-loaded wage rate.
- \$193,011.00: Six and a half (6.5) Senior Executive Service employees spending approximately 10% of their time annually reviewing, providing oversight, and performing other case processing or case administration related functions for the information collection. This includes the 1.4 wage rate multiplier to reflect the fully-loaded wage rate.
- \$177,728.60: One (1) GS-13, step 5 employee spending approximately 100% of their time annually performing technical maintenance and/or technical troubleshooting

duties for the information collection. This includes the 1.4 wage rate multiplier to reflect the fully-loaded wage rate.

15. Explanation of Program Changes or Adjustments

Not applicable. This is a new information collection.

16. For Collection of Information Whose Results Will be Published, Outline Plans for Tabulation and Publication

Not applicable.

17. Display of OMB Approval Date

This collection does not seek approval to not display the expiration date for OMB approval.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection does not seek exception to “Certification for Paperwork Reduction Act Submissions.”